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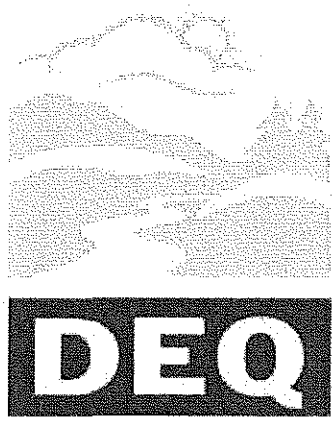
OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS



State of Oregon
Department of Environmental Quality

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OREGON ENVIRONMENTAL QUALITY COMMISSION MEETING

January 22, 1988
Fourth Floor Conference Room
Executive Building
811 S. W. Sixth Avenue
Portland, Oregon

REVISED 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 Work Session on Legislative Concepts, December 10, 1987, and the December 11, 1987, EQC Meeting.
12/10 - APPROVED; 12/11 - APPROVED WITH CORRECTIONS

* B. Monthly Activity Report for November 1987. - *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. Informational Report: New Federal Ambient Air Quality Standards for Particulate Matter (PM_{10}) and Its Effect on Oregon's Air Quality Program. - *APPROVED*

E. Request for Authorization to Conduct a Public Hearing to Amend Ambient Air Quality Standards (OAR 340-31-005 through 055) and Air Pollution Emergencies (OAR 340-27-055 through 025) Principally to Add New Federal PM_{10} Requirements as a Revision to the State Implementation Plan. - *APPROVED*

F. Request for Authorization to Conduct a Public Hearing on Revisions to the Air Pollution Control New Source Review Regulations (OAR 340-20-220 through 260) and Prevention of Significant Deterioration Regulations (OAR 340-31-100 through 130). - *APPROVED*

G. Request for Authorization to Conduct a Public Hearing on Commitment for PM_{10} Group II Areas (Bend, LaGrande, Portland) as a Revision to the State Implementation Plan (OAR 340-20-047). *APPROVED*

H. Request for Authorization to Conduct a Public Hearing on Proposed Asbestos Regulations Concerning Licensing and Training Requirements for Contractors and Workers. - *APPROVED*

I. Request for Authorization to Conduct Public Hearings on Proposed Amendments to the General Groundwater Quality Protection Policy, OAR 340-41-029: General Policies, Groundwater Quality Management Classification System, Point Source Control Rules, Nonpoint Source Control and Groundwater Quality Standards. - *APPROVED*

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

*K. Proposed Adoption of Interim Underground Storage Tank Rules, OAR 340-150-010 through 340-150-150 and OAR 340-012-067. *APPROVED WITH AMENDMENT*

*L. Proposed Adoption of Rules to Establish Chapter 340, Division 130, Procedures Governing the Issuance of Environmental Hazard Notices. *APPROVED*

*M. Proposed Adoption of Amendments to OAR 340-105-120 Concerning Hazardous Substances Remedial Action Fees (formerly Hazardous Waste Disposal Fee) to Support Remedial Action Program. *APPROVED*

N. Hearing and Request for Adoption of Temporary Rules to Certify Sewage Treatment Plant Personnel under a Voluntary Certification Program. - *APPROVED WITH AMENDMENT*

O. Request for Issuance of a Stipulated Consent Agreement and Final Order to the City of Lowell, Oregon. - *APPROVED*

P. Request for Commission Approval of Metropolitan Service District Updated Regional Waste (Water) Treatment Management Plan. *APPROVED*

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 be March 11, 1988, 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.

* NOTE: *The Environmental Quality Commission directed the Hearings Officer to set the McInnis matter, as reasonable and practicable but after April 1, for hearing independent of the criminal case outcome.*

MINUTES ARE NOT FINAL UNTIL APPROVED BY THE EQC

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 DEQ 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.

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 DEQ 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.

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:

OAR 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 EQC

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.

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.

Burkholder

MINUTES ARE NOT FINAL UNTIL APPROVED BY THE EQC

ENVIRONMENTAL QUALITY COMMISSION

Minutes of the One Hundred Eighty-Fifth Meeting
January 22, 1988

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
Kurt Burkholder, Assistant Attorney General, for Michael Huston
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

Bacona Road Landfill Site: Director Hansen informed the Commission about the status of the Bacona Road Landfill site. He also discussed the testing and monitoring activities at the site. Steve Greenwood briefed the Commission on Metro's solid waste planning and selection process and alternative disposal methods under consideration. Steve also advised the Commission that the draft permit for Oregon Waste Systems' proposed landfill at Arlington was being released and a hearing was scheduled in Arlington on February 18, 1988.

PM_{10}: Director Hansen and John Core, Air Quality Division, told the Commission the Department would be modifying the State

Implementation Plan to conform to the new PM_{10} requirements. Mr. Core indicated the Department has been working with local officials and citizen groups in the Grants Pass, Medford and Klamath Falls area. Wood Stove emissions are a major part of the problem in these communities. The next step is having local governments adopt ordinances to implement a mandatory program that prohibits wood heating on poor air quality days. Additionally, programs are being developed to further reduce industrial emissions. The Department continues to work with local governments and to provide information to the public.

FORMAL MEETING

CONSENT ITEMS:

Agenda Item A: Minutes of the Special Work Session on Legislative Concepts, December 10, 1987, and the December 11, 1988, EQC Meeting.

Action: It was MOVED by Commissioner Hutchison, seconded by Commissioner Brill, and passed unanimously that the minutes of the Special Work Session on Legislative Concepts, December 10, 1987, be approved.

The following modifications were proposed for the December 11, 1987, minutes of the regular meeting:

♦♦ Page 8 Agenda Item H, Appeal of Hearings Officer's Decision in DEQ vs. Kirkham: Commissioner Denecke requested the minutes be modified to reflect he supported dismissal of the appeal since the record indicated the hearings officer found the fire district would have given Mr. Kirkham a permit to burn if one had been requested.

♦♦ Page 15 Work Session on Yard Debris: Commissioner Hutchison requested the motion be corrected as follows:

> It was MOVED by Commissioner Hutchison [Commissioner Denecke],...

Also, Commissioner Hutchison requested the minutes be modified to reflect that the EQC will consider the Yard Debris draft rule amendments at the April 29, 1988, meeting.

It was MOVED by Commissioner Bishop, seconded by Commissioner Hutchison and passed unanimously that the minutes for the December 11, 1987, regular meeting be approved with the corrections noted above.

Agenda Item B: Monthly Activity Reports for November 1987.

Action: It was MOVED by Commissioner Bishop, seconded by Commissioner Brill and passed unanimously that the November 1987 Monthly Activity Report 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.

Appl. No.	Applicant	Facility
T-2248	Timber Products Company	baghouse
T-2353	Brand S Corporation	2 Geoenergy precipitators
T-2747	Dow Corning Corporation	baghouse

PUBLIC FORUM

Jeanne Orcutt, Gresham, read into the record a statement expressing her concerns that the Cities of Portland and Gresham were failing to comply with new requirements specified in Oregon Revised Statues (ORS) 454. (In the 1987 Legislative Session, House Bill 3101 was adopted. This bill added requirements for municipalities affected by a Commission order pursuant to ORS 454.275 to 454.350.) She provided the Commission with a copy of her statement and attachments. A copy of Ms. Orcutt's materials is made a part of this record.

In summary, Ms. Orcutt's concerns were that Gresham has not yet adopted a safety net program, that citizen involvement is not occurring in Gresham, that the composition of Portland's citizens sewer advisory committee does not comply with the statute, that Multnomah County had inappropriately passed a resolution allowing the County to remonstrate against sewer assessments for county owned property (thereby increasing the cost to other property owners within an LID), and that Portland was inappropriately collecting their 7 percent franchise fee from customers outside city limits. She was also concerned that Portland was unfairly giving rebates on connection charges paid by people who had

previously connected to a city sewer. She said the grants being received are for the affected area and property owners who connected prior to the sewer mandate should not receive a rebate.

At the conclusion of the regular agenda, Chairman Petersen asked **Dick Nichols**, Water Quality Division Administrator, if he had investigated the concerns raised by Ms. Orcutt. While Mr. Nichols had not been able to review Ms. Orcutt's specific comments, he clarified the Department's views as presented to the Legislature during the hearings and work sessions on HB 3101.

He indicated the Department attempted to minimize any new obligations for the Commission as a result of the legislation. The only specific part of the legislation requiring Commission action was a section stating the Commission must approve any significant change to the areawide 208 plan. This plan is the governing master plan for the provision of sewage collection, treatment and disposal services by the municipalities in an affected area.

Chairman Petersen responded that from his perspective the Commission was concerned about people in the affected area being treated fairly. He asked the Department to keep this in mind when reviewing Ms. Orcutt's concerns.

John Charles, Executive Director, Oregon Environmental Council, spoke to the Commission about Senate Bill 405. Mr. Charles referred specifically to the provisions of ORS 459.188 which allow the Commission to require source separation of identified recyclable materials if specific findings can be made. He focused in particular on one of the required findings specified in ORS 459.188 (3)(a), as follows:

> 3(a) The opportunity to recycle has been provided for a reasonable period of time and the level of participation by generators does not fulfill the purposes of ORS 459.015;

Mr. Charles requested clarification of the terms "reasonable period of time" and "level of participation." Mr. Charles suggested the Solid Waste Advisory Committee be used to help develop draft rules and to define participation levels for an acceptable recycling program under SB 405. He asked the Commission to direct the Department to undertake these efforts.

Chairman Petersen asked if the Department's Solid Waste Advisory Committee could pursue Mr. Charles's request. Director Hansen stated the Department needs criteria for evaluating the effectiveness of recycling programs. He stated the Department will explore options for addressing this issue, including use of

the Solid Waste Advisory Committee, and will report back at the next EQC meeting with a proposed process.

Jeff Golden, Jackson County Commissioner, invited the Commission to hold a meeting in Medford and asked the Commission to devote an entire day to the Medford area. He felt this action would provide:

- a partnership between DEQ, local officials and Rogue Valley residents;
- the feeling that the DEQ's presence is strong and effective in the Rogue Valley; and
- public information to the citizens of Rogue Valley.

Commissioner Golden emphasized that if the Commission met in the Medford area this action would send a message of commitment from the Department to the Rogue Valley area. In addition, he said that improved quality and quantities of information would be made available to the area. Commissioner Golden asked the Commission to attend a town hall type of forum the night before the regular EQC meeting. The offset policy and proposed pulp and paper mill are topics of interest that could be discussed at the forum.

On behalf of the EQC, Chairman Petersen accepted Commissioner Golden's invitation, and the April 29 meeting date was chosen. A town hall forum will be held Thursday evening, April 28.

Director Hansen thanked Commissioner Golden for addressing the EQC and also thanked him for his participation in the woodstove citizen advisory committee. Commissioner Golden and Director Hansen discussed the air quality monitoring data being developed by the Department and Dr. Palzer's analysis of existing air quality information. The Department will be providing Dr. Palzer with the new fingerprinting data that was recently gathered.

Chairman Petersen asked to be kept informed about studies being developed by the Department and by Dr. Palzer. Chairman Petersen also requested that the Department to share this new monitoring data with those areas involved. Director Hansen indicated that **Carolyn Young**, Assistant to the Director for Public Affairs, would be providing that information to the areas through coordinated educational programs with Jackson and Klamath Counties.

HEARING AUTHORIZATIONS:

Agenda Item D: Information Report: new Federal Ambient Air

Quality Standards for Particulate Matter (PM_{10}) and Its Effect on Oregon's Air Quality Program.

This agenda item is about several proposed changes to air quality rules outlined in subsequent agenda items. The proposed schedule for these items would result in adoption prior to the May 1, 1988, the date requested by the U. S. Environmental Protection Agency (EPA).

In July 1987, EPA adopted new national air quality standards called PM_{10} to better protect public health from particulate matter. Changes are needed in the Department's air quality program so that implementation of the PM_{10} standards in Oregon can occur.

This agenda item is also about the expected schedule for completing control strategies for the PM_{10} problem areas in coordination with local governments. The Department expects the control strategies will be ready for adoption in June 1988. While the one month delay is not expected to result in any EPA sanctions, a longer delay does increase the risk of potential sanctions.

Director's Recommendation: Based on the report summation, the Director recommended the Commission concur in the following course of action to be pursued by the Department.

1. The Department will continue to coordinate Group I control strategies with local governments and request authorization from the Commission as soon as possible for public hearings. The Department expects this to be on the March 11, 1988, EQC agenda.

2. Following EQC public hearings and adoption of any necessary local ordinances, the Department will propose adoption of the Group I control strategies. The Department expects this to be on the June 3, 1988, EQC agenda.

3. Pending authorization to conduct public hearings requested at this meeting on the five other major PM_{10} changes, the Department will proceed as quickly as possible to bring these five changes back to the Commission for adoption at the April 29, 1988, EQC meeting.

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 to Amend Ambient Air Standards (OAR 40-31-005 through 055) and Air Pollution Emergencies (OAR 340-27-005 through 012) Principally to add New Federal PM_{10} Requirements as a Revision to the State Implementation Plan.

This agenda item is about amending OAR 340-31-055 through 340-31-040, Ambient Air Quality Standards for the State of Oregon. The proposed changes would establish a new particulate standard for suspended particulate less than 10 microns in aerodynamic diameter (PM_{10}); convert the units of standards for sulfur dioxide, carbon monoxide, ozone and nitrogen dioxide to parts per million by volume (ppm); and repeal the standard for hydrocarbons.

The Department also proposed to amend OAR 340-27-005 through 340-27-012, Air Pollution Emergencies, by deleting the criteria levels for the product of sulfur dioxide and particulate; changing the particulate levels from TSP to PM_{10} as a criteria pollutant; and changing the expressed concentration units of all gaseous pollutants to ppm.

Director's Recommendation: Based on the report summation, the Director recommended the Commission authorize a public hearing on revisions to the Ambient Air Standards (OAR 340-31-005 through 055) and Emergency Action Plan (OAR 340-27-005 through 012).

Action: It was MOVED by Commissioner Bishop, 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 Revisions to the New Source Review Rules (OAR 340-20-220 through 260) and Prevention of Significant Deterioration Rules (OAR 340-31-100 through 130).

This agenda item is about the relationship of PM_{10} to the New Source Review program for air contaminant sources. The proposed rule modifications contain the minimum changes required by EPA. These and additional changes will improve the Department's ability to achieve statewide compliance with the ambient standards for PM_{10}. The Department intends to hold public hearings on the proposed regulations along with the other public hearings on PM_{10}.

Director's Recommendation: The Director recommended the Commission approve the request for a hearing on the proposed rule changes for the New Source Review Rules which would

incorporate requirements for reviewing new or modified sources for PM_{10} emissions.

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

Agenda Item G: Request for Authorization to Conduct a Public Hearing on Commitment for PM_{10} Group II Areas (Bend, LaGrande, Portland) as a Revision to the State Implementation Plan (OAR 340-20-047).

This agenda item is about modifying the State Implementation Plan to include a section pertaining to areas that have a moderate chance of not meeting the new PM_{10} standard.

This modification must be adopted by May 1988. The new section commits the Department to a program of monitoring, reporting and evaluating all areas eventually leading to a final determination of the attainment status for each area. These areas--Bend, LaGrande and Portland--are addressed in this amendment. The Lane Regional Air Pollution Authority is preparing a committal SIP for a fourth area, Oakridge.

Chairman Petersen asked the Department if budget constraints were a problem in accomplishing the needed monitoring. Air Quality staff indicated that permanent equipment was funded ongoing and that mobile site monitoring was funded through one-time expenditures. Equipment is also bought with EPA funds. Chairman Petersen requested that the DEQ studies be completed on time.

Director's Recommendation: Based on the report summation, the Director recommended the Commission authorize a public hearing to take testimony on revision of the State Implementation Plan to provide for the required monitoring and evaluation of Oregon's Group II areas against the new standard for particulate matter.

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

Special Agenda Item: McInnis Enterprises Contested Case Proceeding

McInnis Enterprises appealed Department decisions which assessed a civil penalty and revoked their Sewage Disposal Service License. The Commission's Hearings Officer deferred the hearing pending

resolution of criminal proceedings filed against McInnis in Multnomah County Circuit Court.

Steve Sanders, Assistant Attorney General, presented the Commission with a motion for an order to proceed with a hearing on the McInnis Enterprises, Inc. contested case without waiting for resolution of the criminal proceeding.

Mark Blackman, representing McInnis Enterprises, agreed the hearing should proceed; however, he asked the Commission to set the hearing after April 1.

> **Action:** It was MOVED by Commissioner Hutchison, seconded by Commissioner Bishop, and passed unanimously that the Hearings Officer be directed to set the McInnis hearing date as soon as reasonable and practicable after April 1, 1988, independent of the criminal case outcome.

Agenda Item H: Request for Authorization to Conduct Public Hearings Concerning Proposed Rules Relating to Asbestos Control and Proposed Amendments to the Hazardous Air Contaminant Rules for Asbestos, OAR Chapter 340, Division 25, Section 465.

This agenda item is about requesting authorization to conduct public hearings on proposed new rules for the asbestos abatement contractor licensing and worker training program. The Commission is required, by legislation adopted last session, to enact rules for this program by July 1, 1988. Rule revisions are also proposed to update the air quality hazardous air contaminant rules for asbestos.

George Guntermann, Chairperson of the Oregon Asbestos Advisory Board, spoke to the Commission. He indicated the committee had met seven times since October and has forwarded recommendations to the Department on the definition of small-scale, short-duration work and training. The advisory board will be sending further recommendations to the Department prior to the rulemaking hearing.

Chairman Petersen said he felt health considerations were equally important as economic feasibility. He also expressed the view that training was difficult without providing hands-on experience. Commissioner Denecke said he hoped that more publicity and recognition could be given to the contributions of advisory committees. He felt meeting dates and locations should be publicized as well as the names of committee members.

> **Director's Recommendation:** Based upon the report summation, the Director recommended the Commission authorize the Department to conduct public hearings to take testimony on

proposed asbestos control rules concerning contractor licensing and worker training and proposed amendments to the hazardous Air Contaminant Rules, OAR Chapter 340, Division 25, Section 465.

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

Agenda Item I: Request for Authorization to Conduct Public Hearings on Proposed Amendments to the General Groundwater Quality Protection Policy, OAR 340-41-029: General Policies, Groundwater Quality Management Classification System, Point Source Control Rules, Nonpoint Source Control and Groundwater Quality Standards.

This agenda item is about the Department's proposed rule amendments that address several problems with the existing groundwater policy. These revisions provide a base for groundwater quality protection by establishing mandatory minimum groundwater protection requirements. Contained in the revisions is a comprehensive framework the Department will integrate into the groundwater protection efforts.

In August 1981, the Commission adopted OAR 340-41-029, the General Groundwater Quality Protection Policy. Over the last several years, evidence of groundwater quality problems in Oregon has increased, and the Department has had difficulty in applying the policy to the problem situations. The Department evaluated the existing policy and developed alternatives for groundwater management. A citizens' advisory committee was formed to assist in this process.

Director Hansen indicated this proposed rule is a significant new step into the groundwater quality protection area. The Department is continuing to evaluate and consider suggestions for improving the proposed rules. He felt additional suggestions would come from public review of the rules. The Department's groundwater protection program will continue to evolve as new information becomes available; the proposed rules are a starting point.

Commissioner Hutchison asked about page 9 of the staff report which stated only the permit holder or the Department could apply for an alternative concentration limit (ACL). He asked how this relates to the provision of the Oregon Environmental Council settlement agreement on the ability of ten (10) people to request a hearing. Director Hansen said in most cases the ACL process would be used for increasing the allowable concentration limit over an adopted standard. This action will be the concern of the

party responsible for meeting the standard. An alternative concentration limit, if approved, would be the basis for drafting permit limits. The settlement agreement deals with the ability of citizens to request a hearing on a proposed permit prior to a final issuance decision.

Director's Recommendation: Based on the report summation, the Director recommended the Commission authorize the Department to proceed to public hearing to take testimony on the proposed amendments for groundwater quality protection, as presented in Attachment C of the staff report.

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

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

This agenda item is about requesting authorization to conduct a public hearing on a proposed increase in hazardous waste fees. The Department's Hazardous Waste program has a current shortfall in fee revenue of approximately $494,000 for the current biennium. The Department proposes to review the shortfall with the Hazardous Waste Program Funding Committee and, with its recommendation, prepare a revised fee schedule for the 1988 billing period. Hearing authorization is requested to allow time for Department review with the Funding Committee and to prepare a proposed fee schedule for rule adoption prior to the 1988 billing period (June 1988).

Director's Recommendation: Based on the report summation, the Director recommended the Commission authorize a public hearing to take testimony on proposed amendments to the hazardous waste fee schedules in OAR 340-102-065 and 340-105-113.

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

Agenda Item K: Proposed Adoption of Interim Underground Storage Tank Rules, OAR 340-150-101 through 340-150-150 and OAR 340-012-067.

This agenda item is about adopting proposed Interim Underground Storage Tank Rules. Hearings conducted in Portland, Eugene,

Medford, Bend and LaGrande during the week of December 1, 1987, generated testimony on the proposed rules. This oral testimony in addition to 26 separate documents of testimony were considered and used to modify the proposed rules. The rules have received extensive modification and are easier to understand and to comply with while protection of the environment has not been sacrificed.

Final rules will be brought before the Commission late in 1988, after the federal technical and financial responsibility rules are adopted. These final rules will contain the complete language of the federal rules and will address many of the concerns voiced by those who testified.

The Commission received a copy of a letter from Mr. Richard D. Bach of Stoel, Rives, Boley, Jones & Grey. Mr. Bach is the Chairperson for the Department's Underground Storage Tanks Citizens' Advisory Committee. In the letter, which is made a part of this record, Mr. Bach indicated the committee supported the rules with one exception. The exception to the rules deals with the term of permits to be issued under the proposed rules. The Commission then received a copy of a proposed change to that part of the rule the advisory committee had exception with. The amendment is also made a part of this record.

Commissioner Hutchison asked the Department about the August 1, 1989, deadline for stopping delivery to unpermitted tanks. Larry Frost and Richard Reiter, Hazardous and Solid Waste Division, indicated the statute provides that rules for permitting of tanks do not become effective until one (1) year after the rules are adopted by the Commission. The department considered a six-month period after the permit rules become effective (February 1989) to be a reasonable period for tank owners to be notified and obtain permits. After August 1989, delivery must be stopped if the tanks are not permitted.

Director's Recommendation: Based upon the report summation, the Director recommended the Commission adopt the proposed underground storage tank rules, OAR 340-150-010 through 340-150-150, OAR 340-0120-067 as presented in Attachment I of the staff report and the amendment to ORS 340-150-020 (5).

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

Agenda Item L: Proposed Adoption of Rules to Establish Chapter 340, Division 130, Procedures Governing the Issuance of Environmental Hazard Notices.

This agenda item is about proposed adoption of rules to implement the Environmental Hazards Notice statute passed by the 1985 Legislature. Sites containing waste and contamination exist throughout the state. Some of these, such as solid waste disposal sites, are operating under permits issued by the Department. Other sites contain hazardous substances and may undergo cleanups that allow wastes or contamination to remain. The Department's existing regulatory authorities will end at these sites.

The environmental hazard notice ensures that present and future owners take into consideration environmental hazards posed by the remaining waste or contamination. The notice identifies the location of the sites for local governments and neighbors. Additionally, the notice restricts use of the site so that the remaining waste or contamination will not become a health or environmental problem.

The proposed rules create the procedure to issue the environmental hazard notices. The rules were drafted with the assistance of an advisory committee chaired by Portland land use attorney, Steve Schell.

The environmental hazard notice will only be used at certain sites. The notices are not meant to be used at every disposal site. However, the Department recognizes a notice will impact the affected use of a site and, therefore, will act cautiously and carefully when recommending a notice for a site.

Commissioner Hutchison asked why it took three (3) years to develop and implement the rules after the 1985 legislation. Director Hansen said the Department gave higher priority to the immediate implementation of other new programs and program enhancements and thus chose to defer the drafting of the rules.

Commissioner Hutchison questioned whether there was consideration of the issue of taking (condemnation) relative to the mandated environmental notice. Director Hansen responded that the value of the property is affected by the contamination present rather than the environmental notice that is consistent with the level of contamination present.

Chairman Petersen expressed concern that these rules expanded the process of appeal by allowing persons other than the site owner to appeal. He asked who would hold the contested case hearings. Bob Danko, Hazardous and Solid Waste Division, indicated this was a conscious decision to expand the appeal rights to adversely affected persons other than the site owner. The advisory committee felt the issuance of an environmental notice was significant action that can directly and adversely affect persons

other than the property owner and thus recommended expanding the appeal rights. Mr. Danko felt that once the rules where in place, experience would allow future direction on contested case hearings and petitioning. Director Hansen indicated that contested case hearings would be conducted on behalf of the Commission by the Hearings Officer in the same manner as other appeals are handled.

Director's Recommendation: Based on the report summation, the Director recommended the Commission adopt proposed rules to establish Chapter 340, Division 130, Procedures Governing the Issuance of Environmental Hazard Notices.

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

Agenda Item M: Proposed Adoption of Amendments to OAR 340-105-120 Concerning Hazardous Substances Remedial Action Fees (formerly Hazardous Waste Disposal Fee) to Support Remedial Action Program.

This agenda item is about proposed adoption of technical amendments to existing rules, which are necessary for consistency with changes mandated by Senate Bill 122. The rules concern the payment and collection of the fee paid by certain permitted hazardous waste disposal facilities, i.e., Arlington. This fee supports and will continue to support the Department's remedial action program to clean up toxic waste sites.

The amendments include the statutorily mandated increase in the fee from $10 to $20 per ton. There are also minor grammatical and textual changes made for clarification or consistency.

Director's Recommendation: Based on the report summation, the Director recommended the Commission adopt 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 Bishop, seconded by Chairman Hutchison and passed unanimously that the Director's recommendation be approved.

Agenda Item N: Hearing and Request for Adoption of Temporary Rules to Certify Sewage Treatment Plant Personnel under a Voluntary Certification Program.

This agenda item is about proposed authorization to administer a voluntary sewage works operator certification program through the

adoption of temporary rules and fee schedule. The proposed rules would maintain a voluntary operator certification program for 180 days following adoption and filing of the temporary rules. Permanent rules are being developed to address the statutory requirements of Oregon Laws 1987, Chapter 635 and will be adopted before the temporary rules expire. The temporary rules will allow the Department to meet the needs of operators and facility owners while complying with the new laws.

Chris Mack, Chairperson of the Sewage Works Advisory Committee, requested clarification of the proposed fee schedule, Attachment E. Staff responded by providing a revised Attachment E. This new revision, which is made a part of this record, clarifies that examination fees are included with the application for certification. Additionally, Attachment D, Administration Rules, page 3, item 20, should be amended to read "Collection system as defined in (18) above."

Director's Recommendation: Based on the report summation, the Director recommended the Commission adopt the temporary rules and temporary fee schedule for administering the voluntary sewage works operator certification program (Attachments D and E). Adoption of the temporary fee schedule (Attachment E) is subject to the approval of the Emergency Board on January 26, 1988. The Director also recommended the amendments noted above be adopted.

Action: It was MOVED by Commissioner Denecke, seconded by Commissioner Bishop and passed unanimously that the Director's recommendation, as amended, be approved.

Agenda Item O: Request for Issuance of an Environmental Quality Commission Order for the City of Lowell, Oregon.

This agenda item is about a proposed compliance order to be issued to the City of Lowell, Oregon, for National Pollution Discharge Elimination System (NPDES) permit violations and to address issues raised by EPA's National Municipal Policy. The order contains interim effluent limitations and a schedule of milestones to bring the City into compliance.

Chairman Petersen asked if representatives from the City were in attendance. **Ken Vigil**, Water Quality Division, responded that while the City had been invited and encouraged to attend the meeting, they were unable to do so. Mr. Vigil added that Department staff had read through the staff report with the City Council, and the council had agreed with the report's recommendation. The City Council, therefore, felt it was not absolutely necessary to attend.

Chairman Petersen asked if the compliance schedule included in the order was reasonable. Mr. Vigil responded the schedule had been developed with the cooperation of the City and their engineers and all parties thought the order was reasonable. Director Hansen said additional increments of time had been included in the schedule to allow for unavoidable delays.

Commissioner Hutchison asked if the term "facilities" as it appears on line 4 of page 4 of the order is well defined or was there a chance for misunderstanding. Director Hansen replied that as it is used, the term "facilities" is narrowly defined by EPA. **Mary Halliburton**, Water Quality Division, added that on page 1 of the order a more specific reference to waste water treatment and disposal facilities was included.

> **Director's Recommendation:** Based on the report summation, the Director recommended the Commission issue the compliance order as discussed in Alternative 3 of the staff report by signing the document prepared as Attachment D.
>
> **Action:** It was MOVED by Commissioner Hutchison, seconded by Commissioner Denecke and passed unanimously that the Director's recommendation be approved.

Agenda Item P: Request for Commission Approval of Metropolitan Service District Updated Regional Waste (Water) Treatment Management Plan.

This agenda item is about approval of Metro's updated Regional Waste Treatment Management Plan pursuant to Chapter 627, Oregon Laws 1987 (House Bill 3101).

The Metropolitan Service District (Metro) prepared a Regional Waste Treatment Management Plan for the Portland area which was adopted by the Metro Council in 1980. Since that time, the Management Plan has been updated several times. These updates reflected housekeeping changes made in service area boundaries and service agreements among the jurisdictions.

In 1986, the management plan was updated to include the Commission's Findings and Order pursuant to ORS 454.275 which declared a "Threat to Drinking Water" in the Mid-Multnomah County area and to include the Mid-Multnomah County Sewer Implementation Plan.

During 1987, Metro reviewed and updated the management plan. The Metro Council adopted the updated plan on October 22, 1987, and submitted the plan to the Department on November 30, 1987, asking

that it be forwarded to EPA for recertification. In 1987, legislation was passed that amended the threat to drinking water statute (ORS 545.275) and that required the Commission to approve amendments to the Regional Water Treatment Management Plan.

Director's Recommendation: Based on the report summation, the Director recommended the Commission approve the updated 208 Management Plan adopted by Metro Council on October 22, 1987, and authorize the Department to submit the plan to the U. S. Environmental Protection Agency for recertification.

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

Other Business:

Director Hansen advised the Commission about the action he was taking to modify an order issued to the City of Coos Bay. The order requires improvements to the Coos Bay No. 1 sewerage facility. The change in the order provides interim effluent limits during the summer and alters interim dates. However, the final date for completing the project and attaining compliance with final permit limits is not changed. There were no comments or questions by the Commission.

Director Hansen also noted the Commission had been provided with a memorandum about Mr. Newkirk's sewage backup problem at his house located in Twin Rocks Sanitary District near Tillamook. Director Hansen indicated the memo included as an attachment a letter from the Twin Rocks Sanitary District. The letter was in reply to a letter sent by Fred Hansen to the District concerning the problem and requesting the District take necessary action. Chairman Petersen emphasized his concern that the Department work aggressively with the district to resolve the problem.

There was no further business and the meeting adjourned at 11:45 a.m. The next Environmental Quality Commission meeting will be held in Portland on Friday, March 11, 1988.

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. B, January 22, 1988, EQC Meeting

November 1987 Program Activity Report

Discussion

Attached is the November 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.

Lydia Taylor for
Fred Hansen

C.Nuttall:y
MD26
229-6484
Attachment

DEPARTMENT OF ENVIRONMENTAL QUALITY

Monthly Activity Report

November 1987

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DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

November 1987
(Month and Year)

SUMMARY OF PLAN ACTIONS

	Plans Received		Plans Approved		Plans Disapproved		Plans
	Month	FY	Month	FY	Month	FY	Pending
Air							
Direct Sources	6	40	5	45	0	0	11
Total	6	40	5	45	0	0	11
Water							
Municipal	6	42	6	61	0	0	29
Industrial	6	32	3	34	0	0	6
Total	12	74	9	95	0	0	35
Solid Waste							
Gen. Refuse	3	16	1	5	-	2	27
Demolition	-	1	-	-	-	-	2
Industrial	1	4	1	6	-	1	10
Sludge	1	2	-	-	-	-	3
Total	5	23	2	11	0	3	42
GRAND TOTAL	23	137	16	151	0	3	88

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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
03 2624	OMARK INDUSTRIES, INC.	CLACKAMAS	01	10/28/87	COMPLETED-APRVD	11/10/87
07 0006	PINE PRODUCTS CORP.	CROOK	01	08/24/87	COMPLETED-APRVD	11/16/87
08 0003	SOUTH COAST LUMBER CO.	CURRY	01	10/01/87	COMPLETED-APRVD	11/16/87
18 0013	WEYERHAEUSER COMPANY	KLAMATH	01	11/04/87	COMPLETED-APRVD	11/09/87
34 2745	MARYSVILLE NURSING HOME	WASHINGTON	01	09/24/87	COMPLETED-APRVD	11/09/87

TOTAL NUMBER QUICK LOOK REPORT LINES 5

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division (Reporting Unit) — November, 1987 (Month and Year)

SUMMARY OF AIR PERMIT ACTIONS

	Permit Actions Received Month	Permit Actions Received FY	Permit Actions Completed Month	Permit Actions Completed FY	Permit Actions Pending	Sources Under Permits	Sources Reqr'g Permits
Direct Sources							
New	0	12	3	18	13		
Existing	2	11	2	10	11		
Renewals	3	30	13	32	47		
Modifications	6	28	7	34	19		
Total	11	81	25	94	90	1398	1422
Indirect Sources							
New	0	4	0	5	4		
Existing	0	0	0	0	0		
Renewals	0	0	0	0	0		
Modifications	0	2	0	2	0		
Total	0	6	0	7	4	276	280
GRAND TOTALS	11	87	25	101	94	1674	1702

Number of Pending Permits	Comments
11	To be reviewed by Northwest Region
11	To be reviewed by Willamette Valley Region
7	To be reviewed by Southwest Region
1	To be reviewed by Central Region
1	To be reviewed by Eastern Region
8	To be reviewed by Program Operations Section
35	Awaiting Public Notice
16	Awaiting end of 30-day Public Notice Period
90	

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AA5323

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 7091	SMURFIT NEWSPRINT CORP.	BENTON	28	06/11/86	PERMIT ISSUED	12/01/87	RNW
03 2577	CLACKAMAS HIGH SCHOOL	CLACKAMAS	04	07/06/87	PERMIT ISSUED	11/05/87	RNW
03 2583	MILWAUKIE HIGH SCHOOL	CLACKAMAS	04	07/06/87	PERMIT ISSUED	11/05/87	RNW
04 0041	CAVENHAM FOREST INDUST.	CLATSOP	24	06/02/87	PERMIT ISSUED	11/06/87	MOD
05 2367	CASCADE AGGREGATES INC	COLUMBIA	22	09/17/87	PERMIT ISSUED	10/23/87	RNW
07 0006	PINE PRODUCTS CORP.	CROOK	37	06/22/87	PERMIT ISSUED	11/16/87	MOD
08 0003	SOUTH COAST LUMBER CO.	CURRY	40	10/01/87	PERMIT ISSUED	11/16/87	MOD
15 0073	MEDITE CORPORATION	JACKSON	01	03/31/86	PERMIT ISSUED	11/27/87	EXT
16 0003	BRIGHT WOOD CORP.	JEFFERSON	07	07/27/87	PERMIT ISSUED	11/13/87	RNW
22 6018	RAINIER WOOD PRODUCTS INC	LINN	07	10/21/87	PERMIT ISSUED	11/05/87	MOD
22 7137	SMURFIT NEWSPRINT CORP.	LINN	06	11/12/85	PERMIT ISSUED	12/01/87	RNW
24 5956	MORSE BROS INC	MARION	17	06/08/87	PERMIT ISSUED	11/06/87	EXT
24 7106	NORPAC FOODS, INC.	MARION	06	10/21/87	PERMIT ISSUED	11/05/87	MOD
24 8057	MORSE BROS., INC.	MARION	01	06/08/87	PERMIT ISSUED	11/06/87	NEW
26 1889	UNION OIL CO OF CALIF	MULTNOMAH	24	09/11/87	PERMIT ISSUED	11/13/87	RNW
26 3025	INDUSTRIAL LAUNDRY & DRY	MULTNOMAH	17	08/12/87	PERMIT ISSUED	11/13/87	RNW
30 0088	UMATILLA READY MIX INC	UMATILLA	07	10/30/87	PERMIT ISSUED	11/27/87	RNW
31 0013	UNION FOREST PRODUCTS	UNION	33	08/06/87	PERMIT ISSUED	11/02/87	MOD
31 0039	SCHUBERT & SON'S READYMIX	UNION	01	07/20/87	PERMIT ISSUED	11/05/87	NEW
34 2580	PERMAPOST PRODUCTS CO	WASHINGTON	07	08/12/87	PERMIT ISSUED	12/01/87	RNW
34 2670	PEERLESS CORPORATION	WASHINGTON	20	10/19/87	PERMIT ISSUED	11/02/87	MOD
37 0159	FOWLER CRUSHING	PORT.SOURCE	13	09/10/87	PERMIT ISSUED	10/23/87	RNW
37 0185	TILLAMOOK CO. ROAD DEPT	PORT.SOURCE	17	10/14/87	PERMIT ISSUED	11/02/87	RNW
37 0294	H & L CONSTRUCTION CO.	PORT.SOURCE	08	10/16/87	PERMIT ISSUED	11/13/87	RNW
37 0378	SCHUBERT & SON'S READYMIX	PORT.SOURCE	01	07/20/87	PERMIT ISSUED	11/05/87	NEW

TOTAL NUMBER QUICK LOOK REPORT LINES 25

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division (Reporting Unit) — November, 1987 (Month and Year)

PERMIT ACTIONS COMPLETED

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

Indirect Sources

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AA5324

DEPARTMENT OF ENVIRONMENTAL QUALITY
MONTHLY ACTIVITY REPORT

Water Quality Division (Reporting Unit) — November 1987 (Month and Year)

PLAN ACTIONS COMPLETED - 9

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
MUNICIPAL WASTE SOURCES - 6			
Lane	Westfir Sanitary Sewer Reconstruction Project	11-23-87	Provisional Approval
Washington	USA (Gaston) Pump Station (only)	11-6-87	Provisional Approval
Lane	Mapleton Community System	11-4-87	Technical comments to County
Lincoln	Newport NW Meander & 54th St (F. Bilodeau property)	11-17-87	Provisional Approval
Deschutes	Bend Aubrey Butte, Phase 4	11-16-87	Provisional Approval
Tillamook	Cape Look Out State Park Drainfield addition	11-11-87	Comments to region and parks

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Water Quality Division (Reporting Unit) — November 1987 (Month and Year)

PLAN ACTIONS COMPLETED - 9

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
INDUSTRIAL WASTE SOURCES - 3			
Umatilla	Tom Kosmos Potato Chip Waste Irrigation System	7-9-87	Approved
Washington	Western Foundry Sump & Industrial Water Sewer Line	11-9-87	Approved
Jackson	Jonco Mill Specialities Sapstain Control System	11-16-87	Approved

Summary of Actions Taken
On Water Permit Applications in NOV 87

Source Category &Permit Subtype	Number of Applications Filed						Number of Permits Issued						Applications Pending Permits Issuance (1)			Current Number of Active Permits		
	Month			Fiscal Year			Month			Fiscal Year								
	NPDES	WPCF	Gen	NPDES	WPCF	Gen	NPDES	WPCF	Gen	NPDES	WPCF	Gen	NPDES	WPCF	Gen	NPDES	WPCF	Gen
Domestic																		
NEW		1		1	12			6			12		4	20				
RW										1								
RWO	4	4		28	12		1			18	16		57	30				
MW				1									2					
MWO										19	2		6	1				
Total	4	5		30	24		1	6		38	30		69	51		224	180	29
Industrial																		
NEW			2		4	14	1		1	1	6	14	2	13	6			
RW																		
RWO	2	1		8	11		2	2		4	5		19	21				
MW													1					
MWO				4	2	1		1	1	6	3	1	1	1	1			
Total	2	1	2	12	17	15	3	3	2	11	14	15	23	35	7	165	133	389
Agricultural																		
NEW						1			118			289		1				
RW																		
RWO				1	1								1	1				
MW																		
MWO												1						
Total				1	1	1			118			290	1	2		2	12	344
Grand Total	6	6	2	43	42	16	4	9	120	49	44	305	93	88	7	391	325	762

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-NOV-87.

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

CAT	PERMIT NUMBER	TYPE	SUB-TYPE	OR NUMBER	FACILITY	FACILITY NAME	CITY	COUNTY/REGION	DATE ISSUED	DATE EXPIRES
General: Cooling Water										
IND	100	GEN01	MWO	OR003241-7	103248/A	JUNCTION CITY SCHOOL DISTRICT #69	JUNCTION CITY	LANE/WVR	06-NOV-87	31-DEC-90
General: Suction Dredges										
IND	700	GEN07	NEW		103250/A	OLSON, KEN		MOBILE SRC/ALL	02-NOV-87	31-JUL-91
General: Subsurface Suction (potential)										
AGR	800	GEN08	NEW		103181/A	RAUSCHERT, ELSIE	BANDON	COOS/SWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103183/A	DEMEYERS DAIRY, JOE	REDMOND	DESCHUTES/CR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103185/A	TROOST, GARY	STAYTON	MARION/WVR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103187/A	SAR-BEN FARMS INC.	ST. PAUL	MARION/WVR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103192/A	EVERS, JOSEPH	BANKS	WASHINGTON/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103194/A	BOSCH, HANK	TILLAMOOK	TILLAMOOK/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103204/A	C & A DAIRY	MCMINNVILLE	YAMHILL/WVR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103206/A	MILKY WAY DAIRY INC.	AURORA	MARION/WVR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103208/A	ALBAR, ROBERT	CANBY	CLACKAMAS/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103212/A	GATES, WILLIAM M.	CLOVERDALE	TILLAMOOK/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103214/A	YATES FARMS INC.	CLOVERDALE	TILLAMOOK/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103219/A	ESPLIN, SCOTT OR JOHN	NEHALEM	TILLAMOOK/NWR	16-NOV-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		103221/A	MORNING MIST DAIRY	JEFFERSON	MARION/WVR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103223/A	THE FOUR UDDER'S DAIRY	TERREBONNE	DESCHUTES/CR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103225/A	ROODZANT FAMILY DAIRY	CLOVERDALE	TILLAMOOK/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103227/A	BEELER, STEVE & SHELLY	TILLAMOOK	TILLAMOOK/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103229/A	GROSSEN, BEN	HILLSBORO	WASHINGTON/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103231/A	IDYLWILD FARM, INC.	WEST LINN	CLACKAMAS/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103233/A	THATCHER DAIRY	HALFWAY	BAKER/ER	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103235/A	RANSOM DAIRY, CALVIN	RICHLAND	BAKER/ER	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103237/A	NIX & GIMSBURG DAIRY	NORTH BEND	COOS/SWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103239/A	EENK, CARL	TILLAMOOK	TILLAMOOK/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103241/A	ROCK, WILFORD	CLOVERDALE	TILLAMOOK/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103244/A	BANNOCKBURN FARMS, INC.	ALBANY	LINN/WVR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103246/A	LEWIS, GERHARD J.	MULINO	CLACKAMAS/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103249/A	JENCK, DONALD A.	TILLAMOOK	TILLAMOOK/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103252/A	KEYSTONE RANCH	BLACHLY	LANE/WVR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103254/A	DUTCH CAN YON DAIRY-DONALD LAICA	SCAPPOOSE	COLUMBIA/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103258/A	HIGHTIDE HOLSTEINS	TILLAMOOK	TILLAMOOK/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103260/A	HITE, ROY & JOE	WOODBURN	MARION/WVR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103269/A	CREAM CREEK JERSEYS	MCMINNVILLE	YAMHILL/WVR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103271/A	WASSMER, ROBERT	TILLAMOOK	TILLAMOOK/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103273/A	MADSEN, JIM	WOODBURN	MARION/WVR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103275/A	CHRISTENSEN, TIMOTHY J.	TILLAMOOK	TILLAMOOK/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103279/A	HEATHERSHAW, RICHARD	CLOVERDALE	TILLAMOOK/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103280/A	RUEF'S FUR RANCH	MT. ANGEL	MARION/WVR	16-NOV-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		103282/A	PATCHEFT, KENNETH	VALE	MALHEUR/ER	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103286/A	AUFDERMAUER, DON	TILLAMOOK	TILLAMOOK/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103288/A	MOORE, ARNOLD	BORING	CLACKAMAS/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103297/A	MYERS BROTHERS	NEHALEM	TILLAMOOK/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103301/A	MELODY HILL DAIRY FARM	MONROE	BENTON/WVR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103303/A	BOSCH, CARL	TILLAMOOK	TILLAMOOK/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103306/A	TALLMAN FARMS	NEHALEM	TILLAMOOK/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103308/A	NUSSBAUMER BROTHERS	HILLSBORO	WASHINGTON/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103310/A	LAUNE, DARYL	MCMINNVILLE	YAMHILL/WVR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103312/A	DUYCK, VERNON	FOREST GROVE	WASHINGTON/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103314/A	FOREST GLEN OAKS, INC.	DAYTON	YAMHILL/WVR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103316/A	ASAY, GENE	NEHALEM	TILLAMOOK/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103318/A	BREWER & SONS DAIRY	HUBBARD	MARION/WVR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103320/A	MCKENDRY, BRUCE	TILLAMOOK	TILLAMOOK/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103322/A	BRANDT, TOM	JEFFERSON	MARION/WVR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103324/A	BEEBE DAIRY	ADRIAN	MALHEUR/ER	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103330/A	SCHOCH, HANS	HILLSBORO	WASHINGTON/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103334/A	LICORICE LANE FARM INC.	HILLSBORO	WASHINGTON/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103338/A	BAUNE, RON	TILLAMOOK	TILLAMOOK/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103341/A	ARBOR ROSE FARMS	SCAPPOOSE	COLUMBIA/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103346/A	ARMSTRONG, NORMAN S.	TILLAMOOK	TILLAMOOK/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103349/A	ELLIS JR. & SONS, LOREN	SCAPPOOSE	COLUMBIA/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103364/A	TRENT, WAYNE	CLOVERDALE	TILLAMOOK/NWR	16-NOV-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		103365/A	MAPLE LEAF FARMING CORP.	YAMHILL	YAMHILL/WVR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103351/A	GARDNER'S DAIRY	MYRTLE POINT	COOS/SWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103348/A	ROSECREST FARM	SHERIDAN	YAMHILL/WVR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103343/A	WHITE, RAY W.	NYSSA	MALHEUR/ER	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103339/A	A. J. DAIRY, INC.	MT. ANGEL	MARION/WVR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103336/A	JENKINS DAIRY	TILLAMOOK	TILLAMOOK/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103331/A	PETERSON FARM, ERIC & ROY	TILLAMOOK	TILLAMOOK/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103329/A	DEJONG, JOHN JERRY	SCIO	LINN/WVR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103323/A	NAEGELI, WALTER	TILLAMOOK	TILLAMOOK/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103321/A	NAEGELI, MARWYN	TILLAMOOK	TILLAMOOK/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103319/A	GREVE, FRANZ	MT ANGEL	MARION/WVR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103317/A	MANZI & SONS DAIRY, INC.	MONMOUTH	POLK/WVR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103315/A	FOREST GLEN JERSEYS, INC.	DAYTON	YAMHILL/WVR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103313/A	THOMAS, BRUCE	TILLAMOOK	TILLAMOOK/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103311/A	PALMER - HUNT DAIRY	GRANTS PASS	JOSEPHINE/SWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103309/A	BOHREN FARMS, INC.	TILLAMOOK	TILLAMOOK/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103307/A	DUTCH MILL DAIRY	SALEM	MARION/WVR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103304/A	BENNETT, NORMAN	TILLAMOOK	TILLAMOOK/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103302/A	MAROLF, RON & CLAUDIA	TILLAMOOK	TILLAMOOK/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103300/A	MOON MEADOW DAIRY	BEAVER	TILLAMOOK/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103294/A	PEARN, ROY	BEAVER	TILLAMOOK/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103287/A	WAGNER, BRICE	PORT ORFORD	CURRY/SWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103284/A	STAEHELY BROS.	OREGON CITY	CLACKAMAS/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103281/A	RIEDER DAIRY	ALBANY	LINN/WVR	16-NOV-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		103278/A	MILLER, GARY	ASTORIA	CLATSOP/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103276/A	JOHNSTON, FILBERT & RITA	TILLAMOOK	TILLAMOOK/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103274/A	TWIN SPRINGS DAIRY, INC.	CLOVERDALE	TILLAMOOK/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103272/A	REBOB FARM, INC.	TILLAMOOK	TILLAMOOK/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103270/A	CHRISTIE, WAYNE	TILLAMOOK	TILLAMOOK/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103261/A	GIENGER, RONALD J.	TILLAMOOK	TILLAMOOK/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103259/A	NAUTA, PETE	ST. PAUL	MARION/WVR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103257/A	STEELE, ALEXANDER	GASTON	WASHINGTON/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103253/A	KELLY, DAN M.	ASTORIA	CLATSOP/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103251/A	CHELONE, RICHARD & SUSAN	TILLAMOOK	TILLAMOOK/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103247/A	KEMPEMA, OSCAR	DAYTON	YAMHILL/WVR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103245/A	MANN, ALAN & BARBARA	SILVERTON	MARION/WVR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103243/A	JOHNSTON, M. DARYL	NEHALEM	TILLAMOOK/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103240/A	MADER, DAVID & DEBORAH	HALFWAY	BAKER/ER	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103238/A	BAILEY FARMS, INC.	CLOVERDALE	TILLAMOOK/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103236/A	TURNER, JACK L.	TILLAMOOK	TILLAMOOK/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103234/A	PRICE, BILLY	GRANTS PASS	JOSEPHINE/SWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103232/A	RAINBOW DAIRIES ORE-LTD.	TILLAMOOK	TILLAMOOK/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103230/A	WIL-RENE FARMS	FOREST GROVE	WASHINGTON/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103228/A	RUFFING, MARVIN L.	WOODBURN	MARION/WVR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103226/A	MEURY'S DAIRY FARM	FOREST GROVE	WASHINGTON/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103224/A	VALLEY VIEW DAIRY	COQUILLE	COOS/SWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103222/A	HILLVIEW DAIRY, INC.	BOARDMAN	MORROW/ER	16-NOV-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		103220/A	MAST, HOLLIS	COQUILLE	COOS/SWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103215/A	WALDRON, EARL C.	BAY CITY	TILLAMOOK/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103213/A	STELLINGWERF, STAN	MONMOUTH	POLK/WVR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103209/A	STREETER, RAY & JACKIE	CLOVERDALE	TILLAMOOK/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103207/A	BOERSMA, PHILLIP	GRANTS PASS	JOSEPHINE/SWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103205/A	WOODS, EDWIN	BEAVER	TILLAMOOK/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103195/A	L & H TILLAMOOK JERSEYS	TILLAMOOK	TILLAMOOK/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103193/A	GYPO JERSEYS	TILLAMOOK	TILLAMOOK/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103191/A	MCCRIGHT, MILO	POWELL BUTTE	CROOK/CR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103186/A	HERING, DANIEL F.	HILLSBORO	WASHINGTON/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103184/A	WEBER BRO. DAIRY	GRESHAM	MULTNOMAH/NWR	16-NOV-87	31-JUL-92
AGR	800	GEN08	NEW		103182/A	J & B DAIRY	TILLAMOOK	TILLAMOOK/NWR	16-NOV-87	31-JUL-92

NPDES

CAT	PERMIT NUMBER	TYPE	SUB-TYPE	OR NUMBER	FACILITY	FACILITY NAME	CITY	COUNTY/REGION	DATE ISSUED	DATE EXPIRES
DOM	100397	NPDES	RWO	OR002051-6	70620/A	PORT ORFORD, CITY OF	PORT ORFORD	CURRY/SWR	17-NOV-87	31-OCT-92
IND	100401	NPDES	RWO	OR002728-6	41299/A	IDAHO POWER COMPANY	OXBOW	BAKER/ER	23-NOV-87	30-NOV-92
IND	100403	NPDES	RWO	OR002727-8	41297/A	IDAHO POWER COMPANY	HELLS CANYON	WALLOWA/ER	23-NOV-87	30-NOV-92
IND	100404	NPDES	NEW	OR003196-8	84855/A	COFFEE LAKE ROCK, INC.	SHERWOOD	WASHINGTON/NWR	23-NOV-87	31-OCT-92

WPCF

CAT	PERMIT NUMBER	TYPE	SUB-TYPE	OR NUMBER	FACILITY	FACILITY NAME	CITY	COUNTY/REGION	DATE ISSUED	DATE EXPIRES
DOM	100394	WPCF	NEW		64734/A	OREGON DEPARTMENT OF TRANSPORTATION		MARION/WVR	04-NOV-87	31-OCT-92
IND	3779	WPCF	MWO		68205/B	DIAMOND WOOD PRODUCTS, INC.	COOS BAY	COOS/SWR	05-NOV-87	31-DEC-88

CAT	PERMIT NUMBER	TYPE	SUB-TYPE	OR NUMBER	FACILITY	FACILITY NAME	CITY	COUNTY/REGION	DATE ISSUED	DATE EXPIRES
DOM	100395	WPCF	NEW		102954/A	MABRY, BOYD	BANDON	COOS/SWR	05-NOV-87	31-OCT-92
IND	100396	WPCF	RWO		69494/A	UNITED FOODS, INC.	ALBANY	LINN/WVR	17-NOV-87	31-OCT-92
DOM	100399	WPCF	NEW		6155/B	KEINGELDT LTD	PORTLAND	MULTNOMAH/NWR	18-NOV-87	30-SEP-92
IND	100400	WPCF	RWO		59790/A	NATIONAL FRUIT CANNING COMPANY	ALBANY	LINN/WVR	23-NOV-87	31-OCT-92
DOM	100402	WPCF	NEW		67145/A	ADVANCE RESORTS OF AMERICA, INC.	WHEELER	TILLAMOOK/NWR	23-NOV-87	30-JUN-89
DOM	3635	WPCF	NEW		88677/B	PHM HEALTH CARE GROUP, INC.	TILLAMOOK	TILLAMOOK/NWR	25-NOV-87	31-JAN-88
DOM	100405	WPCF	NEW	OR002324-8	90926/A	U. S. DEPARTMENT OF AGRICULTURE	YACHATS	LINCOLN/WVR	27-NOV-87	31-AUG-92

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

PLAN ACTIONS COMPLETED

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Douglas	Douglas County Roseburg Landfill Existing municipal waste landfill.	10/27/87	Plan approved (not reported on October list).
Linn	Willamette Industries, Inc. Snow Peak Pond Landfill New industrial waste landfill.	11/13/87	Plan approved (groundwater study).

SB7236

MAR.3 (5/79)

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

SUMMARY OF HAZARDOUS WASTE PROGRAM ACTIVITIES

PERMITS

	ISSUED		PLANNED
	No. This Month	No. Fiscal Year to Date (FYTD)	No. in FY 88
Treatment	-0-	-0-	-0-
Storage	-0-	-0-	7
Disposal	-0-	-0-	1

INSPECTIONS

	COMPLETED		PLANNED
	No. This Month	No. FYTD	No. in FY 88
Generator	4	23	38
TSD	0	8	29

CLOSURES

	PUBLIC NOTICES			CERTIFICATIONS ACCEPTED		
	No. This Month	FYTD No.	Planned in FY88	No. This Month	No. FYTD	No. Planned in FY 88
Treatment	-0-	-0-	-0-	-0-	-0-	-0-
Storage	-0-	-0-	3	1	3	4
Disposal	-0-	-0-	2	0	1	3

SB5285.A
MAR.2 (9/87)

DATE	WASTE TYPE	SOURCE	DISPOSE ANNUALLY
19-NOV-87	TANK BOTTOMS (LEADED)	PETROLEUM BULK TERMINALS	2.43 CUBIC YARDS
1 Request(s) approved for generators in Alaska			
18-NOV-87	ENDOSULFAN CONTAMINATED SOIL	RCRA SPILL CLEANUP	0.41 CUBIC YARDS
1 Request(s) approved for generators in Idaho			
02-NOV-87	LAB PACK - POISON B	OTHER GOVERNMENT AGENCY	0.27 CUBIC YARDS
16-NOV-87	LAB PACK - POISON B	COLLEGES & UNIVERSITIES	0.27 CUBIC YARDS
2 Request(s) approved for generators in Montana			
02-NOV-87	LAB PACK-CREOSOTE	SHIP BUILDING & REPAIRING	0.54 CUBIC YARDS
02-NOV-87	SPENT GASOLINE FILTERS	PETROLEUM BULK TERMINALS	1.62 CUBIC YARDS
02-NOV-87	LAB PACK - CORROSIVE	OTHER AGRICULTURAL CHEMICALS	0.54 CUBIC YARDS
02-NOV-87	LAB PACK - MISCELLANEOUS WASTE	OTHER GOVERNMENT AGENCY	1.00 CUBIC YARDS
02-NOV-87	PCB CONTAMINATED ELECTRICAL EQUIPMENT	PCB REMOVAL & CLEANUP ACTIVITY	4.00 CUBIC YARDS
04-NOV-87	DIATOMACEOUS EARTH FILTER CAKE	TRUCKING TERMINAL FACILITIES	160.00 CUBIC YARDS
04-NOV-87	METHYLENE CHLORIDE STILLBOTTOM	WOOD FURNITURE MANUFACTURE	1.60 CUBIC YARDS
16-NOV-87	LAB PACK - ORM-A	FARM SUPPLIES & FEED	0.41 CUBIC YARDS
16-NOV-87	CYANIDE CONTAMINATED DEBRIS	RCRA SPILL CLEANUP	0.81 CUBIC YARDS
16-NOV-87	CARDBOARD CONTAMINATED/W HYDROFLO	RCRA SPILL CLEANUP	0.54 CUBIC YARDS
19-NOV-87	SMALL CAPACITOR	PCB REMOVAL & CLEANUP ACTIVITY	1.34 CUBIC YARDS
11 Request(s) approved for generators in Oregon			

DATE	WASTE TYPE	SOURCE	DISPOSE ANNUALLY
02-NOV-87	PCB CONTAMINATED SOLIDS	PCB REMOVAL & CLEANUP ACTIVITY	2.16 CUBIC YARDS
02-NOV-87	LAB PACK - CORROSIVE	COLLEGES & UNIVERSITIES	0.54 CUBIC YARDS
02-NOV-87	LAB PACK - ORM-A	OTHER GOVERNMENT AGENCY	1.00 CUBIC YARDS
02-NOV-87	LAB PACK - ORM-A	COLLEGES & UNIVERSITIES	0.54 CUBIC YARDS
02-NOV-87	LAB PACK - ORM-E	OTHER GOVERNMENT AGENCY	1.00 CUBIC YARDS
02-NOV-87	CLOTHING & BOXES CONTAMINATED/DINOSEB	HW TREAT/STORE/DISPOSE FCLTY	221.40 CUBIC YARDS
04-NOV-87	WATER & AMMONIA/HEAVY METALS	ENV. SERVICES CONTRACTORS	3880.80 CUBIC YARDS
10-NOV-87	SPENT LITHIUM BATTERIES/CONCRETE	HW TREAT/STORE/DISPOSE FCLTY	27.00 CUBIC YARDS
10-NOV-87	LAB PACK - CORROSIVE	COLLEGES & UNIVERSITIES	0.54 CUBIC YARDS
10-NOV-87	LAB PACK - CORROSIVE	COLLEGES & UNIVERSITIES	0.54 CUBIC YARDS
10-NOV-87	LAB PACK - ORM-A	FARM SUPPLIES & FEED	0.54 CUBIC YARDS
10-NOV-87	LAB PACK - ORM-E	COLLEGES & UNIVERSITIES	0.54 CUBIC YARDS
16-NOV-87	NICKEL-CADMIUM BATTERIES	HW TREAT/STORE/DISPOSE FCLTY	27.00 CUBIC YARDS
16-NOV-87	SOIL CONTAMINATED/PITCH & COKE	PRIMARY PRODUCTION OF ALUMINUM	200.00 CUBIC YARDS
16-NOV-87	POTASSIUM PERMANGANATE DEBRIS	RCRA SPILL CLEANUP	2.43 CUBIC YARDS
16-NOV-87	MERCURY VAPOR BULBS & DEBRIS	HW TREAT/STORE/DISPOSE FCLTY	27.00 CUBIC YARDS
16-NOV-87	LAB PACK - FLAMMABLE	COLLEGES & UNIVERSITIES	1.08 CUBIC YARDS
19-NOV-87	DISCARDED AMMONIUM PERSULFATE	HW TREAT/STORE/DISPOSE FCLTY	5.40 CUBIC YARDS
19-NOV-87	LAB PACK - POISON B	RCRA SPILL CLEANUP	0.27 CUBIC YARDS
19-NOV-87	PCB CONTAMINATED SOLIDS	PCB REMOVAL & CLEANUP ACTIVITY	40.00 CUBIC YARDS
19-NOV-87	MERCURY BATTERIES & DEBRIS	HW TREAT/STORE/DISPOSE FCLTY	27.00 CUBIC YARDS

21 Request(s) approved for generators in Washington

36 Requests granted - Grand Total

DEPARIMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

SUMMARY OF SOLID WASTE PERMIT ACTIONS

	Permit Actions Received		Permit Actions Completed		Permit Actions	Sites Under	Sites Reqr'g
	Month	FY	Month	FY	Pending	Permits	Permits
General Refuse							
New	-	3	-	1	4		
Closures	-	1	-	-	5		
Renewals	-	4	2	3	16		
Modifications	1	11	1	11	-		
Total	1	19	3	15	25	176	176
Demolition							
New	-	-	-	-	-		
Closures	-	-	-	-	-		
Renewals	-	-	-	1	1		
Modifications	-	1	-	1	-		
Total	0	1	0	2	1	12	12
Industrial							
New	2	4	-	4	6		
Closures	-	-	-	-	1		
Renewals	-	2	-	-	6		
Modifications	2	9	2	9	-		
Total	4	15	2	13	13	104	104
Sludge Disposal							
New	1	1	-	-	2		
Closures	-	1	-	-	1		
Renewals	-	-	-	-	-		
Modifications	5	6	5	6	-		
Total	6	8	5	6	3	17	17
Total Solid Waste	11	43	10	36	42	309	309

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

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

PERMIT ACTIONS COMPLETED

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Columbia	City of Vernonia Vernonia Landfill Existing municipal waste landfill.	11/5/87	Permit issued.
Coos	Georgia Pacific Coos Bay Plywood Landfill Existing industrial waste landfill.	11/16/87	Addendum issued.
Deschutes	U.S. Forest Service Deschutes Nat'l. Forest Crane Prairie Septage Lagoon Existing septage lagoon.	11/16/87	Addendum issued.
Deschutes	U.S. Forest Service Deschutes National Forest Pauline Lake Septage Lagoon Existing septage lagoon.	11/16/87	Addendum issued.
Deschutes	U.S. Forest Service Deschutes National Forest Red Butte Septage Lagoon Existing septage lagoon.	11/16/87	Addendum issued.
Jackson	Eugene F. Burrill Lumber Co. Burrill Lumber Landfill Existing industrial waste landfill.	11/16/87	Addendum issued.
Jefferson	U.S. Forest Service Deschutes National Forest Cache Creek Septage Lagoon Existing septage lagoon.	11/16/87	Addendum issued.
Jefferson	Jefferson County Camp Sherman Trans. Station Existing transfer station.	11/16/87	Addendum issued.

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

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Josephine	City of Grants Pass Grants Pass Landfill Existing municipal waste landfill.	11/16/87	Permit issued.
Klamath	U.S. Forest Service Deschutes National Forest Mabel Butte Septage Lagoon Existing septage lagoon.	11/16/87	Addendum issued.

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

PERMIT ACTIONS PENDING - 40

County	Name of Facility	Date Appl. Rec'd.	Date of Last Action	Type of Action and Status	Location
Municipal Waste Sources - 25					
Clackamas	Rossmans	3/14/84	2/11/87	(C) Applicant review (second draft)	HQ/RO
Malheur	Brogan-Jamieson	6/29/84	4/21/86	(R) Application filed	HQ
Baker	Haines	1/30/85	6/20/85	(R) Applicant review	HQ
Malheur	Adrian	11/7/85	11/7/85	(C) Application filed	RO
Jackson	Ashland	12/9/85	1/13/86	(R) Draft received	HQ
Jackson	So. Stage	12/30/85	8/24/87	(R) Draft received	HQ
Curry	Wridge Creek	2/19/86	9/2/86	(R) Draft received	HQ
Umatilla	Rahn's (Athena)	5/16/86	5/16/86	(R) Application filed	RO
Marion	Woodburn Indfl.	9/22/86	7/9/87	(R) Draft received	HQ
Douglas	Lemolo Trans. Sta.	12/10/86	7/28/87	(R) Draft received	HQ
Multnomah	St. Johns Landfill	12/17/86	12/17/86	(C) Application filed	RO/HQ
Coos	Bandon Landfill	1/20/87	1/20/87	(R) Application filed	RO
Deschutes	Negus Landfill	2/4/87	11/16/87	(R) Applicant review	HQ
Douglas	Reedsport Indfl.	5/7/87	5/7/87	(R) Application filed	RO
Malheur	Harper Transfer	6/22/87	6/22/87	(N) Application filed	RO
Malheur	Willowcreek Indfl.	6/22/87	6/22/87	(C) Application filed	RO
Klamath	Klamath Falls Landfill	7/6/87	7/6/87	(R) Application filed	RO

SB4968
MAR.7S (5/79)

(A) = Amendment; (C) = Closure permit;
(N) = New source; (R) = Renewal

County	Name of Facility	Date Appl. Rec'd.	Date of Last Action		Type of Action and Status	Location
Wasco	Northern Wasco Co. Transfer	7/24/87	11/16/87	(N)	Applicant review	HQ
Malheur	Harper Landfill	8/17/87	8/17/87	(C)	Application filed	RO
Gilliam	Waste Mgmt. Inc.	8/31/87	8/31/87	(N)	Application filed	HQ
Grant	Hendrix Landfill	9/17/87	9/17/87	(R)	Application filed	RO
Lane	Florence Landfill	9/21/87	9/21/87	(R)	Application filed	RO
Morrow	Tidewater Barge Lines (Finley Butte Landfill)	10/15/87	10/15/87	(N)	Application filed	HQ
Douglas	Roseburg Landfill	10/21/87	10/21/87	(R)	Application filed	RO
Marion	Ogden-Martin of Marion, Inc. (Brooks)	11/12/87	11/12/87	(R)	Applicant review	HQ
<u>Demolition Waste Sources</u> - 1						
Coos	Bracelin/Yeager (Joe Ney)	3/28/86	9/2/86	(R)	Draft received	HQ
<u>Industrial Waste Sources</u> - 13						
Lane	Bohemia, Dorena	1/19/81	9/1/87	(R)	Applicant review of second draft	HQ
Wallowa	Boise Cascade Joseph Mill	10/3/83	5/26/87	(R)	Applicant comments received	HQ
Douglas	Int'l Paper (Gardiner)	2/20/86	2/20/86	(N)	Application filed	RO
Klamath	Weyerhaeuser, Klamath Falls (Expansion)	3/24/86	11/25/86	(N)	Add'l. info. requested	HQ
Multnomah	Penwalt	4/2/86	7/14/86	(N)	Add'l. info. requested	HQ
Curry	South Coast Lbr.	7/18/86	7/18/86	(R)	Application filed	RO

County	Name of Facility	Date Appl. Rec'd.	Date of Last Action		Type of Action and Status	Location
Linn	Western Kraft Lime storage	8/11/86	8/11/86	(C)	Application filed	RO
Baker	Ash Grove Cement West, Inc.	4/1/87	4/1/87	(N)	Application received	RO
Klamath	Modoc Lumber Landfill	5/4/87	5/4/87	(R)	Application filed	RO
Linn	Freres Lumber (Lebanon)	7/6/87	7/6/87	(R)	Application filed	RO
Columbia	Boise Cascade St. Helens Sludge	7/10/87	7/10/87	(R)	Application filed (expansion)	HQ
Clatsop	Nygard Logging	11/17/87	11/17/87	(N)	Application filed	RO
Wallowa	Sequoia Forest Ind.	11/25/87	11/25/87	(N)	Application filed	RO
Sewage Sludge Sources - 3						
Coos	Beaver Hill Lagoons	5/30/86	3/10/87	(N)	Add'l. info. received (addition of waste oil facility)	HQ
Coos	Hempstead Sludge Lagoons	9/14/87	9/14/87	(C)	Application received	HQ/RO
Clackamas	Cascade-Phillips Corp. Septage land application	11/12/87	11/12/87	(N)	Application received	RO

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

SUMMARY OF NOISE CONTROL ACTIONS

Source Category	New Actions Initiated		Final Actions Completed		Actions Pending	
	Mo	FY	Mo	FY	Mo	Last Mo
Industrial/ Commercial	7	52	8	73	225	226
Airports			3	8	1	1

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

FINAL NOISE CONTROL ACTIONS COMPLETED

County	Name of Source and Location	Date	Action
Clackamas	Clear Water Construction Co. Clackamas	10/87	Source relocated
Columbia	Boise Cascade, Papers Div., St. Helens	10/87	In compliance
Columbia	Dale Fischer & Sons, Warren	10/87	No violation
Columbia	Northwest Natural Gas Co., Mist Storage Facility	10/87	In compliance
Multnomah	John Garner Auto Body Shop, Portland	10/87	In compliance
Clatsop	Point Adams Packing Co., Hammond	10/87	No violation
Coos	Sun Plywood, Inc., North Bend	10/87	In compliance
Deschutes	Hi Tek Truss, Bend	10/87	In compliance
Yamhill	Mach-o Acres Airport	11/87	Boundary approved
Grant	Hi Country Airport #2	11/87	Boundary approved
Linn	Rainbow Acres Airport	11/87	Boundary disapproved

CIVIL PENALITY ASSESSMENTS

DEPARTMENT OF ENVIRONMENTAL QUALITY
1987

CIVIL PENALITIES ASSESSED DURING MONTH OF NOVEMBER, 1987:

Name and Location of Violation	Case No. & Type of Violation	Date Issued	Amount	Status
Roseburg Paving Co.	AQ-SWR-87-95 Exceeded opacity limitations from scrubber stack on asphalt plant and failed to control fugitive dust emissions; 3 days of each violation.	11/30/87	$2,250	Awaiting response to notice.

GB7231

November, 1987
DEQ/EQC Contested Case Log

ACTIONS	LAST MONTH	PRESENT
Preliminary Issues	1	1
Discovery	0	0
Settlement Action	2	2
Hearing to be scheduled	2	1
Department reviewing penalty	0	0
Hearing scheduled	0	0
HO's Decision Due	0	0
Briefing	0	0
Inactive	4	4
SUBTOTAL of cases before hearings officer.	9	8
HO's Decision Out/Option for EQC Appeal	0	0
Appealed to EQC	5	5
EQC Appeal Complete/Option for Court Review	0	0
Court Review Option Taken	0	0
Case Closed	0	1
TOTAL Cases	14	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

CONTES.B

November 1987

DEQ/EQC Contested Case Log

Pet/Resp Name	Hrng Rqst	Hrng Rfrrl	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	EQC to review at December 11, 1987 meeting.
VANDERVELDE, ROY	06/06/86	06/10/86	11/06/86	Prtys	05-WQ-WVR-86-39 $5,500 Civil Penalty	EQC to review at December 11, 1987 meeting.
RICHARD KIRKHAM dba, WINDY OAKS RANCH		01/07/87	03/04/87	Resp	1-AQ-FB-86-08 $680 civil penalty	EQC to review at December 11, 1987 meeting.
~~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~~	Case Closed. hearing deferred.
MERIT USA, INC.	05/30/87	06/10/87	09/14/87	Prtys	4-WQ-NWR-87-27 $3500 civil penalty (oil)	Merit appealed to EQC. Cross appeal by Dept.
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)	Settlement Action.
THE WESTERN COMPLIANCE SERVICES, INC.	09/11/87	09/15/87		Prtys	7-HW-NWR-87-48 RCRA & PCB violations	Preliminary issues.
ROGER DEJAGER	10/13/87				8-WQ-WVR-87-68 $1,000 civil penalty	To be scheduled.
City of Klamath Falls	9/04/87	10/09/87			Salt Caves 401 denial	Prehearing conference scheduled December 4, 1987.

November 1987

DEQ/EQC Contested Case Log

Pet/Resp Name	Hrng Rqst	Hrng Rfrrl	Hrng Date	Resp Code	Case Type & No.	Case Status
WAH CHANG	04/78	04/78		Prtys	16-P-WQ-WVR-78-2849-J NPDES Permit Modification	Current permit in force. Hearing deferred.
WAH CHANG	04/78	04/78		Prtys	03-P-WQ-WVR-78-2012-J NPDES Permit Modification	Current permit in force. Hearing deferred.
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.

NEIL GOLDSCHMIDT
GOVERNOR

Department of Environmental Quality

811 SW SIXTH AVENUE, PORTLAND, OREGON 97204-1334 PHONE (503) 229-5696

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item C, January 22, 1988, EQC Meeting

TAX CREDIT APPLICATIONS

Director's Recommendations

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

Appl. No.	Applicant	Facility
T-2248	Timber Products Co.	Baghouse
T-2353	Brand-S Corp.	2 Geonergy Precipitators
T-2747	Dow Corning Corp.	Baghouse

Fred Hansen for

C. Nuttall:p
(503) 229-6484
December 30, 1987
MP1232

Proposed January 22, 1988 Totals:

Air Quality	$ 703,251.00
Water Quality	- 0 -
Hazardous/Solid Waste	- 0 -
Noise	- 0 -
	$ 703,251.00

1988 Calendar Year Totals not including Tax Credits Certified at this EQC meeting.

Air Quality	$ - 0 -
Water Quality	- 0 -
Hazardous/Solid Waste	- 0 -
Noise	- 0 -
	$ - 0 -

MP1232

Application No. T-2248

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Timber Products Company
Tim Ply-Grants Pass Division
P.O. Box 1669
Medford, OR 97501

The applicant owns and operates a plywood manufacturing plant at 111 NE Mill Street, in Grants Pass, Oregon.

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

2. Description of Facility

The facility consists of a baghouse to control fine particulate emissions from a cyclone serving the saw line and sander.

Claimed Facility Cost: $64,090.
(Accountant's Certification was provided).

3. Procedural Requirements

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

The facility met all statutory deadlines in that:

a. The request for preliminary certification was filed March 4, 1987, less than 30 days before construction commenced on April 1, 1987. 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 23, 1987, and the application for final certification was found to be complete on November 18, 1987, within 2 years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the sole purpose is to control a substantial quantity of air pollution. This is accomplished by the addition of a baghouse to control the discharge from a cyclone serving the saw line and sander. This was required because the cyclone could not adequately control the fine particulate emissions from the sander resulting in excessive discharge and complaints from neighboring facilities.

The facility has been inspected by Department personnel and has been found to be operating in compliance with Department Regulations and permit conditions. Emission tests performed on the facility demonstrate that particulate emissions have been reduced from 27.0 lbs/hr to 5.15 lbs/hr. Complaints resulting from excessive emissions have also been eliminated.

b. Eligible Cost Findings

In determining the percent of the pollution control facility cost allocable to pollution control, the following factors from ORS 468.190 have been considered and analyzed as indicated:

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

The material collected by the facility is generally disposed of at landfill and is not converted by the facility into a salable or usable commodity.

2. The estimated annual percent return on the investment in the facility.

There is no return on investment from the facility. Therefore, using the return on investment formula, 100% of the facility cost would be allocable to pollution control.

3. The alternative methods, equipment and costs for achieving the same pollution control objective.

The method utilized is the accepted method for control of particulate emissions. This method is the least cost and most effective method of controlling wood waste residue.

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

There is no savings from the facility. However, the cost of maintaining and operating the facility is $7,297.60 annually.

5. 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.

   There are no other factors to consider in establishing the actual cost of the facility properly allocable to prevention, control or reduction of pollution.

   The actual cost of the facility properly allocable to pollution control as determined by using factor #2 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 control a substantial quantity of air pollution and accomplishes this purpose by the addition of a baghouse to control the fine particulate emission generated by the sander 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 $64,090 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-2248.

W.J. Fuller:cdj
AD1823
(503) 229-5749
December 28, 1987

Application No. T-2353

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Brand-S Corporation
Leading Plywood Division
6300 Reservoir Road
Corvallis, OR 97330

The applicant owns and operates a plywood manufacturing facility near Corvallis, Oregon.

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

2. Description of Facility

The claimed facilities are two Geoenergy precipitators for the purpose of abating the emissions of particulate matter from the exhaust of the Moore and the Prentice veneer dryers.

Claimed Facility Cost: $395,121.00 (adjusted to eligible cost of $392,916.00)

(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 December 10, 1984, 30 days before installation commenced.

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

c. Installation of the facility was substantially completed in May 1987 (the installation time was over several months, since the second veneer dryer control installation did not commence until compliance was approved for the first unit) and the application for final certification was found to be complete on October 5, 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 air pollution.

This control is accomplished by the use of an air-cleaning device as defined in ORS 468.275.

b. Eligible Cost Findings

In determining the percent of the pollution control facility cost allocable to pollution control, the following factors from ORS 468.190 have been considered and analyzed as indicated:

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

The facility does not recover or convert waste products into a salable or usable commodity.

2. The estimated annual percent return on the investment in the facility is zero.

There are operation and maintenance costs and no income from the facility.

3. The alternative methods, equipment and costs for achieving the same pollution control objective.

Other emission control devices were considered. The Ceilcote IWS unit which was basically comparable to the selected geoenergy E-tube collector in performance would have cost more, about $502,000.

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

There is no income from operating this facility. There are operational and maintenance costs required when operating the facility.

5. 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.

The claimed cost is for the purchase and installation of two independent veneer dryer emission control systems. The cost includes capitalized expenditures to outside contractors and in-house work on the project occurring after January 10, 1985.

The total amended claimed cost of $395,121.00 was reduced by $2,205.00, leaving a net eligible cost of $392,916.00.

The $2,205.00 was for particulate source testing as a demonstration of compliance with the emission standards. Compliance testing is not considered a part of the pollution control facility as defined by OAR 340-16-025(1). The costs incurred for the project are in line with prices realized by other companies in controlling veneer dryer air contaminant emissions.

Based on these findings, factors 2, 4, and 5 are the most applicable factors.

The actual cost of the facility properly allocable to pollution control as determined by using this factor is 100% as shown adjusted.

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 air pollution and accomplishes this purpose by the use of an air-cleaning device as defined in ORS 468.275.

c. The facility complies with DEQ statutes and rules, and

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 $392,916.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-2353.

Don Neff:d
AD1897
(503) 229-6480
December 28, 1987

Application No. T-2747

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Dow Corning Corporation
Springfield Plant
1801 Aster Street
Springfield, OR 97477

The applicant owns and operates a primary smelting plant producing metallurgical grade silicon metal in Springfield, Oregon.

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

2. Description of Facility

The facility consists of a baghouse installation, supporting structure, piping, main fan recorder, screw conveyor, and three rotary feeders.

Claimed Facility Cost: $246,245.
(Accountant's Certification was provided).

3. Procedural Requirements

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

The facility met all statutory deadlines in that:

a. The request for preliminary certification was filed July 15, 1985, more than 30 days before construction commenced on October 8, 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 November 11, 1985, and the application for final certification was found to be complete on October 30, 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 Lane Regional Air Pollution Authority (LRAPA) order for corrective action to reduce fugitive emissions from the furnace building. These fugitive emissions consisting of an amorphic silicon dioxide fume (silica fume) were generated due to inefficiencies in the existing closed loop collection system.

To correct these inefficiencies a second baghouse was installed to collect the fine material that was escaping collection by a cyclone rather than recycle the material back to the collection hood.

b. Eligible Cost Findings

In determining the percent of the pollution control facility cost allocable to pollution control, the following factors from ORS 468.190 have been considered and analyzed as indicated:

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

Although the material recovered has some value, its marketability is limited requiring the majority of material collected to be disposed of at landfill. The portion of material sold affects the annual percent return on the investment in the facility and is, therefore, considered in paragraph 4.b.2.

2. The estimated annual percent return on the investment in the facility.

The silica dust collected has minimal value. During 1986 only 13.2% was sold with 86.8% being landfilled. Over the past five years the gross income from sales of silica dust collected was $585,770. During the same period the cost of collection and landfilling the remainder of the material was $1,934,301. This represents an annual expense of $269,706. Therefore, there is no economic benefit to the applicant and there is no return on investment in the facility. Therefore, using the return on investment formula, 100% of the facility cost is allocable to pollution control.

3. The alternative methods, equipment and costs for achieving the same pollution control objective.

This project was undertaken only after an engineering study by consultants to determine costs of various methods and respective collection efficiency. The cost(s) for alternate systems were in the magnitude of 160-200% higher without additional control.

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

   There is no notable savings or increase in costs as a result of the facility modification.

5. 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.

   There are no other factors to consider in establishing the actual cost of the facility properly allocable to prevention, control or reduction of pollution.

   Based on these findings, factor #2 is the most applicable factor. The actual cost of the facility properly allocable to pollution control is 100%.

5. Summation

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

   b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by Lane Regional Air Pollution Authority to reduce air pollution.

   c. The facility complies with Lane Regional Air Pollution Authority requirements.

   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 $246,245 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-2747.

W.J. Fuller:d
AD1828
(503) 229-5749
January 5, 1988

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

TO: Environmental Quality Commission

FROM: Director

SUBJECT: Agenda Item D, January 22, 1988, EQC Meeting

Informational Report: New Federal Ambient Air Quality Standard for Particulate Matter (PM_{10}) and Its Effects on Oregon's Air Quality Program.

BACKGROUND

After several years in the proposal stage, the U.S. Environmental Protection Agency (EPA) adopted major revisions to the national ambient air quality standards for particulate matter effective July 31, 1987. This action deleted the federal primary (health-related) and secondary (welfare-related) total suspended particulate (TSP) standards and replaced them with new standards for particulate less than ten micrometers in diameter (PM_{10}). These new standards are considered to be more protective of public health.

States are primarily responsible for assuring attainment and maintenance of the ambient air quality standards adopted by EPA. The new PM_{10} standards trigger several changes to Oregon's air pollution control program. Some of these changes are due by May 1, 1988 (nine months after the July 31, 1987, EPA adoption). This staff report provides a general overview of the changes needed in our program. The needed changes are outlined below.

1. Adoption of Oregon PM_{10} ambient air quality standards;

2. Amendments to emergency action plan;

3. Amendments to new source review rules;

4. Amendments to prevention of significant deterioration rules;

5. Commitments to monitor PM_{10} and determine if there are or will be PM_{10} problems in Group II areas (areas with moderate probability of violating the PM_{10} standards); and

6. Adoption of control strategies for Group I areas (areas with high probability of violating the PM_{10} standards).

All six of the listed requirements are due by May 1, 1988. The first five items are addressed in Agenda Items E, F, and G. Combined public hearings on these items are proposed for Portland, Medford, Bend and La Grande during March 1988. Final adoption is expected at the April 29, 1988, EQC meeting.

The sixth requirement (control strategies for Group I areas) involves coordination with local governments and cannot be completed by the May 1, 1988, deadline. The Department plans to request authorization for public hearings on the Group I control strategies at the March 11, 1988, EQC meeting and propose final adoption at the June 3, 1988, EQC meeting. This schedule is about one month past the May 1, 1988, EPA deadline and is dependent on developing a consensus with local governments during February 1988.

The one month delay is not expected to result in EPA sanctions. Under the proposed schedule, the draft Group I control strategies would be available to EPA following the March 11, 1988, EQC meeting and prior to the May 1, 1988, EPA deadline. Longer delays, if judged by EPA to not represent a good faith effort, would increase the risk of EPA sanctions. These sanctions could include withholding air program and sewage treatment grants and prohibition of major new or modified industrial source construction.

Developing a consensus with local governments is critical to the success of the Group I control strategies and adherence to the proposed schedule. This is because the reduction of residential woodsmoke from stoves and fireplaces is an essential component of each of the Group I control strategies and will probably require local ordinances for implementation. The authority of the Commission and the Department to control smoke from home heating equipment is limited by ORS 468.290(5) to only the woodstove certification program that regulates which new woodstoves can be sold in Oregon.

Health Protection and Stringency of the New PM_{10} Standard

The new standards change the focus from total suspended particulate (particulate up to 60 microns in diameter based on the sampling method) to only the fine particulate less than ten micrometers in diameter (referred to as "PM_{10}"). These smaller particles are likely to be responsible for most of the adverse health effects because of their ability to reach the thoracic or lower regions of the respiratory tract. One micrometer, sometimes referred to as a micron, is one-millionth of a meter or 1/25,000 of an inch. For comparison, the thickness of a human hair is about 100 micrometers and the period at the end of this sentence is about 1000 micrometers.

Most particulate matter can be categorized as either smoke or dust particles. Almost all smoke particles (from residential woodstoves and fireplaces, industrial boilers, field burning, and other combustion processes) are in the PM_{10} size range. In contrast, a minor fraction of the dust particles (from road dust stirred up by traffic, agricultural tilling, windblown dust, etc.) are in the PM_{10} size range.

The new EPA PM_{10} standards are more stringent than the old EPA TSP health standards and will better protect public health from the effects of particulate matter. Health effects of particulate matter include changes in lung function and increased respiratory symptoms, aggravation of existing respiratory and cardiovascular disease, alterations in the body's defense systems against foreign materials, damage to lung tissue, cancer and, in extreme cases, premature death.

The national PM_{10} standards are twofold: PM_{10} levels must not exceed 150 micrograms per cubic meter (ug/m^3) more than an average of one day per year and must not exceed 50 ug/m^3 as an annual arithmetic average. The new PM_{10} secondary standards are identical to the primary standards since the primary standards were judged by EPA to protect adequately against both health and welfare effects.

Since PM_{10} in Oregon averages 60-80% of TSP levels, the new EPA PM_{10} standards are slightly less stringent than the current Oregon TSP standards of 150 ug/m^3 (24-hour average) and 60 ug/m^3 (annual average).

Groupings of PM_{10} Areas

The EPA regulations for implementing the PM_{10} standards classify all areas of the country into one of the following three groups.

1. Problem areas (called Group I areas) are those areas with a high probability of violating the new PM_{10} standards. Four areas of Oregon have been identified as Group I PM_{10} problem areas: Medford-White City, Eugene-Springfield, Klamath Falls, and Grants Pass.

2. Questionable areas (called Group II areas) are those areas with a moderate probability of violating the PM_{10} standards. Four areas of Oregon are Group II areas: Bend, Oakridge, La Grande, and Portland.

3. Other areas (called Group III areas) are those areas with a high probability of meeting the standards. The remainder of Oregon, other than the four Group I areas and four Group II areas identified above, is considered in Group III.

The Lane Regional Air Pollution Authority (LRAPA) will address the Group I and II areas in Lane County (Eugene-Springfield and Oakridge, respectively). The Department will address the other three Group I areas (all in southern Oregon: Medford-White City, Klamath Falls and Grants Pass) and the other three Group II areas (Bend, La Grande and Portland).

Causes of the Problem

The particulate problems are caused by the combination of poor ventilation, especially during the fall and winter months, and particulate emissions from various sources. A national study of weather patterns by EPA in 1972 indicated

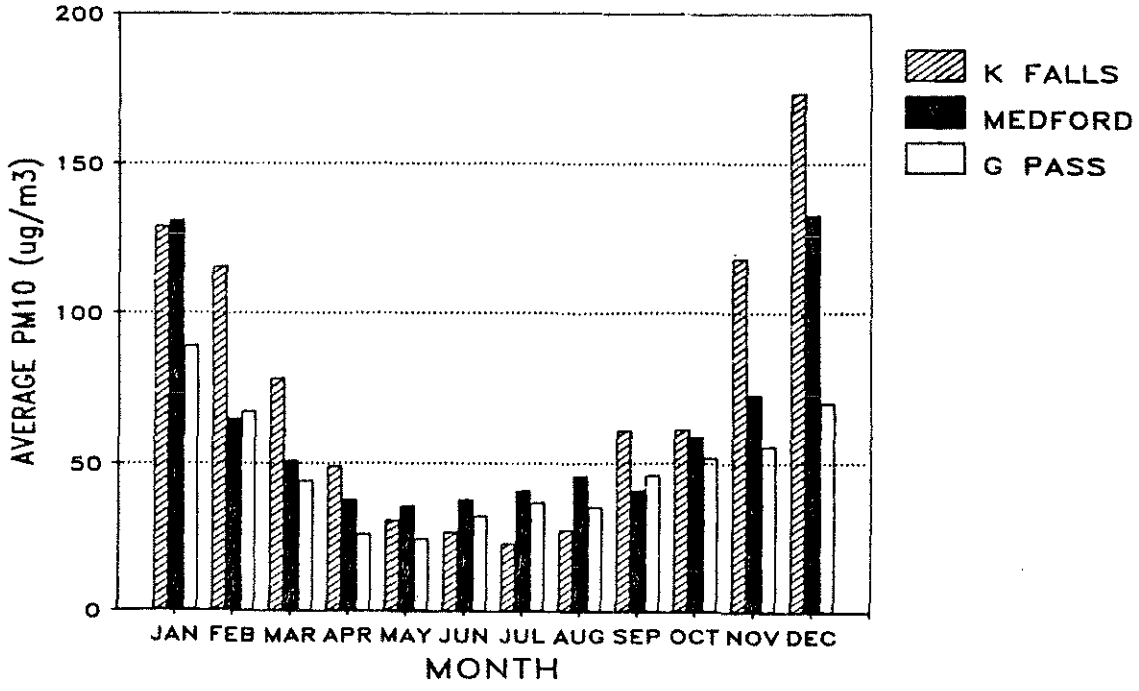
that the interior valleys of southwest Oregon had among the poorest atmospheric ventilation in the country. This ventilation data is summarized in Figure 1.

FIGURE 1

ATMOSPHERIC VENTILATION

The poor ventilation, resulting in high air pollution potential, is caused by the meteorology (low wind speeds and frequent temperature inversions) and topography (mountain valleys) of the area. Lowest PM_{10} levels generally occur from April through September and peak levels occur in December and January as outlined in Figure 2.

Figure 2
SOUTHERN OREGON PM10 PROFILES



Based on 1984–86 data.

Prior to 1975, the major source of particulate emissions in the particulate problem areas in southwest Oregon was clearly the wood products industry. However, since the oil embargo and rapid escalation of energy prices in the mid-1970s, residential woodstove and fireplace use has increased dramatically. This increased residential woodburning, combined with progressively tighter pollution control requirements on industry, has caused residential woodsmoke to become the single largest contributor to the particulate problem.

Residential woodsmoke is of special health concern since these smoke particles are almost all in the inhalable range, less than ten micrometers, and occur during the months of the year when the air is most stagnant (December and January). The 1986 inventory of PM_{10} emissions in the Medford-White City area, as summarized in the following table and in Figure 3, illustrates this point:

Source Category	Annual PM_{10} Emissions (%)	Worst Day PM_{10} Emissions (%)
Residential woodsmoke	41	65
Wood products industry	21	13
Soil and road dust	24	14
Motor vehicle exhaust	7	4
Other	7	4
TOTAL	100	100

The fraction of PM_{10} from residential woodsmoke is greater than this in Klamath Falls and less than this in Grants Pass but, in all three of these Group I areas, residential woodsmoke is the most important source category, especially on the worst days which occur during the winter months.

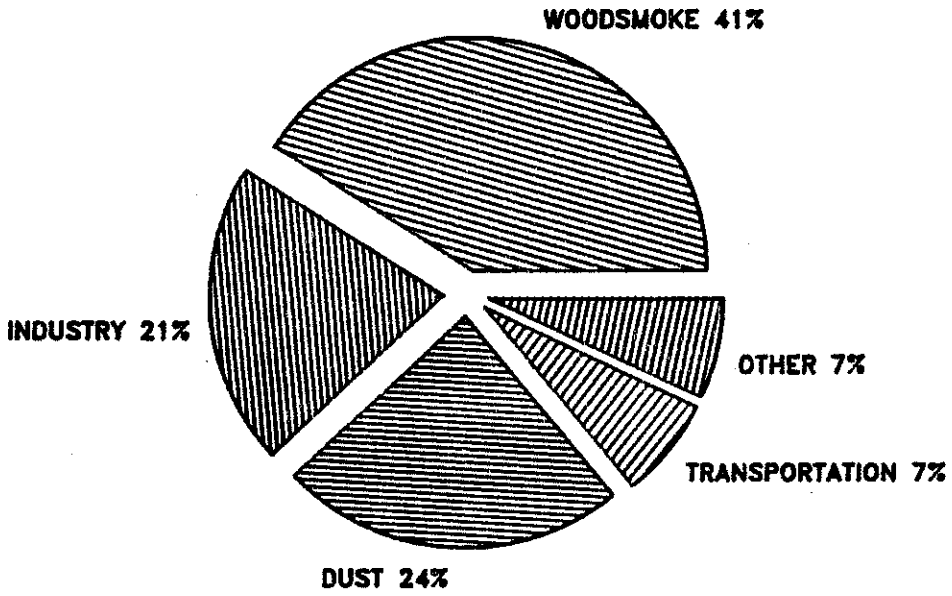
Requirements for All Areas (Group I/II/III)

There are some common new federal requirements for all areas of the state triggered by the new PM_{10} standards.

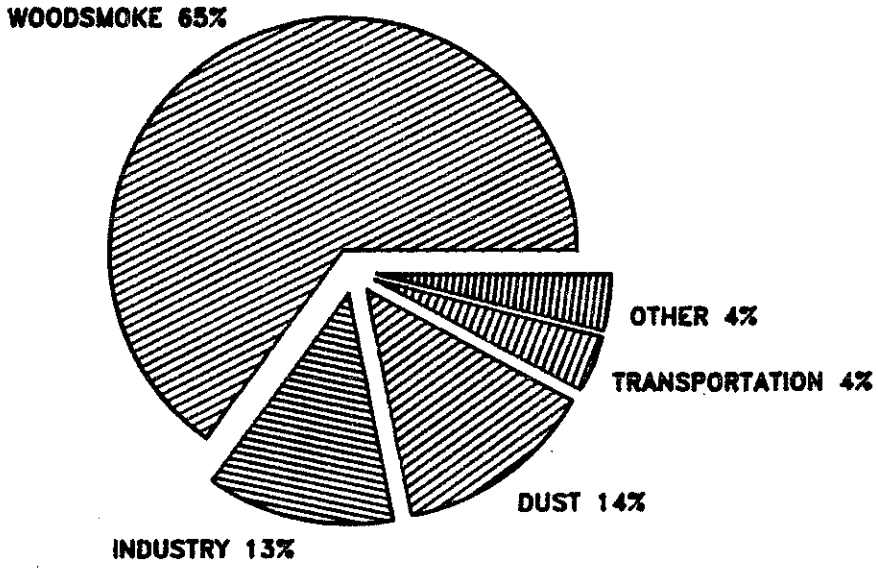
The Oregon ambient air quality standards need to be modified to include PM_{10} standards. The emergency action plan needs to be revised, with the action levels triggered by ambient PM_{10} concentrations (which better reflect the relative health concerns) instead of by total suspended particulate concentrations. These changes to the ambient air quality standards and emergency action plan are proposed as revisions to the SIP (in a request for hearing authorization) in Agenda Item E.

The new source review (NSR) and prevention of significant deterioration (PSD) rules need to be modified to address significant new or modified sources of PM_{10}. These changes are proposed as revisions to the SIP (in a request for hearing authorization) in Agenda Item F.

Figure 3
MEDFORD AREA EMISSION INVENTORY
PM10 Emissions During 1986



ANNUAL



WORST DAY

Requirements for Group II Areas

For Group II areas, states are required to submit commitments (committal SIPs) to EPA to monitor and evaluate PM_{10} over a three-year period. States are required to monitor PM_{10} concentrations according to a plan negotiated with EPA, notify EPA if concentrations go over the standards, inventory existing and projected sources of PM_{10} by September 1990, and, if necessary, develop and implement a control strategy to meet ambient standards within 3-5 years from the date of EPA approval of the committal SIPs. These commitments for Group II areas are proposed as SIP revisions (in a request for hearing authorization) in Agenda Item G.

Requirements for Group I Areas

For Group I areas, states are required to submit full control strategies to EPA that are adequate to meet the PM_{10} standards in the problem areas within three years of EPA approval of the control strategy. A two year extension is possible if all practical measures are not adequate to meet standards within three years.

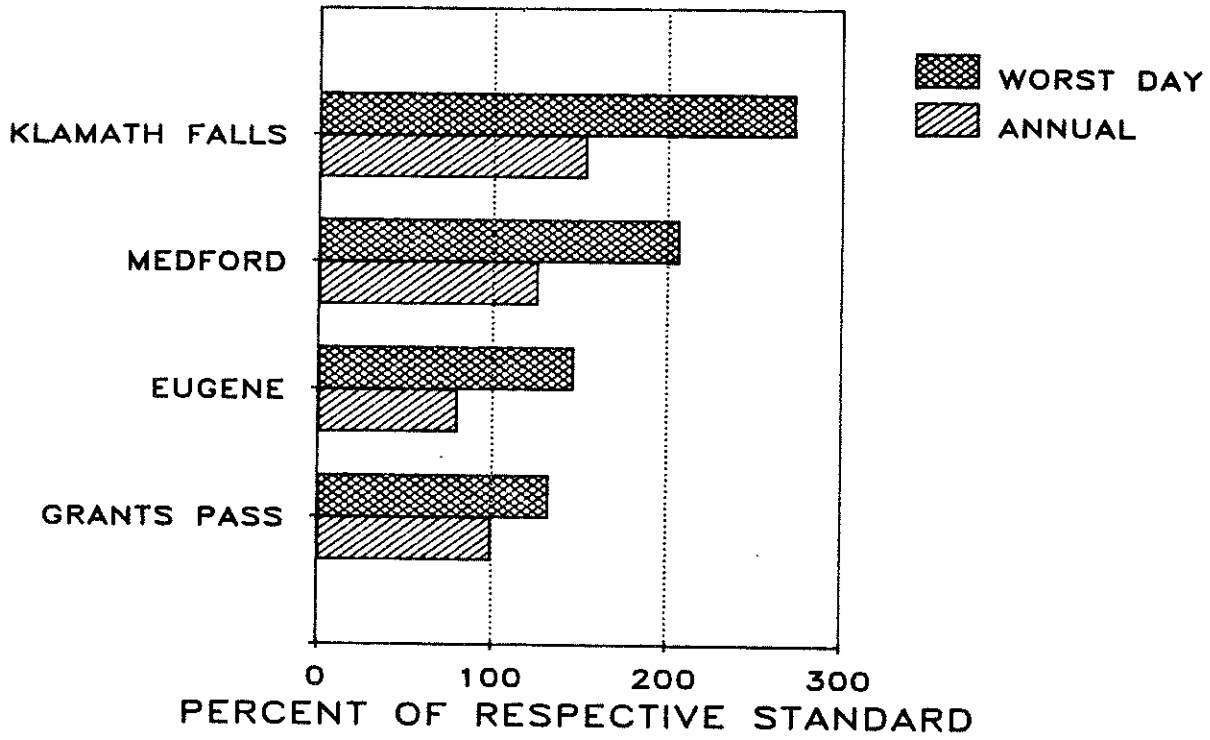
The Department is coordinating the PM_{10} Group I control strategies in southern Oregon (Medford-White City, Klamath Falls, and Grants Pass) with the appropriate cities and counties; the Lane Regional Air Pollution Authority (LRAPA) is coordinating the Eugene-Springfield control strategy.

The design values (or baseline PM_{10} levels during 1984-86) have been estimated for each of the Group I areas and are summarized in the table below and in Figure 4. These design values are considered approximate since EPA only recently adopted specific PM_{10} reference methods and the size of the PM_{10} data record (number of monitoring sites, frequency of sampling, months or years of record) varies between areas.

	Approximate Design Value (ug/m^3)	
Group I Area	Annual	Peak Day
Klamath Falls	60-90	400 or more
Medford-White City	55-65	260-370
Grants Pass	45-55	180-220
Eugene-Springfield	35-45	200-240
(Standard)	(50)	(150)

The daily standard will be the more difficult to achieve in the Oregon problem areas. In the Group I areas, worst day PM_{10} levels must be reduced by 25-60% in order to meet the daily PM_{10} standard and annual average PM_{10} levels must be reduced 0-30% to meet the annual standard.

Figure 4
OREGON PM10 DESIGN VALUES
Based on 1984-86 Data



The Department and LRAPA are currently meeting with advisory committees in each of the Group I areas. The recommended strategies will include a combination, in most cases, of residential control measures (primarily involving reduction of woodsmoke from stoves and fireplaces) and industrial control measures (primarily involving the wood products industries). These combinations of control measures will require local ordinances, state rules, and interagency commitments. Some of the measures will be controversial.

For example, the Jackson County (including the Medford-White City Group I area) and Klamath County (including the Klamath Falls Group I area) advisory committees have recommended mandatory curtailment of woodstove and fireplace use (with limited exemptions) during air stagnation periods, clean air utility rates, financial incentives for replacing woodstoves with cleaner burning units, and expanded public education. Some of these strategies require public hearings by local government, and adoption of local ordinances, prior to the EQC public hearings for incorporating the control strategies into the SIP.

The control strategies for at least some of the Group I areas will probably include tighter emission requirements for veneer driers and wood-fired boilers,

more comprehensive industrial requirements for continuous emission monitoring and/or operation and maintenance, and possibly more restrictive offset requirements. Such additional industrial measures are needed to help meet annual standards and avoid more drastic, if not impractical, controls on residential woodheating in the future. State rules would be needed for these industrial measures.

SUMMATION

1. The U.S. Environmental Protection Agency (EPA) adopted new ambient air quality standards for particulate matter (PM_{10}) effective July 31, 1987. All areas of the state fall into one of three groups based on the probability of violating the new standards.

2. The PM_{10} problem areas (Group I areas) in Oregon are: Klamath Falls, Medford- White City, Grants Pass, and Eugene-Springfield.

3. The questionable PM_{10} areas (Group II areas) in Oregon are: Bend, La Grande, Oakridge, and Portland.

4. All other areas of Oregon are considered in compliance with the PM_{10} standards (Group III areas).

5. Changes are needed in the following parts of the Oregon State Implementation Plan in order to implement the new PM_{10} standards:

   (a) Ambient air quality standards;
   (b) Emergency action plan;
   (c) New source review rules;
   (d) Prevention of significant deterioration rules;
   (e) Commitments to monitor, report and evaluate questionable PM_{10} areas; and
   (f) Control strategies for PM_{10} problem areas.

6. The above parts (a) through (e) are proposed as revisions to the State Implementation Plan (in requests for hearing authorizations) in subsequent agenda items. Part (f) will take longer to complete, in coordination with local governments, and is expected to be on the agenda of the March 11, 1988, EQC meeting.

7. These changes are due to EPA by May 1, 1988. Parts (a) through (e) are expected to be adopted by April 29, 1988; part (f) is expected to be adopted by June 3, 1988. Part (f) will be completed about one month after the date due to EPA.

8. The control strategies in Group I problem areas are expected to be a combination of residential control measures (primarily involving reduction of woodsmoke from stoves and fireplaces) and industrial control measures (primarily involving the wood products industries). Some of the measures will be controversial.

DIRECTOR'S RECOMMENDATION

It is recommended that the Commission concur in the following course of action to be pursued by the Department:

1. The Department will continue to coordinate Group I control strategies with local governments and request authorization from the Commission as soon as possible for public hearings. The Department expects this to be on the March 11, 1988, EQC agenda.

2. Following EQC public hearings and adoption of any necessary local ordinances, the Department will propose adoption of the Group I control strategies. The Department expects this to be on the June 3, 1988, EQC agenda.

3. Pending authorization to conduct public hearings requested at this meeting on the five other major PM_{10} changes, the Department will proceed as quickly as possible to bring these five changes back to the Commission for adoption at the April 29, 1988, EQC meeting.

Fred Hansen

Merlyn L. Hough
(229-6446)
January 6, 1988
PM10EQC6
AD1961

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

To: Environmental Quality Commission

From: Director

Subject: Agenda Item E January 22, 1988, EQC Meeting

Request for Authorization to Conduct a Public Hearing to Amend Ambient Air Standards (OAR 40-31-005 through -055) and Air Pollution Emergencies (OAR 340-27-005 through -012) Principally to add New Federal PM_{10} Requirements as a revision to the State Implementation Plan.

Background

The Environmental Protection Agency (EPA) first promulgated National Ambient Air Quality Standards (NAAQS) for certain criteria pollutants in 1970. These standards were designed to protect public health, including sensitive portions of the population, with an adequate margin of safety. States are principally relied upon to provide long range strategies to attain and maintain compliance with these standards within specified time periods. Along with NAAQS, EPA has promulgated significant harm levels for the criteria air pollutants which are considered to present an imminent and substantial danger to the health of even healthy individuals. States are required to have emergency action plans which provide for all possible measures including immediate curtailment of emission sources to avoid reaching the significant harm levels.

EPA and subsequently the state have addressed particulate air pollution with NAAQS and significant harm levels addressing total suspended particulate (TSP) (particles normally ranging up to 60 microns with the specified monitoring method).

In July, 1987, after years of study of health impact information, EPA dropped its total suspended particulate NAAQS and significant harm level and replaced them with particulate levels generally reflecting particles less than 10 microns in size (PM_{10}). It was felt that PM_{10} would be more protective of public health as particles above this size are generally filtered out in the upper respiratory system and thus are incapable of penetrating and being retained in the lungs for long periods of time where they can cause significant damage to the body. EPA also felt the PM_{10} standards would be adequate to protect against welfare effects (soiling, etc.).

EPA's PM_{10} actions trigger the need for the state to adopt similar air quality standards and significant harm levels so that required supporting programs including related attainment control strategies, new source review, prevention of significant deterioration programs, and emergency action plans are all based on uniform enforceable standards.

Legal Authority

Acting upon these rules lies within the general lawful authority of the Commission to adopt rules and standards to restore and maintain the air resources of the state as outlined in ORS 468.015, 468.020, 468.280, 468.285, 468.295, and 468.305.

Evaluation and Alternatives

The current relevant state total suspended particulate ambient air quality standards and significant harm level and new EPA PM_{10} levels are shown in Table 1.

Table 1

Particulate Air Quality Standards and Significant Harm Levels

	24 hr. Standard	Annual Standard	24 hr. Significant Harm Level
Oregon (TSP)	150	60	1000
EPA (PM_{10})	150	50	600

Since PM_{10} levels in Oregon averages about 60% to 80% of TSP levels, the EPA standards may be looked upon as a relaxation compared to state standards. The EPA PM_{10} significant harm levels, however, may be looked upon as more stringent than the current Oregon TSP significant harm levels.

While EPA has deleted its TSP standard, it has not yet dropped its TSP Prevention of Significant Deterioration (PSD) increment system. The increment is a small amount of deterioration of air quality allowed under the PSD regulations beyond the levels of a baseline year which keeps air quality in clear air areas from not being polluted up to the limits allowed by the NAAQS. It is expected that a PM_{10} increment system will be developed in about two years. Additional PM_{10} emission standards have not been developed to replace TSP emission standards which are used, among other things, to protect PSD increments. Based on this situation, it would not appear appropriate for the state to drop its TSP standard during the transition period. It would be appropriate to

reevaluate the need to retain the state TSP standard in about two years when more is expected to be known about the PSD increment system and the relationship of TSP to PM_{10} in Oregon.

Being more stringent, it would be appropriate to replace the state TSP significant harm level with the new EPA PM_{10} level. Besides having the significant harm level in the state Emergency Action Plan, there are three intermediate TSP levels that describe alert, warning, and emergency conditions and corresponding increasingly stringent source control actions that should take place to avoid reaching the significant harm level. These should be changed to the EPA new PM_{10} intermediate levels.

Several housekeeping changes should be made in the state's ambient air quality rules that will align them to the federal rules. Alignment of the rules is desirable in order that application of the rules on either the state or federal level is consistent. These changes include:

- Delete the monthly TSP standard as no comparable Federal standard has ever existed and the Department has never seen value in enforcing this standard.

- Delete the hydrocarbon ambient air standard since EPA has done so. Such a standard is not needed to protect public health since control of hydrocarbons necessitated to meet the ozone standard results in more stringent control than the old hydrocarbon standard itself would require.

- Convert all gaseous ambient air quality standards from units of micrograms per cubic meter to parts per million by volume (ppm) and follow the new EPA data round-off procedures since this has been done by EPA. The instruments are actually calibrated in that manner and the ppm units are independent of temperature and pressure. Standards for solids in air (particulates and lead) must be maintained in the units of weight per unit volume of air since this is how instruments are calibrated and measure this pollutant.

- Clarify certain terminology and definitions.

There are some additional changes that should be made to the Emergency Action Plan including:

- Change gaseous pollutant concentrations units from micrograms per cubic meter to parts per million by volume.

- o Delete emergency action criteria for the product of TSP and sulfur dioxide since EPA has also dropped this quantity.

- o Clarify that wood and coal spacing heating shall be curtailed when legal authority exists to require such action.

Attachment 3 contains the Department's proposed amendments to the ambient air quality standard and Attachment 4 contains the Department's proposed amendments to the Emergency Action Plan rules. The needed amendments were fairly simple and straight forward and thus no major review was made with interested parties during the rule development process.

Summation

1. The EPA adopted a new PM_{10} national ambient air standard in July, 1987 triggering state requirements to adopt similar standards and correspondingly revise emergency action plans by May, 1988.

2. While EPA dropped its total suspended particulate (TSP) air quality standards, it will not drop its Prevention of Significant Deterioration (PSD) system based on TSP until a new PM_{10} PSD increment system is devised in about two years.

3. Since the state's PSD system and particulate emission standards are still based on TSP, it is felt prudent to retain the State TSP standard at least until such time as the EPA PM_{10} program is defined and an approach can be developed to reflect PM_{10} in Department emission standards.

4. EPA's new PM_{10} emergency action plan levels for PM_{10} are more stringent than current TSP levels. Since they are considered to be better protection of public health, the Department believes they should replace current state TSP emergency action plan levels.

5. Other housekeeping changes are needed in the Department's ambient air standards and Emergency Action Plan rules which do not have any significant impact on the public health protectiveness of these rules.

Director's Recommendation

Based on the Summation, it is recommended that the EQC authorize a public hearing on revisions to the Ambient Air Standards (OAR 340-

31-005 through -055) and Emergency Action Plan (OAR 340-27-005 through -012).

Attachments:
1. Draft Statement of Need for rule changes
2. Draft Hearings Notices
3. Proposed Amendments to OAR 340-31-005 through -055
4. Proposed Amendments to OAR 340-27-005 through -012.

Lydia Taylor
Fred Hansen for

LDBrannock:ahe
229-5836
December 28, 1987
AAQS-EAP.RPT
AD1951

Attachment 1

Agenda Item E, January 22, 1988, EQC Meeting.

STATEMENT OF NEED FOR RULE MAKING

Pursuant to ORS 183.335(7), this statement provides information on the Environmental Quality Commission's intended action to adopt a rule.

(1) Legal Authority

The Environmental Quality Commission's legal authority for making these rule changes lies in the legislatively derived functions, responsibilities and authority assigned in Oregon Revised Statutes, Chapter 468 including ORS 468.015, 468.020, 468.280, 468.285, 468.295 and 468.305.

(2) Need for these Rules

United States law administered by the Environmental Protection Agency (EPA) requires the State of Oregon, and all other states, to establish and maintain Ambient Air Quality Standards (AAQS) within the state and in addition, to develop a contingency plan to handle air pollution emergencies in the event the air quality seriously deteriorates. The contingency plan is to prevent reaching a pollutant level of significant harm in the ambient air. The AAQS are established in OAR 340-31-005 through 340-31-055. The required contingency plan is contained in OAR 340-27-005 through 340-27-012, Oregon's Emergency Action Plan (EAP) which also lists the pollutant levels of significant harm.

A new National AAQS for suspended particulate, PM_{10}, and new Level of Significant Harm for PM_{10} were promulgated by the EPA in July, 1987. Federal law requires the State of Oregon to respond with a plan implementing the new standard within 9 months of promulgation. To comply it is necessary to add a PM_{10} standard to the existing AAQS for the State and change the EAP where it is concerned with PM_{10}.

Language establishing the AAQS in the current Oregon Administrative Rules (OAR) state the value of the standards in several systems of measurement creating ambiguity due to rounding errors. To correct the problem it is proposed to change all gaseous pollutant concentration references in the AAQS and EAP to parts per million (ppm) and delete actions required by the EAP for suspended particulate and the suspended particulate - sulfur dioxide product.

Updating of the definitions in OAR 340-31-005 is needed to bring the text into line with current thinking and practice which has evolved since the rules were first written. It is proposed to delete several definitions and add new ones.

The AAQS for hydrocarbons is no longer required by federal regulations. It is proposed to repeal OAR 340-31-035 which sets the AAQS for hydrocarbons.

Other minor housekeeping changes are proposed.

(3) Principal Documents Relied Upon

a. Federal Register, vol. 52, no. 126, July 1, 1987, pg. 24736 ff.

b. Code of Federal Regulations (CFR):
40 CFR 50
40 CFR 51
40 CFR 58

c. ORS Ch. 468

All documents referenced may be inspected at the Department of Environmental Quality, 811 SW 6th Av., Portland, OR, during normal business hours.

(4) Land Use Consistency

The proposed rule changes appear to affect land use as defined in the Department's coordination program with DLCD, but appear to be consistent with the Statewide Planning Goals.

With regard to Goal 6, (air, water and land resources quality), the proposed changes are designed to enhance and preserve air quality in the State and are considered consistent with the goal. The proposed rule changes do not appear to conflict with the other Goals.

Public comment on any land use issue involved is welcome and may be submitted in the same fashion as indicated for other testimony on these rules.

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

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

FISCAL AND ECONOMIC IMPACT

These proposed rules would establish a limit for PM_{10} in the ambient air and various emergency action levels for PM_{10} which may be more restrictive than the levels contained in the existing rule. Adoption of the air quality standard revisions will have an economic impact on the department because of changes in the air quality monitoring implied by the new rules. The impact will be offset by monitoring resource savings derived from the suspension of TSP monitoring in most areas. Should areas reach episode PM_{10} levels which trigger immediate source curtailment requirements, there could be an economic impact on both the public and private sectors in the form of costs for lost operating time. For instance, in the case of woodstove curtailment, extra costs for using more expensive (electric) heating sources may be incurred. The probability of reaching emergency shutdown levels in any part of Oregon is considered low, however, and at worst might occur on a couple of days in Medford and Klamath Falls.

Should areas of the state be found to not meet the air quality standards, appropriate measures will be required to bring the areas into compliance. Adoption of these strategies will require a formal revision to the State Implementation plan by the Commission and the specific economic and fiscal impacts caused by the strategies will be described at that time in those rule changes. Beyond that, adoption of the proposed standard revisions will have no direct economic impact on either the public or private sectors.

Adoption of revisions to the Emergency Action Plan could have an economic impact on industry in affected areas in the event of an air pollution episode of sufficient proportions as to require the outlined actions to be taken. The only revisions to the plan involve the inclusion of PM_{10} levels into the criteria for taking action and since the PM_{10} levels of action are lower than the TSP levels of action, the emission reduction plans could be call into action sooner. Any time emission reduction plans are activated, it will have an impact on the affected parties. The necessity of activating the emission reductions, however, would seem remote.

AD1956

Oregon Department of Environmental Quality

ATTCHMENT 2

A CHANCE TO COMMENT ON...

Proposed changes to ORS 340-31-005 through 340-31-040, Ambient Air Quality Standards and ORS 340-27-005 through 340-27-012 and Tables 1 through 4 thereof, Air Pollution Emergencies.

NOTICE OF PUBLIC HEARING

Hearing date: March, 1988
Comments due:

Who is Affected: All persons in the state who are affected by or are concerned with the Ambient Air Quality Standards (AAQS) for particulate or concerned with emergency actions to be taken in the event of high levels of particulate.

What is Proposed: The Department of Environmental Quality is proposing to amend OAR 340-31-005 through 340-31-040; Ambient Air Quality Standards for the State of Oregon. These proposals would change the AAQS by:

a. Establishing a new particulate standard for suspended particulate less than 10 microns in aerodynamic diameter (PM_{10}),

b. Expressing the units of the standards for sulfur dioxide, carbon monoxide, ozone and nitrogen dioxide in terms of an unambiguous measurement system, namely parts per million by volume (ppm),

c. Repealing the standard for hydrocarbons.

As a consequence of the above changes, the Department is proposing the following amendments to OAR 340-27-005 through 340-27-012, Air Pollution Emergencies:

d. Deleting the criteria levels for the product of sulfur dioxide and particulate,

e. Changing the particulate levels from TSP to PM_{10} as a criteria pollutant,

f. Changing the expressed concentration units of all gaseous pollutants to ppm (parts per million).

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

FOR FURTHER INFORMATION:

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

What are the Highlights:

1. Establish PM_{10} standards of:
   (a) 50 micrograms per cubic meter as an annual arithmetic average; and
   (b) 150 micrograms per cubic meter as a 24-hour average.

2. Define the AAQS for particulate, sulfur dioxide, carbon monoxide, ozone and nitrogen dioxide in terms of a single, dimensionless system of measurement for each pollutant to reduce the ambiguity in the standard.

3. Repeal the standard for hydrocarbons.

4. Establish PM_{10} episode levels of:
   (a) Alert; 350 micrograms per cubic meter as a 24-hr. average
   (b) Warning; 420 micrograms per cubic meter as a 24-hr. average
   (c) Emergency; 500 micrograms per cubic meter as a 24-hr. average
   (d) Significant harm level; 600 micrograms per cubic meter

5. Define the concentration levels for particulate, sulfur dioxide, carbon monoxide, ozone and nitrogen dioxide in terms of a single, dimensionless system of measurement for each pollutant to reduce the ambiguity in the standard.

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 Spencer Erickson at 229-6458 (Call toll-free, 1-800-452-4011).

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

(Time) 7 p.m.
(Date) March, 1988
(Place) Portland, Medford, Bend, & La Grande

Oral and written comments will be accepted at the public hearing. Written comments may be sent to the DEQ Air Quality Division, 811 S.W. Sixth Avenue, Portland, Oregon 97204, but must be received no later than _____.

Attachment 2
Notice of Public Hearing

What is the next step: After public hearing the Environmental Quality Commission may adopt rule amendments identical to the proposed amendments, adopt modified rule amendments on the same subject matter, or decline to act. The Commission's deliberation should come in April 29, 1988 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.

Public testimony on proposed revisions to the State Implementation Plan for Group II areas and New Source Review Rules will also be taken at these public hearings.

LDBrannock:LDB
January 5, 1988
AAQS-EAP.NPH
AD1958

Attachment 2
Notice of Public Hearing

Attachment 3

AMBIENT AIR QUALITY STANDARDS
Proposed Rule Change

Definitions

340-31-005 As used in these rules, unless otherwise required by context:

(1) "Ambient air" means [the air] that portion of the atmosphere which surrounds the earth and is normally used for respiration by plants or animals including man, but excluding the general volume of gases contained within any building or structure.

(2) "Ambient air monitoring site" means a site established by the Department of Environmental Quality for the purpose of monitoring contaminants in the ambient air to determine compliance with Ambient Air Quality Standards. Such sites are intended to represent a relatively broad area and shall be configured in accordance with standard siting criteria contained in Appendix E of 40 CFR 58 and additional site criteria approved and kept on file by the Department of Environmental Quality.

(3) "Approved method" means an analytical method for measuring air contaminant concentrations which are described or referenced in Appendices to 40 CFR 50. These methods are approved by the Department of Environmental Quality.

(4) "CFR" means Code of Federal Regulations which is published annually and updated daily by issues of the Federal Register. The CFR contains general and permanent rules promulgated by the executive departments and agencies of the federal government. References to the CFR are preceded by a "Title number" and followed by a "Part and Section number." For example: "40 CFR 50.7." The CFR referenced in these rules are available for inspection at the Department of Environmental Quality.

[(2)](5) "Equivalent method" means any method of sampling and analyzing for an air contaminant deemed by the Department of Environmental Quality to be equivalent in sensitivity, accuracy, reproducibility, and selectivity to [a method approved by and on file with the Department of Environmental Quality] an approved method. Such method shall be equivalent to the method or methods approved by the Federal Environmental Protection Agency.

(6) "Ppm" means parts per million by volume. It is a dimensionless unit of measurement for gasses which expresses the ratio of the volume of one component gas to the volume of the entire sample mixture of gasses.

[(3) "Primary air mass station" means a station designed to measure contamination in an air mass and represent a relatively broad area. The sampling site shall be representative of the general area concerned. The sampler shall be a minimum of 15 feet and a maximum of 150 feet above ground level. Actual elevations should vary to prevent adverse exposure conditions caused by surrounding buildings and terrain. The probe inlet for sampling gaseous contaminants shall be place approximately 20 feet above

the roof top, or not less than 2 feet from any wall. Suspended particulate filters shall be mounted on the sampler and placed not less than 3 feet and particle fallout jar openings not less than 5 feet, above the roof top.

(4) "Primary ground level monitoring station" means a station designed to provide information on contaminant concentrations near the ground. The sampling site shall be representative of the immediate area. The sample shall be taken from a minimum of 10 feet and a maximum of 15 feet above ground level, with a desired optimum height of 12 feet. the probe inlet for sampling gaseous contaminants shall be placed not less than 2 feet from any building or wall. Suspended particulate filters shall be mounted on the sampler and placed not less than 3 feet, or particle fallout jar openings not less than 5 feet, above the supporting roof top.

(5) "Special station" means any station other than a primary air mass station or primary ground level monitoring station.]

(Publications: The publications referred to or incorporated by reference in this rule are available for inspection at the office of the Department of Environmental Quality.)

Stat. Auth.: ORS Ch. 468

Suspended Particulate Matter

304-31-015 Concentrations of suspended particulate matter at [a primary air mass station] an ambient air monitoring site, as measured by [a method approved] an approved method for total suspended particulate, (TSP), or by an approved method for the fraction of TSP which is less than 10 microns in aerodynamic diameter, (PM_{10}), [by and on file with the Department of Environmental Quality,] or by an equivalent method for TSP or PM_{10}, shall not exceed:

(1) 60 micrograms of TSP per cubic meter of air[,] as an annual geometric mean for any calendar year.

[(2) 100 micrograms per cubic meter of air, 24 hour concentration for more than 15 percent of the samples collected in any calendar month.]

[(3)](2) 150 micrograms of TSP per cubic meter of air[,] as an average 24-hour concentration[,] more than once per year.

(3) 50 micrograms of PM_{10} per cubic meter of air as an annual arithmetic mean. This standard is attained when the expected annual arithmetic mean concentration, as determined in accordance with Appendix K of 40 CFR 50 is less than or equal to 50 micrograms pre cubic meter.

(4) 150 micrograms of PM_{10} per cubic meter of air as a 24-hour average concentration for any calendar day. This standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 micrograms per cubic meter as determined in accordance with Appendix K of 40 CFR 50 is equal to or less than one.

(Publications: The publications referred to or incorporated by reference in this rule are available for inspection at the office of the Department of Environmental Quality.)

Stat. Auth.: ORS Ch. 468

Sulfur Dioxide

340-31-020 Concentrations of sulfur dioxide at [a primary air mass station, primary ground level station, or special station,] an ambient air monitoring site as measured by [a method approved by and on file with the Department of Environmental Quality,] an approved method or by an equivalent method, shall not exceed:

(1) [60 micrograms per cubic meter of air (0.02 ppm),] 0.02 ppm as an annual arithmetic mean for any calendar year.

(2) [260 micrograms per cubic meter of air (0.10 ppm), maximum] 0.10 ppm as a 24-hour average concentration [average] more than once per year.

(3) [1300 micrograms per cubic meter of air (0.50 ppm) maximum] 0.50 ppm as a 3-hour average concentration [average,] more than once per year.

Stat. Auth.: ORS Ch. 468

Carbon Monoxide

340-31-025 For comparison to the standard, averaged ambient concentrations of carbon monoxide shall be rounded the nearest integer in parts per million (ppm). Fractional parts of 0.5 or greater shall be rounded up. Concentrations of carbon monoxide at [a primary air mass station or primary ground level stations,] an ambient air monitoring site as measured by [a method approved by and on file with the Department of Environmental Quality] an approved method or by an equivalent method, shall not exceed:

(1) [10 milligrams per cubic meter of air (8.7 ppm),] 9 ppm as an [maximum] 8-hour average[,] concentration more than once [a] per year.

(2) [40 milligrams per cubic meter of air (35 ppm),] 35 ppm as a [maximum] 1-hour average[,] concentration more than once per year.

Stat. Auth.: ORS Ch. 468

Ozone

340-31-030 Concentrations of ozone at [a primary air mass station,] an ambient air monitoring site as measured by [a method approved by and on file with the Department of Environmental Quality,] an approved method or by an equivalent method, shall not exceed [235 micrograms per cubic meter (]0.12 ppm[), maximum] as a 1-hour average concentration. This standard is attained when the expected number of days per calendar year with maximum hourly

concentrations greater than [235 micrograms per cubic meter] 0.12 ppm is equal to or less than one as determined by the method of Appendix H, 40 CFR [40, Part] 50.9. [(page 8220) **Federal Register** 44 No. 28, February 8, 1979.]

(Publications: The publications referred to or incorporated by reference in this rule are available for inspection at the office of the Department of Environmental Quality.)

Stat. Auth.: ORS Ch. 468

[Hydrocarbons

340-31-35 Concentrations of hydrocarbons at a primary air mass station, as measured and corrected for methane by a method approved by and on file with the Department of Environmental Quality, or by an equivalent method, shall not exceed 160 micrograms per cubic meter of air (0.24 ppm), maximum 3-hour concentration measured from 0600 to 0900, not be exceeded more than once per year.]

Nitrogen Dioxide

340-31-040 Concentrations of nitrogen dioxide at [a primary air mass station, as measured by a method approved and on file with the Department of Environmental Quality,] an ambient air monitoring station as measured by an approved method or by an equivalent method, shall not exceed [100 micrograms per cubic meter of air (0.05 ppm),] 0.053 ppm as an annual arithmetic mean.

Stat. Auth.: ORS Ch. 468

Particle Fallout

340-31-045 The particle fallout rate at [a primary air mass station, primary ground level station, or special station,] an ambient air monitoring site as measured by [a method approved by and on file with the Department of Environmental Quality,] an approved method or by an equivalent method, shall not exceed:

(1) 10 grams per square meter per month in an industrial area[; or].

(2) 5.0 grams per square meter per month in an industrial area if visual observations show a presence of wood waste or soot and the volatile fraction of the sample exceeds seventy percent (70%)[; or].

(3) 5.0 grams per square meter per month in residential and commercial areas[; or].

(4) 3.5 grams per square meter per month in residential and commercial areas if visual observations show the presence of wood waste or soot and the volatile fraction of the sample exceeds seventy percent (70%).

Stat. Auth.: ORS Ch. 468

Calcium Oxide (Lime Dust)

340-31-050 (1) Concentrations of calcium oxide present as suspended particulate at [a primary air mass station] an ambient air monitoring site, as measured by [a method approved by and on file with the Department of Environmental Quality,] an approved method or by an equivalent method, shall not exceed 20 micrograms per cubic meter in residential and commercial areas[at any time].

(2) Concentrations of calcium oxide present as particle fallout at [a primary air mass station, primary ground level station, or special station] an ambient air monitoring site, as measured by [a method approved by and on file with the Department of Environmental Quality,] an approved method or by an equivalent method, shall not exceed 0.35 grams per square meter per month in residential and commercial areas.

Stat. Auth.: ORS Ch. 468

Ambient air Quality Standard for Lead

340-31-055 The lead concentration measured at [any individual sampling station, using sampling and analytical methods on file with the Department,] an ambient air monitoring site as measured by an approved method or by an equivalent method, shall not exceed 1.5 [ug/m^3] micrograms per cubic meter as an arithmetic average concentration of all samples collected at that station during any one calendar quarter[period].

Stat. Auth.: ORS. Ch. 468

AD1959

Attachment 4

AIR POLLUTION EMERGENCIES
Proposed Rule Changes

Introduction

340-27-005 OAR 340-27-010, 340-27-015 and 340-27-025 are effective within priority I and II air quality control regions (AQCR) designated in 40 CFR Part 52 Subpart MM, when the AQCR contains a nonattainment area listed in 40 CFR Part 81. All other rules in this Division 27 are equally applicable to all areas of the state. Notwithstanding any other regulation or standard, these emergency rules are designed to prevent the excessive accumulation of air contaminants during periods of atmospheric stagnation or at any other time, which if allowed to continue to accumulate unchecked could result in concentrations of these contaminants reaching levels which could cause significant harm to the health of persons. These rules establish criteria for identifying and declaring air pollution episodes at levels below the level of significant harm and are adopted pursuant to the requirements of the Federal Clean Air Act as amended and 40 CFR Part 51.16. Legislative authority for these rules is contained in Oregon Revised Statutes including ORS 468.020, 468.095, 468.115, 468.280, 468.285, 468.305 and 468.410. Levels of significant harm for various pollutants listed in 40 CFR Part 51.16 are:

(1) For sulfur dioxide (SO_2) - [2,620 micrograms per cubic meter,] 1.0 ppm, 24-hour average.
(2) For particulate matter [(TSP) - 1000] (PM10) - 600 micrograms per cubic meter, 24-hour average.
[(3) For the product of sulfur dioxide and particulate matter - 490 x 10^3 micrograms squared per cubic meter squared, 24-hour average.]
[(4)] (3) For carbon monoxide (CO) -
a. [57.5 milligrams per cubic meter] 50 ppm, 8-hour average.
b. [86.3 milligrams per cubic meter] 75 ppm, 4-hour average.
c. [144 milligrams per cubic meter] 125 ppm, 1-hour average.
[(5)] (4) For ozone (O_3) - [1,200 micrograms per cubic meter] 0.6 ppm, 1-hour average.
[(6)] (5) For nitrogen dioxide (NO_2) -
a. [3,750 micrograms per cubic meter] 2.0 ppm, 1-hour average.
b. [938 micrograms per cubic meter] 0.5 ppm, 24-hour average.

(Publications: The publication(s) referred to or incorporated by reference in this rule are available for inspection at the Department of Environmental Quality in Portland.)
Stat. Auth: ORS Ch 468 including 468.020, 468.280, 468.285, 468.305

Episode Stage Criteria For Air Pollution Emergencies

340-27-010 Three stages of air pollution episode conditions and a pre-episode standby condition are established to inform the public of the general air pollution status and provide a management structure to require preplanned actions designed to prevent continued accumulation of air pollutants to the level of significant harm. The three episode stages are: Alert, Warning, and Emergency. The Department shall be responsible to enforce the provisions of these rules which require actions to reduce and control emissions during air pollution episode conditions.

An air pollution alert or air pollution warning shall be declared by the Director or appointed representative when the appropriate air pollution conditions are deemed to exist. When conditions exist which are appropriate to an air pollution emergency, the Department shall notify the Governor and declare an air pollution emergency pursuant to ORS 468.115. The statement declaring an air pollution Alert, Warning or Emergency shall define the area affected by the air pollution episode where corrective actions are required. Conditions justifying the proclamation of an air pollution alert, air pollution warning, or air pollution emergency shall be deemed to exist whenever the Department determines that the accumulation of air contaminants in any place is increasing or has increased to levels which could, if such increases are sustained or exceeded, lead to a threat to the health of the public. In making this determination, the Department will be guided by the following criteria for each pollutant and episode stage as listed in this rule.

(1) "Pre-episode Standby" condition, indicates that ambient levels of air pollutants are within standards or only moderately exceed standards. In this condition, there is no imminent danger of any ambient pollutant concentrations reaching levels of significant harm. The Department shall maintain at least a normal monitoring schedule but may conduct additional monitoring. An air stagnation advisory issued by the National Weather Service, an equivalent local forecast of air stagnation or observed ambient air levels in excess of ambient air standards may be used to indicate the need for increased sampling frequency. The pre-episode standby condition is the lowest possible air pollution episode condition and may not be terminated.

(2) "Air Pollution Alert" condition indicates that air pollution levels are significantly above standards but there is no immediate danger of reaching the level of significant harm. Monitoring should be intensified and readiness to implement abatement actions should be reviewed. At the Air Pollution Alert level the public is to be kept informed of the air pollution conditions and of potential activities to be curtailed should it be necessary to declare a warning or higher condition. An Air Pollution Alert condition is a state of readiness. When the conditions in both (a) and (b) below are met, an Air Pollution Alert will be declared and all appropriate actions described in Tables 1 and 4 shall be implemented.

(a) Meteorological dispersion conditions are not expected to improve during the next twenty-four (24) or more hours.

(b) Monitored pollutant levels at any monitoring site exceed any of the following:

(A) Sulfur dioxide - [800 ug/m^3] 0.3 ppm - 24 hour average

(B) [Total Suspended] Particulate Matter (PM_{10}) [- 375 ug/m^3] 350 micro grams per cubic meter (ug/m^3) - 24 hour average. [,except when the particulate is primarily from volcanic activity or windblown dust.]

[(C) Sulfur dioxide and total suspended particulate product (not including suspended particulate which is primarily from volcanic activity or windblown dust) - -65×10^3 $(ug/m^3)^2$ - 24 hour average.]

[(D)] (C) Carbon monoxide - [17 mg/m^3] 15 ppm - 8 hour average.

[(E)] (D) Ozone - [400 ug/m^3] 0.2 ppm - 1 hour average.

[(F)] (E) Nitrogen dioxide:

(i) [1130 ug/m^3] 0.6 ppm - 1 hour average; or

(ii) [282 ug/m^3] 0.15 ppm - 24 hour average.

(3) "Air Pollution Warning" condition indicates that pollution levels are very high and that abatement actions are necessary to prevent these levels from approaching the level of significant harm. At the Air Pollution Warning level substantial restrictions may be required limiting motor vehicle use and industrial and commercial activities. When the conditions in both (a) and (b) below are met, an Air Pollution Warning will be declared by the Department and all appropriate actions described in Tables 2 and 4 shall be implemented.

(a) Meteorological dispersion conditions are not expected to improve during the next twenty-four (24) or more hours.

(b) Monitored pollutant levels at any monitoring site exceed any of the following:

(A) Sulfur dioxide - [1600 ug/m^3] 0.6 ppm - 24 hour average.

(B) Particulate Matter (PM_{10}) [- 625] 420 ug/m^3 - 24 hour average. [, except when the particulate is primarily from volcanic activity or windblown dust.]

[(C) Sulfur dioxide and total suspended particulate product (not including suspended particulate which is primarily from volcanic activity or windblown dust) - 261×10^3 $(ug/m^3)^2$ - 24 hour average.]

[(D)] (C) Carbon monoxide [- 34 mg/m^3] 30 ppm - 8 hour average.

[(E)] (D) Ozone - [800 ug/m^3] 0.4 ppm - 1 hour average.

[(F)] (E) Nitrogen dioxide:

(i) [2260 ug/m^3] 1.2 ppm - 1 hour average; or

(ii) [565 ug/m^3] 0.3 ppm - 24 hour average.

(4) "Air Pollution Emergency" condition indicates that air pollutants have reached an alarming level requiring the most stringent actions to prevent these levels from reaching the level of significant harm to the health of persons.

At the Air Pollution Emergency level extreme measures may be necessary involving the closure of all manufacturing, business operations and vehicle traffic not directly related to emergency services.

Pursuant to ORS 468.115, when the conditions in both (a) and (b) below are met, an air pollution emergency will be declared by the Department and all appropriate actions described in Tables 3 and 4 shall be implemented.

(a) Meteorological dispersion conditions are not expected to improve during the next twenty-four (24) or more hours.

(b) Monitored pollutant levels at any monitoring site exceed any of the following:

(A) Sulfur dioxide [- 2100 ug/m^3] 0.8 ppm - 24 hour average.

(B) Particulate Matter (PM_{10}) [- 875] 500 ug/m^3 - 24 hour average. [, except when the particulate is primarily fallout from volcanic activity or windblown dust.]

[(C) Sulfur dioxide and total suspended particulate product (not including suspended particulate which is primarily from volcanic activity or windblown dust) 393 x 10^3 (ug/m^3)^2 - 24 hour average.]

[(D)] (C) Carbon monoxide [-]

[(i) 46 mg/m^3] 40 ppm - 8 hour average[; or

(ii) 69 mg/m^3 - 4 hour average; or

(iii) 115 mg/m^3 - 1 hour average.]

[(E)] (D) Ozone [- 1000 ug/m^3] 0.5 ppm - 1 hour average.

[(F)] (E) Nitrogen dioxide;

(i) [3000 ug/m^3] 1.6 ppm - 1 hour average; or

(ii) [750 ug/m^3] 0.4 ppm - 24 hour average,

(5) "Termination": Any air pollution episode condition (Alert, Warning or Emergency) established by these criteria may be reduced to a lower condition when the elements required for establishing the higher condition are no longer observed.

Stat. Auth: ORS Ch 468 including 468.020, 468.115, 468.280, 468.285, 468.305, 468.410

Special Conditions

340-27-012 (1) The Department shall issue an "Ozone Advisory" to the public when monitored ozone values at any site exceed the ambient air quality standard of [235 ug/m^3] 0.12 ppm but are less than [400 ug/m^3] 0.2 ppm for a 1 hour average. The ozone advisory shall clearly identify the area where the ozone values have exceeded the ambient air standard and shall state that significant health effects are not expected at these levels, however, sensitive individuals may be affected by some symptoms.

(2) Where particulate is primarily soil from windblown dust or fallout from volcanic activity, episodes dealing with such conditions must be treated differently than particulate episodes caused by other controllable sources. In making a declaration of

air pollution alert, warning, or emergency for such particulate, the Department shall be guided by the following criteria:

(a) "Air Pollution Alert for Particulate from Volcanic Fallout or Windblown Dust" means total suspended particulate values are significantly above standard but the source is volcanic eruption or dust storm. In this condition there is no significant danger to public health but there may be a public nuisance created from the dusty conditions. It may be advisable under these circumstances to voluntarily restrict traffic volume and/or speed limits on major thoroughfares and institute cleanup procedures. The Department will declare an air pollution alert for particulate from volcanic fallout or wind-blown dust when total suspended particulate values at any monitoring site exceed or are projected to exceed 800 ug/m^3 - 24 hour average and the suspended particulate is primarily from volcanic activity or dust storms, meteorological conditions not withstanding

(b) "Air Pollution Warning for Particulate from Volcanic Fallout or Windblown Dust" means total suspended particulate values are very high but the source is volcanic eruption or dust storm. Prolonged exposure over several days at or above these levels may produce respiratory distress in sensitive individuals. Under these conditions staggered work hours in metropolitan areas, mandated traffic reduction, speed limits and cleanup procedures may be required. The Department will declare an air pollution warning for particulate from volcanic fallout or wind-blown dust when total suspended particulate values at any monitoring site exceed or are expected to exceed 2000 ug/m^3 - 24 hour average and the suspended particulate is primarily from volcanic activity or dust storms, meteorological conditions not withstanding.

(c) "Air Pollution Emergency for Particulate from Volcanic Fallout or Windblown Dust" means total suspended particulate values are extremely high but the source is volcanic eruption or dust storm. Prolonged exposure over several days at or above these levels may produce respiratory distress in a significant number of people. Under these conditions cleaning procedures must be accomplished before normal traffic can be permitted. An air pollution emergency for particulate from volcanic fallout or wind-blown dust will be declared by the Director, who shall keep the Governor advised of the situation, when total suspended particulate values at any monitoring site exceed or are expected to exceed 5000 ug/m^3 - 24 hour average and the suspended particulate is primarily from volcanic activity or dust storms, meteorological conditions notwithstanding.

(3) Termination: Any air pollution condition for particulate established by these criteria may be reduced to a lower condition when the criteria for establishing the higher condition are no longer observed.

(4) Action: Municipal and county governments or other governmental agency having jurisdiction in areas affected by an air pollution Alert, Warning or Emergency for particulate from volcanic fallout or windblown dust shall place into effect the actions pertaining to such episodes which are described in Table 4.

Stat. Auth: ORS Ch 468 including 468.020, 468.115, 468.280, 468.285, 468.305, 468.410

Table 1

Air Pollution Episode
ALERT Conditions
Source Emission Reduction Plan

Emission Control Actions to be Taken
as Appropriate in Alert Episode Area

Part A - Pollution Episode Conditions for Particulate Matter (PM_{10})
(Except Particulate from Volcanic Activity or Windblown Dust.)

- -

a. There shall be no open burning of any material in the designated area.

b. Where appropriate and if air quality maintenance strategies have not already prohibited the use of woodstoves and fireplaces, the public is requested to refrain from using coal or wood in uncertified woodstoves and fireplaces for domestic space heating where other heating methods are available.

[b]c. Sources having Emission Reduction Plans, review plans and assure readiness to put them into effect if conditions worsen.

Part B - Pollution Episode Conditions for Carbon Monoxide, Ozone

- -

a. All persons operating motor vehicles voluntarily reduce or eliminate unnecessary operations within the designated alert area.

b. Where appropriate, the public is requested to refrain from using coal or wood in uncertified woodstoves and fireplaces for domestic space heating where other heating methods are available.

[b]c. Governmental and other agencies, review actions to be taken in the event of an air pollution warning.

Table 2

Air Pollution Episode
WARNING Conditions
Emission Reduction Plan

Part A - Pollution Episode Conditions for Particulate Matter (PM_{10})
(Except Particulate from Volcanic Activity or Windblown Dust.)

Source	Emission control action to be taken as appropriate in warning area.
a. General (all sources and general public)	a. Continue alert procedures. b. [Public requested to refrain from using coal or wood] Where legal authority exists, governmental agencies shall prohibit all use of woodstoves and fireplaces for domestic space heating except where such woodstoves and fireplaces provide the sole source of heat. [where other heating methods are available.] c. The use of incinerators for disposal of solid or liquid waste is prohibited. d. Reduce emissions as much as possible consistent with safety to people and prevention of irreparable damage to equipment. e. Prepare for procedures to be followed if an emergency episode develops.

Table 2 - Continued

Air Pollution Episode
WARNING Conditions
Emission Reduction Plan

Part A - Pollution Episode Conditions for Particulate
(Except Particulate from Volcanic Activity or Windblown Dust.)
Continued

Source	Emission control action to be taken as appropriate in warning area.
b. Specific additional general requirements for coal, oil or wood-fired electric power or steam generating facilities.	a. Effect a maximum reduction in emissions by switching to fuels having the lowest available ash and sulfur content. b. Switch to electric power sources located outside the Air Pollution Warning area or to noncombustion sources (hydro, thermonuclear). c. Cease operation of facilities not related to safety or protection of equipment or delivery of priority power.

Table 2 - Continued

Air Pollution Episode
WARNING Conditions
Emission Reduction Plan

Part A - Pollution Episode Conditions for Particulate
(Except Particulate from Volcanic Activity or Windblown Dust.)
Continued

Source	Emission control action to be taken as appropriate in warning area.
c. Specific additional general requirements for manufacturing industries including: Petroleum Refining, Chemical, Primary Metals, Glass, Paper and Allied Products, Mineral Processing, Grain and Wood Processing	a. Reduce process heat load demand to the minimum possible consistent with safety and protection of equipment. b. Reduce emission of air contaminants from manufacturing by closing, postponing or deferring production to the maximum extent possible without causing injury to persons or damage to equipment. In so doing, assume reasonable economic hardships. Do not commence new cooks, batches or furnace changes in batch operation. Reduce continuous operations to minimum operating level where practicable. c. Defer trade waste disposal operations which emit solid particles, gases, vapors or malodorous substances.

Table 2 (cont.)
(340-27-010, 340-27-015)

Air Pollution Episode
WARNING Conditions
Emission Reduction Plan

Part B - Pollution Episode Conditions for Carbon Monoxide, Ozone: control actions to be taken as appropriate in warning area.

- -

a. All operators of motor vehicles continue alert procedures.

b. Operation of motor vehicles carrying fewer than three persons shall be requested to avoid designated areas from 6 a.m. to 11 a.m. and 2 p.m. to 7 p.m. or other hours as may be specified by the Department. Exempted from this request are:

   1. Emergency vehicles
   2. Public transportation
   3. Commercial vehicles
   4. Through traffic remaining on Interstate or primary highways
   5. Traffic controlled by a preplanned strategy

c. In accordance with a traffic control plan prepared pursuant to OAR 340-27-015(3), public transportation operators shall provide the additional service necessary to minimize the public inconvenience resulting from actions taken in accordance with paragraph b. above.

d. For ozone episodes there shall be:

   1. No bulk transfer of gasoline without vapor recovery from 2 a.m. to 2 p.m.
   2. No service station pumping sales of gasoline from 2 a.m. to 2 p.m.
   3. No operation of paper coating plants from 2 a.m. to 2 p.m.
   4. No architectural painting or auto refinishing.
   5. No venting of dry cleaning solvents from 2 a.m. to 2 p.m., (except perchloroethylene).

e. When appropriate for carbon monoxide episodes [the public is requested to refrain from using coal or wood] during the heating season and where legal authority exists, governmental agencies shall prohibit all use of woodstoves and fireplaces for domestic space heating except where such woodstoves and fireplaces provide the sole source of heat. [where other heating methods are available.]

Table 3
(340-27-010, 340-27-015)

Air Pollution Episode
EMERGENCY Conditions
Emission Reduction Plan

Pollution Episode Conditions for all Pollutants

(Except Particulate from Volcanic Activity or Windblown Dust.)

Source	Emission control actions to be taken as appropriate in emergency area
a. Requirements for all measures sources and general public.	a. Continue emission reduction taken under warning conditions. b. All places of employment, commerce, trade, public gatherings, government, industry, business, or manufacture shall immediately cease operations. c. Paragraph b. above does not apply to: 1. Police, fire, medical and other emergency services. 2. Utility and communication services. 3. Governmental functioning necessary for civil control and safety. 4. Operations necessary to prevent injury to persons or serious damage to equipment or property. 5. Food stores, drug stores and operations necessary for their supply. 6. Operations necessary for evacuation of persons leaving the area.

Table 3 (continued)
(340-27-010, 340-27-015)

Air Pollution Episode
EMERGENCY Conditions
Emission Reduction Plan

Pollution Episode Conditions for all Pollutants (continued)
(Except Particulate from Volcanic Activity or Windblown Dust.)

Source	Emission control action to be taken as appropriate in warning area.
	7. Operations conducted in accordance with an approved Source Emission Reduction Plan on file with the Department.
	d. The operation of motor vehicles is prohibited except for the conduct of the functions exempted in paragraph c. above.
	e. Reduce heat and power loads to a minimum by maintaining heated occupied spaces no higher than $65^{o}F$ and turning off heat to all other spaces.
	f. [No one shall use coal or wood] Where legal authority exists, governmental agencies shall prohibit all use of woodstoves and fireplaces for domestic space heating. [unless no other heating method is available.]

Table 3 (continued)
(340-27-010, 340-27-015)

Air Pollution Episode
EMERGENCY Conditions
Emission Reduction Plan

Pollution Episode Conditions for all Pollutants (continued)
(Except Particulate from Volcanic Activity or Windblown Dust.)

Source	Emission control actions to be taken as appropriate in emergency area
b. Specific additional requirements for coal oil or wood-fired electric power generating facilities operating under an approved source emission reduction plan.	a. Maintain operation at the lowest level possible consistent with prevention of damage to equipment and power production no higher than is required to supply power which is obtained elsewhere for essential services.
c. Specific additional requirements for coal, oil or wood-fired steam generating facilities operating under an approved source emission reduction plan.	a. Reduce operation to lowest level possible consistent with preventing damage to equipment.
d. Specific additional requirements for industries operating under an approved source emission reduction plan including: Petroleum Refining; Chemical; Primary Metals; Glass; Paper and Allied Products; Mineral Processing; Grain; Wood Processing.	a. Cease all trade waste disposal operations. b. If meteorological conditions are expected to persist for 24 hours or more, cease all operations not required for safety and protection of equipment.

Table 4
(340-27-012)

Air Pollution Episode Conditions Due to Particulate
Which is Primarily Fallout from
Volcanic Activity
or
Windblown Dust

Ambient Particulate Control Measures to be Taken
as Appropriate in Episode Area

Part A - ALERT Condition Actions

1. Traffic reduction by voluntary route control in contaminated areas.
2. Voluntary motor vehicle speed limits in dusty or fallout areas.
3. Voluntary street sweeping.
4. Voluntary wash down of traffic areas.

Part B - WARNING Condition Actions

1. Continue and intensify alert procedures.
2. Mandated speed limits and route control in contaminated areas.
3. Mandate wash down of exposed horizontal surfaces where feasible.
4. Request businesses to stagger work hours where possible as a means of avoiding heavy traffic.

Part C - EMERGENCY Condition Actions

1. Continue warning level procedures, expanding applicable area if necessary.
2. Prohibit all except emergency traffic on major roads and thoroughfares until the area has been cleaned.
3. Other measures may be required at the discretion of the Governor.

Ad1960

Director's introductory paragraph

Agenda Item E: Request for Authorization to Conduct a Public Hearing to Amend Ambient Air Standards and Air Pollution Emergency Rules principally to add new Federal PM_{10} requirements as a Revision to the State Implementation Plan

EPA has adopted a new national Ambient Air Quality Standard for particulate matter generally reflecting particles less than 10 microns in diameter. The action triggers the need for the State to modify its ambient air standards and emergency action plan levels to include the new PM_{10} levels.

While EPA has dropped their Total Suspended Particulate standard, the Department is recommending to retain, at least temporarily, its standard. However, the Department is recommending to evaluate the desirability of retaining the State Total Suspended Particulate standard in about two years after more information becomes available on the relationship of TSP and PM_{10} levels in the state and when EPA is expected to replace it TSP Prevention of Significant Deterioration system with a PM_{10} increment system.

Other minor housekeeping changes are proposed for the two rules.

Spencer Erickson is here to answer any questions.

AD1957

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item F, January 22, 1988, EQC Meeting

Request for Authorization to Conduct a Public Hearing on Revisions to the New Source Review Rules (OAR 340-20-220 through -260) and Prevention of Significant Deterioration Rules (OAR 340-31-100 through -130)

Background and Problem Statement

The New Source Review (NSR) regulations contain requirements for major new or modified air contaminant sources. Although the Department typically reviews fewer than five NSR sources per year, effective regulation of these sources is important because of the relatively large amount of emissions of each source, the long expected life of most new facilities, and the opportunity to prescribe control requirements during facility design. The NSR regulations contain requirements for specific pollutants. These regulations must be revised to incorporate the pollutant PM_{10}.

Revisions are needed to provide for appropriate control of major new sources of PM_{10} as part of the Department's strategy to achieve and maintain compliance with the federal ambient air quality standards. Federal PM_{10} regulations were promulgated in 1987 to take into account the increased health impacts of fine particulate over total suspended particulate (see agenda item D). The Oregon regulations must be at least as stringent as the federal regulations in order for the Department to maintain delegated authority to administer the NSR programs in Oregon. EPA requires that states adopt the PM_{10} regulations by May 1, 1988.

Revisions are also needed to clarify that the Prevention of Significant Deterioration regulations apply to Total Suspended Particulate, not PM_{10}, and to update the reference modeling guidelines.

The Commission has the authority to adopt the necessary rule revisions under ORS 468.

Alternatives and Evaluation

The existing rules and proposed rule revisions are included as Attachments 1 and 2, respectively. The proposed revisions would have the following effects on the program:

OAR	NATURE OF CHANGE
340-20-225	Definitions
(22)(c)	Addition of PM_{10} Significant Emission Rate (SER). Inclusion of PM_{10} in SER for Medford AQMA.
(23)	Inclusion of PM_{10} in the state definition of Significant Air Quality Impact for particulate. Maintains the particulate matter impact levels at 1/5 of the federal levels for TSP.
340-20-245	Requirements for Sources in Attainment or Unclassified Areas (Prevention of Significant Deterioration)
(3)(c)	Exemptions to PM_{10} requirements added for sources which were permitted or submitted complete applications prior to federal rule proposal.
(4)	Updates reference guidelines on ambient impact modeling to the current EPA guidelines. These guidelines are applicable for any pollutant being reviewed, including PM_{10} specifically.
(5)(a)	Exemption level for preconstruction ambient monitoring of PM_{10} added to particulate subsection.
340-20-260	Requirements for Net Air Quality Benefit
(1)	Modeling reference updated. Requirement for emission offset to be within the area of significant impact revised to include PM_{10}.
(3)	Requirement that inhalable particulate (less than 3 microns) offsets be obtained from a source of particulate in the same size range revised to respirable particulate (less than 10 micron).

340-31-110 Prevention of Significant Deterioration - Ambient Air Increments

(1) Ambient Air Increments for Particulate Matter clarified as pertaining to Total Suspended Particulate (TSP).

The proposed revisions would in all cases be at least as stringent as the federal requirements. Unless otherwise noted, the proposal is equivalent to the federal requirements. Important aspects of the proposed changes are discussed below.

The federal PM_{10} regulations require NSR sources to evaluate emissions of both PM_{10} and TSP. However, the federal regulations for PM_{10} are significantly less stringent than the previous federal regulations for TSP. Since the federal PM_{10} regulations do not require designation of areas exceeding the ambient PM_{10} standards (Group I areas) as nonattainment areas, the normal requirements for applying Lowest Achievable Emission Rate (LAER) and obtaining emission offsets to achieve a net air quality benefit would not be applicable. This creates the potential for major new PM_{10} sources to locate in areas which exceed the health-based PM_{10} ambient standards and cause ambient PM_{10} levels to increase. This, in turn, could increase the magnitude and duration of adverse health impacts and delay compliance with the ambient air quality standards.

To avoid these problems, the Department's proposed control strategy for Class I areas requires that PM_{10} be regulated just as the criteria pollutants, including TSP, are currently regulated.

The Department's proposed control strategy would require the designation of Group I areas as nonattainment areas. The proposed regulations would require that major new PM_{10} sources in nonattainment areas employ Lowest Achievable Emission Rate (LAER) and obtain offsets for PM_{10}. This is particularly important for achieving attainment in those areas which were attainment for TSP and are nonattainment for PM_{10} or for sources which would emit in excess of the Significant Emission Rate for PM_{10} but less than the Significant Emissions Rate for TSP and would be located in a TSP nonattainment area.

While these regulations are more stringent than the federal requirements, they are not more stringent than the control requirements for other pollutants and are a part of the Department's strategy for complying with the federal ambient air quality standards. Failure to have an adequate strategy to achieve compliance in Group I areas could lead to federal funding and construction sanctions (see Agenda Item D).

Overall, the Department's strategies should also minimize adverse economic development impacts. Failure of an area to meet ambient air quality standards frequently serves as a deterrent to the location of new businesses. Revising the NSR rules to prevent major increases in industrial PM_{10} emissions can allow attainment to be achieved more rapidly.

With the exception of the Ambient Air Quality Standard for PM_{10} (discussed in agenda item E), the proposed ambient measures for PM_{10} are equal to the existing TSP values. This includes the significant impact level and the monitoring exemption level. Levels for PM_{10} must be established to implement the NSR programs for PM_{10}. Without proportionate reductions in PM_{10} as compared to TSP, the proposed levels may appear in some applications to be less stringent than the existing program for TSP. However, no source would be allowed to cause or contribute to an exceedance of the Ambient Air Quality Standards for PM_{10} or for TSP.

Preconstruction monitoring is required for NSR sources if necessary to determine that the project would not cause any violation of an ambient air quality standard or PSD increment. Monitoring data for a full year period must be submitted as part of a complete application in such cases. The federal PM_{10} regulations contain a schedule for phasing PM_{10} into preconstruction monitoring programs. The schedule allows for the use of TSP data or PM_{10} data using nonreference methods or shortened PM_{10} monitoring periods during a phase-in period for affected sources which would be otherwise be required to monitor for PM_{10}.

The proposed regulations do not include the phase-in period for preconstruction monitoring. Approved ambient monitoring methods for PM_{10} are currently available. No proposed NSR sources are currently known by the Department to be doing preconstruction monitoring in Oregon for particulate matter, so no current programs are known to be affected. Since the federal schedule allows for exceptions through July 1989, only sources which would commence monitoring by June 1988 could be eligible for the federal exemption. The Department can provide guidance on PM_{10} monitoring to an applicant required to do preconstruction monitoring for PM_{10}.

Increments for Prevention of Significant Deterioration (PSD) for PM_{10} have not been established by EPA. PSD increments are used to ensure that areas with clean air retain that quality. Ambient pollutant concentrations, caused by all area and point sources, are permitted to degrade only by the amount of an applicable PSD increment, rather than to the Ambient Air Quality Standard. EPA has plans to develop PM_{10} increments during the next two years. Promulgation of PM_{10} increments could complete the federal rulemaking package for ambient PM_{10} and reduce the dual regulation of particulate matter as both TSP and PM_{10}. The Department would consider taking appropriate action subsequent to the promulgation of PM_{10} increments. Until that time, the Department proposes to adopt the federal revisions and continue to enforce the TSP increments in attainment areas. The proposed rule change is intended only to clarify that the increments for particulate matter apply to TSP.

The Commission may authorize a hearing on the proposed rules, authorize a hearing on a revised set of rules, or take no action. The no action alternative would not provide needed mechanisms for achieving compliance with the PM_{10} Ambient Air Quality Standard and could eventually result in withdrawal of the EPA delegation of the NSR programs to the Department. Without delegation in force, EPA would conduct the NSR program for affected sources in Oregon, including permit review and issuance, source inspections, and enforcement.

As alternatives to the proposed changes, the Commission could consider adopting regulations which are equivalent to the federal requirements. Adoption of the federal program would differ primarily in the effect on nonattainment area programs.

The federal program replaces the ambient standard for TSP with the PM_{10} standard, rather than adopting both ambient standards (see agenda item E). The federal program does not use nonattainment designations for areas which exceed the PM_{10} standard. Consequently, LAER and offsets for PM_{10} are not part of the federal program.

The federal program has options for regulating areas which are now designated as nonattainment for TSP: these designations can be retained and the area regulated as a TSP nonattainment area, or the areas can be redesignated as unclassified areas. In the later case, BACT is the most stringent control level required for any source of particulate matter. Otherwise, the more stringent LAER and offset controls are required for NSR sources of TSP in nonattainment areas.

Under the federal program, a major new PM_{10} source in a PM_{10} nonattainment area would be required to use BACT for PM_{10}, instead of the more stringent LAER control. No offset is required for PM_{10}, so a net increase in PM_{10} emissions would result rather than a net air quality benefit. The PM_{10} impact could be lessened if the source would also be a major source of TSP and would be located in a designated TSP nonattainment area. Offsets would be required for TSP, which could result in partial or complete offset of PM_{10} emissions.

The Commission could also authorize a hearing for more stringent regulations. These regulations could include provisions which are not included in the federal regulations, such as PM_{10} PSD increments. Other more restrictive actions could include reducing the Significant Emission Rate, preconstruction monitoring cutoff, or the Significant Air Quality Impact. The Department has not analyzed any alternatives more encompassing than the proposed alternative.

SUMMARY

1. EPA has adopted PM_{10} New Source Review regulations which must be implemented in Oregon.

2. Oregon regulations must be amended to be at least as stringent as the federal regulations to avoid loss of delegation of the NSR program.

3. The Department is requesting a hearing authorization for the proposed rule changes.

4. The proposed rule changes are at least as stringent as the federal regulations in all cases.

5. To provide consistency with the Department's proposed PM_{10} control strategies, which are being designed to protect human health and achieve compliance with the ambient standards, the proposed regulations include some additional requirements for the application of appropriate control technology for the control of PM_{10} emissions. Emission offsets and the use of Lowest Achievable Emission Rates would be required for major PM_{10} sources in PM_{10} nonattainment areas, although not required under the federal regulations. These requirements replicate existing rules for other pollutants.

6. The PM_{10} requirements in the proposed NSR and PSD rules are numerically equivalent to the federal PM_{10} Significant Emission Rate and to the existing Oregon Administrative Rules for TSP for the Significant Air Quality Impact and the preconstruction monitoring exemption.

DIRECTOR'S RECOMMENDATION

It is recommended that the Commission approve the request for a hearing on the proposed rule changes for the New Source Review Rules which would incorporate requirements for reviewing new or modified sources for PM_{10} emissions.

Myrna Taylor for
Fred Hansen

Attachments:
1. Existing Rules (OAR 340-20-220 through -260 and OAR 340-31-100 through 1-130)
2. Proposed Rule Revisions
3. Draft Statement of Need for Rulemaking
4. Draft Public Notice

W.L.Sims:k
229-6414
January 6, 1988

AK119.3 (1/88)

ATTACHMENT 1
Agenda Item F
Jan. 22, 1988 EQC Meeting

EXISTING RULES

New Source Review

340-20-220	Applicability
340-20-225	Definitions
340-20-230	Procedural Requirements
340-20-235	Review of New Sources and Modifications for Compliance With Regulations
340-20-240	Requirements for Sources in Nonattainment Areas
340-20-241	Growth Increments
340-20-245	Requirements for Sources in Attainment or Unclassified Areas (Prevention of Significant Deterioration)
340-20-250	Exemptions
340-20-255	Baseline for Determining Credit for Offsets
340-20-260	Requirements for Net Air Quality Benefit
340-20-265	Emission Reduction Credit Banking
340-20-270	Fugitive and Secondary Emissions
340-20-276	Visibility Impact Assessment

LOCATIONS OF REVISIONS ARE DENOTED BY * (REFER TO ATTACHMENT 2 OF THIS AGENDA ITEM FOR THE SPECIFIC REVISIONS.)

New Source Review

Applicability

340-20-220 (1) No owner or operator shall begin construction of a major source or a major modification of an air contaminant source without having received an Air Contaminant Discharge Permit from the Department of Environmental Quality and having satisfied OAR 340-20-230 through 340-20-280 of these rules.

(2) Owners or operators of proposed non-major sources or non-major modifications are not subject to these New Source Review rules. Such owners or operators are subject to other Department rules including Highest and Best Practicable Treatment and Control Required (OAR 340-20-001), Notice of Construction and Approval of Plans (OAR 340-20-020 to 340-20-032), Air Contaminant Discharge Permits (OAR 340-20-140 to 340-20-185), Emission Standards for Hazardous Air Contaminants (OAR 340-25-450 to 340-25-480), and Standards of Performance for New Stationary Sources (OAR 340-25-505 to 340-25-545).

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 25-1981, f. & ef. 9-8-81

Definitions

340-20-225 (1) "Actual emissions" means the mass rate of emissions of a pollutant from an emissions source:

(a) In general, actual emissions as of the baseline period shall equal the average rate at which the source actually emitted the pollutant during the baseline period and which is representative of normal source operation. Actual emissions shall be calculated using the source's actual operating hours, production rates and types of materials processed, stored, or combusted during the selected time period.

(b) The Department may presume that existing source-specific permitted mass emissions for the source are equivalent to the actual emissions of the source if they are within 10% of the calculated actual emissions.

(c) For any newly permitted emission source which had not yet begun normal operation in the baseline period, actual emissions shall equal the potential to emit of the source.

(2) "Baseline Concentration" means that ambient concentration level for a particular pollutant which existed in an area during the calendar year 1978. If no ambient air quality data is available in an area, the baseline concentration may be estimated using modeling based on actual emissions for 1978. The following emission increases or decreases will be included in the baseline concentration:

(a) Actual emission increases or decreases occurring before January 1, 1978; and

(b) Actual emission increases from any major source or major modification on which construction commenced before January 6, 1975.

(3) "Baseline Period" means either calendar years 1977 or 1978. The Department shall allow the use of a prior time period upon a determination that it is more representative of normal source operation.

(4) "Best Available Control Technology (BACT)" means an emission limitation (including a visible emission standard) based on the maximum degree of reduction of each air contaminant subject to regulation under the Clean Air Act which would be emitted from any proposed major source or major modification which, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such air contaminant. In no event, shall the application of BACT result in emissions of any air contaminant which would exceed the emissions allowed by any applicable new source performance standard or any standard for hazardous air pollutants. If an emission limitation is not feasible, a design, equipment, work practice, or operational standard, or combination thereof, may be required. Such standard shall, to the degree possible, set forth the emission reduction achievable and shall provide for compliance by prescribing appropriate permit conditions.

(5) "Class I area" means any Federal, State or Indian reservation land which is classified or reclassified as Class I area. Class I areas are identified in OAR 340-31-120.

(6) "Commence" means that the owner or operator has obtained all necessary preconstruction approvals required by the Clean Air Act and either has:

(a) Begun, or caused to begin, a continuous program of actual on-site construction of the source to be completed in a reasonable time; or

(b) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the source to be completed in a reasonable time.

(7) "Construction" means any physical change (including fabrication, erection, installation, demolition, or modification of an emissions unit) or change in the method of operation of a source which would result in a change in actual emissions.

(8) "Emission Reduction Credit Banking" means to presently reserve, subject to requirements of these provisions, emission reductions for use by the reserver or assignee for future compliance with air pollution reduction requirements.

(9) "Emissions Unit" means any part of a stationary source (including specific process equipment) which emits or

would have the potential to emit any pollutant subject to regulation under the Clean Air Act.

(10) "Federal Land Manager" means with respect to any lands in the United States, the Secretary of the federal department with authority over such lands.

(11) "Fugitive emissions" means emissions of any air contaminant which escape to the atmosphere from any point or area that is not identifiable as a stack, vent, duct, or equivalent opening.

(12) "Growth Increment" means an allocation of some part of an airshed's capacity to accommodate future new major sources and major modifications of sources.

(13) "Lowest Achievable Emission Rate (LAER)" means that rate of emissions which reflects: the most stringent emission limitation which is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable; or the most stingent emission limitation which is achieved in practice by such class or category of source, whichever is more stringent. In no event, shall the application of this term permit a proposed new or modified source to emit any air contaminant in excess of the amount allowable under applicable new source performance standards or standards for hazardous air pollutants.

(14) "Major Modification" means any physical change or change of operation of a source that would result in a net significant emission rate increase (as defined in definition (22)) for any pollutant subject to regulation under the Clean Air Act. This criteria also applies to any pollutants not previously emitted by the source. Calculations of net emission increases must take into account all accumulated increases and decreases in actual emissions occurring at the source since January 1, 1978, or since the time of the last construction approval issued for the source pursuant to the New Source Review Regulations for that pollutant, whichever time is more recent. If accumulation of emission increases results in a net significant emission rate increase, the modification causing such increases become subject to the New Source Review requirements including the retrofit of required controls.

(15) "Major Source" means a stationary source which emits, or has the potential to emit, any pollutant regulated under the Clean Air Act at a Significant Emission Rate (as defined in definition (22)).

(16) "Nonattainment Area" means a geographical area of the State which exceeds any state or federal primary or secondary ambient air quality standard as designated by the Environmental Quality Commission and approved by the Environmental Protection Agency.

(17) "Offset" means an equivalent or greater emission reduction which is required prior to allowing an emission increase from a new major source or major modification of a source.

(18) "Plant Site Emission Limit" means the total mass emissions per unit time of an individual air pollutant specified in a permit for a source.

(19) "Potential to Emit" means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a source.

(20) "Resource Recovery Facility" means any facility at which municipal solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing municipal solid waste for reuse. Energy conversion facilities must utilize municipal solid waste to provide 50% or more of the heat input to be considered a resource recovery facility.

(21) "Secondary Emissions" means emissions from new or existing sources which occur as a result of the construction and/or operation of a source or modification, but do not come from the source itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the source associated with the secondary emissions. Secondary emissions may include, but are not limited to:

(a) Emissions from ships and trains coming to or from a facility;

(b) Emissions from off-site support facilities which would be constructed or would otherwise increase emissions as a result of the construction of a source or modification.

(22) "Significant emission rate" means:

(a) Emission rates equal to or greater than the following for air pollutants regulated under the Clean Air Act:

Table 1: Significant Emission Rates for Pollutants Regulated Under the Clean Air Act

Pollutant	Significant Emission Rate
(A) Carbon Monoxide	100 tons/year
(B) Nitrogen Oxides	40 tons/year
(C) Particulate Matter*	25 tons/year
(D) Sulfur Dioxide	40 tons/year
(E) Volatile Organic Compounds*	40 tons/year
(F) Lead	0.6 ton/year
(G) Mercury	0.1 ton/year
(H) Beryllium	0.0004 ton/year
(I) Asbestos	0.007 ton/year
(J) Vinyl Chloride	1 ton/year
(K) Fluorides	3 tons/year
(L) Sulfuric Acid Mist	7 tons/year
(M) Hydrogen Sulfide	10 tons/year
(N) Total reduced sulfur (including hydrogen sulfide)	10 tons/year
(O) Reduced sulfur compounds (including hydrogen sulfide)	10 tons/year

NOTE: *For the nonattainment portions of the Medford-Ashland Air Quality Maintenance Area, the Significant Emission Rates for particulate matter and volatile organic compounds are defined in Table 2.

(b) For pollutants not listed above, the Department shall determine the rate that constitutes a significant emission rate.

(c) Any emissions increase less than these rates associated with a new source or modification which would con-

struct within 10 kilometers of a Class I area, and would have an impact on such area equal to or greater than 1 ug/m^3 (24 hour average) shall be deemed to be emitting at a significant emission rate (see Table 2).

(23) "Significant Air Quality Impact" means an ambient air quality impact which is equal to or greater than those set out in Table 3. For sources of volatile organic compounds (VOC), a major source or major modification will be deemed to have a significant impact if it is located within 30 kilometers of an ozone nonattainment area and is capable of impacting the nonattainment area.

(24) "Significant impairment" occurs when visibility impairment in the judgment of the Department interferes with the management, protection, preservation, or enjoyment of the visual experience of visitors within a Class I area. The determination must be made on a case-by-case basis considering the recommendations of the Federal Land Manager; the geographic extent, intensity, duration, frequency, and time of visibility impairment. These factors will be considered with respect to visitor use of the Class I areas, and the frequency and occurrence of natural conditions that reduce visibility.

(25) "Source" means any building, structure, facility, installation or combination thereof which emits or is capable of emitting air contaminants to the atmosphere and is located on one or more contiguous or adjacent properties and is owned or operated by the same person or by persons under common control.

(26) "Visibility impairment" means any humanly perceptible change in visual range, contrast or coloration from that which would have existed under natural conditions. Natural conditions include fog, clouds, windblown dust, rain, sand, naturally ignited wildfires, and natural aerosols.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 25-1981, f. & ef. 9-8-81; DEQ 5-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84

Procedural Requirements

340-20-230 (1) Information Required. The owner or operator of a proposed major source or major modification shall submit all information necessary to perform any analysis or make any determination required under these rules. Such information shall include, but not be limited to:

(a) A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;

(b) An estimate of the amount and type of each air contaminant emitted by the source in terms of hourly, daily, seasonal, and yearly rates, showing the calculation procedure;

(c) A detailed schedule for construction of the source or modification;

(d) A detailed description of the system of continuous emission reduction which is planned for the source or modification, and any other information necessary to determine that best available control technology or lowest achievable emission rate technology, whichever is applicable, would be applied;

(e) To the extent required by these rules, an analysis of the air quality and/or visibility impact of the source or modification, including meteorological and topographical data, specific details of models used, and other information necessary to estimate air quality impacts; and

(f) To the extent required by these rules, an analysis of the air quality and/or visability impacts, and the nature and extent of all commercial, residential, industrial, and other source emission growth which has occurred since January 1, 1978, in the area the source or modification would affect.

(2) Other Obligations:

(a) Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to these rules or with the terms of any approval to construct, or any owner or operator of a source or modification subject to this section who commences construction after the effective date of these regulations without applying for and receiving an Air Contaminant Discharge Permit, shall be subject to appropriate enforcement action.

(b) Approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within 18 months of the scheduled time. The Department may extend the 18-month period upon satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

(c) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the State Implementation Plan and any other requirements under local, state or federal law.

(3) Public Participation:

(a) Within 30 days after receipt of an application to construct, or any addition to such application, the Department shall advise the applicant of any deficiency in the application or in the information submitted. The date of the receipt of a complete application shall be, for the purpose of this section, the date on which the Department received all required information.

(b) Notwithstanding the requirements of OAR 340-14-020, but as expeditiously as possible and at least within six months after receipt of a complete application, the Department shall make a final determination on the application. This involves performing the following actions in a timely manner:

(A) Make a preliminary determination whether construction should be approved, approved with conditions, or disapproved.

(B) Make available for a 30-day period in at least one location a copy of the permit application, a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination.

(C) Notify the public, by advertisement in a newspaper of general circulation in the area in which the proposed source or modification would be constructed, of the application, the preliminary determination, the extent of increment consumption that is expected from the source or modification, and the opportunity for a public hearing and for written public comment.

(D) Send a copy of the notice of opportunity for public comment to the applicant and to officials and agencies

having cognizance over the location where the proposed construction would occur as follows: The chief executives of the city and county where the source or modification would be located, any comprehensive regional land use planning agency, any State, Federal Land Manager, or Indian Governing Body whose lands may be affected by emissions from the source or modification, and the Environmental Protection Agency.

(E) Upon determination that significant interest exists, provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source or modification, alternatives to the source or modification, the control technology required, and other appropriate considerations. For energy facilities, the hearing may be consolidated with the hearing requirements for site certification contained in OAR Chapter 345, Division 15.

(F) Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing(s) in making a final decision on the approvability of the application. No later than 10 working days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The Department shall consider the applicant's response in making a final decision. The Department shall make all comments available for public inspection in the same locations where the Department made available preconstruction information relating to the proposed source or modification.

(G) Make a final determination whether construction should be approved, approved with conditions, or disapproved pursuant to this section.

(H) Notify the applicant in writing of the final determination and make such notification available for public inspection at the same location where the Department made available preconstruction information and public comments relating to the source or modification.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 25-1981, f. & ef. 9-8-81; DEQ 18-1984, f. & ef. 10-16-84

Review of New Sources and Modifications for Compliance With Regulations

340-20-235 The owner or operator of a proposed major source or major modification must demonstrate the ability of the proposed source or modification to comply with all applicable requirements of the Department of Environmental Quality, including New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants, and shall obtain an Air Contaminant Discharge Permit.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 25-1981, f. & ef. 9-8-81

Requirements for Sources in Nonattainment Areas

340-20-240 New major sources and major modifications which are located in designated nonattainment areas shall meet the requirements listed below:

(1) Lowest Achievable Emission Rate. The owner or operator of the proposed major source or major modification must demonstrate that the source or modification will comply with the lowest achievable emission rate (LAER) for each nonattainment pollutant. In the case of a major modification, the requirement for LAER shall apply only to each new or modified emission unit which increases emissions. For phased construction projects, the determination of LAER shall be reviewed at the latest reasonable time prior to commencement of construction of each independent phase.

(2) Source Compliance. The owner or operator of the proposed major source or major modification must demonstrate that all major sources owned or operated by such person (or by an entity controlling, controlled by, or under common control with such person) in the state are in compliance or on a schedule for compliance, with all applicable emission limitations and standards under the Clean Air Act.

(3) Growth Increment or Offsets. The owner or operator of the proposed major source or major modification must demonstrate that the source or modification will comply with any established emissions growth increment for the particular area in which the source is located or must provide emission reductions ("offsets") as specified by these rules. A combination of growth increment allocation and emission reduction may be used to demonstrate compliance with this section. Those emission increases for which offsets can be found through the best efforts of the applicant shall not be eligible for a growth increment allocation.

(4) Net Air Quality Benefit. For cases in which emission reductions or offsets are required, the applicant must demonstrate that a net air quality benefit will be achieved in the affected area as described in OAR 340-20-260 (Requirements for Net Air Quality Benefit) and that the reductions are consistent with reasonable further progress toward attainment of the air quality standards.

(5) Alternative Analysis:

(a) An alternative analysis must be conducted for new major sources or major modifications of sources emitting volatile organic compounds or carbon monoxide locating in nonattainment areas.

(b) This analysis must include an evaluation of alternative sites, sizes, production processes, and environmental control techniques for such proposed source or modification which demonstrates that benefits of the proposed source or modification significantly outweigh the environmental and social costs imposed as a result of its location, construction or modification.

(6) Special Exemption for the Salem Ozone Nonattainment Area. Proposed major sources and major modifications of sources of volatile organic compounds which are located in the Salem Ozone nonattainment area shall comply with the requirements of sections (1) and (2) of this rule but are exempt from all other sections of this rule.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 25-1981, f. & ef. 9-8-81; DEQ 5-1983, f. & ef. 4-18-83

Growth Increments

340-20-241 The ozone control strategies for the Medford-Ashland and Portland Air Quality Maintenance Areas (AQMA) establish growth margins for new major sources or major modifications which will emit volatile organic compounds. The growth margin shall be allocated on a first-come-first-served basis depending on the date of submittal of a complete permit application. In the Medford-Ashland AQMA, no single source shall receive an allocation of more than 50% of any remaining growth margin. In the Portland

AQMA, no single source shall receive an allocation of more than 100 tons per year plus 25% of any remaining growth margin. The allocation of emission increases from the growth margins shall be calculated based on the ozone season (May 1 to Sepember 30 of each year). The amount of each growth margin that is available is defined in the State Implementation Plan for each area and is on file with the Department.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the office of the Department of Environmental Quality.]

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 5-1983, f. & ef. 4-18-83; DEQ 5-1986, f. & ef. 2-21-86

Requirements for Sources in Attainment or Unclassified Areas (Prevention of Significant Deterioration)

340-20-245 New Major Sources or Major Modifications locating in areas designated attainment or unclassifiable shall meet the following requirements:

(1) Best Available Control Technology. The owner or operator of the proposed major source or major modification shall apply best available control technology (BACT) for each pollutant which is emitted at a significant emission rate (OAR 340-20-225 definition (22)). In the case of a major modification, the requirement for BACT shall apply only to each new or modified emission unit which increases emissions. For phased construction projects, the determination of BACT shall be reviewed at the latest reasonable time prior to commencement of construction of each independent phase.

(2) Air Quality Analysis:

(a) The owner or operator of the proposed major source or major modification shall demonstrate that the potential to emit any pollutant at a significant emission rate (OAR 340-20-225 definition (22)), in conjunction with all other applicable emissions increases and decreases, (including secondary emissions), would not cause or contribute to air quality levels in excess of:

(A) Any state or national ambient air quality standard; or

(B) Any applicable increment established by the Prevention of Significant Deterioration requirements (OAR 340-31-110); or

(C) An impact on a designated nonattainment area greater than the significant air quality impact levels (OAR 340-20-225 definition (23)). New sources or modifications of sources which would emit volatile organic compounds which may impact the Salem ozone nonattainment area are exempt from this requirement.

(b) Sources or modifications with the potential to emit at rates greater than the significant emission rate but less than 100 tons/year, and are greater than 50 kilometers from a nonattainment area are not required to assess their impact on the nonattainment area.

(c) If the owner or operator of a proposed major source or major modification wishes to provide emission offsets such that a net air quality benefit as defined in OAR 340-20-260 is provided, the Department may consider the requirements of section (2) of this rule to have been met.

(3) Exemption for Sources Not Significantly Impacting Designated Nonattainment Areas:

(a) A proposed major source or major modification is exempt from OAR 340-20-220 to 340-20-270 if:

(A) The proposed source or major modification does not have a significant air quality impact on a designated nonattainment area; and

(B) The potential emissions of the source are less than 100 tons/year for sources in the following categories or less than 250 tons/year for sources not in the following source categories:

(i) Fossil fuel-fired steam electric plants of more than 250 million BTU/hour heat input.
(ii) Coal cleaning plants (with thermal dryers).
(iii) Kraft pulp mills.
(iv) Portland cement plants.
(v) Primary Zinc Smelters.
(vi) Iron and Steel Mill Plants.
(vii) Primary aluminum ore reduction plants.
(vii) Primary copper smelters.
(ix) Municipal Incinerators capable of charging more than 250 tons of refuse per day.
(x) Hydrofluoric acid plants.
(xi) Sulfuric acid plants.
(xii) Nitric acid plants.
(xiii) Petroleum Refineries.
(xiv) Lime plants.
(xv) Phosphate rock processing plants.
(xvi) Coke oven batteries.
(xvii) Sulfur recovery plants.
(xviii) Carbon black plants (furnace process).
(xix) Primary lead smelters.
(xx) Fuel conversion plants.
(xxi) Sintering plants.
(xxii) Secondary metal production plants.
(xxiii) Chemical process plants.
(xxiv) Fossil fuel fired boilers (or combinations thereof) totaling more than 250 million BTU per hour heat input.
(xxv) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.
(xxvi) Taconite ore processing plants.
(xxvii) Glass fiber processing plants.
(xxviii) Charcoal production plants.

(b) Major modifications are not exempted under this section unless the source including the modifications meets the requirements of paragraphs (a)(A) and (B) above. Owners or operators of proposed sources which are exempted by this provision should refer to OAR 340-20-020 to 340-20-032 and OAR 340-20-140 to 340-20-185 for possible applicable requirements.

(4) Air Quality Models. All estimates of ambient concentrations required under these rules shall be based on the applicable air quality models, data bases, and other requirement specified in the "Guidelines on Air Quality Models" (OAQPS 1.2-080, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, N.C. 27711, April 1978). Where an air quality impact model specified in the "Guideline on Air Quality Models" is inappropriate, the model may be modified or another model substituted. Such a change must be subject to notice and opportunity for public comment and must receive approval of the Department and the Environmental Protection Agency. Methods like those outlined in the "Workbook for the Comparison of Air Quality Models" (U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, N.C. 27711, May,

1978) should be used to determine the comparability of air quality models.

(5) Air Quality Monitoring:

(a)(A) The owner or operator of a proposed major source or major modification shall submit with the application, subject to approval of the Department, an analysis of ambient air quality in the area impacted by the proposed project. This analysis shall be conducted for each pollutant potentially emitted at a significant emission rate by the proposed source or modification. As necessary to establish ambient air quality, the analysis shall include continuous air quality monitoring data for any pollutant potentially emitted by the source or modification except for nonmethane hydrocarbons. Such data shall relate to, and shall have been gathered over the year preceding receipt of the complete application, unless the owner or operator demonstrates that such data gathered over a portion or portions of that year or another representative year would be adequate to determine that the source or modification would not cause or contribute to a violation of an ambient air quality standard or any applicable pollutant increment. Pursuant to the requirements of these rules, the owner or operator of the source shall submit for the approval of the Department, a preconstruction air quality monitoring plan.

(B) Air quality monitoring which is conducted pursuant to this requirement shall be conducted in accordance with **40 CFR 58 Appendix B, "Quality Assurance Requirements for Prevention of Significant Deterioation (PSD) Air Monitoring"** and with other methods on file with the Department.

(C) The Department may exempt a proposed major source or major modification from monitoring for a specific pollutant if the owner or operator demonstrates that the air quality impact from the emissions increase would be less than the amounts listed below or that the concentrations of the pollutant in the area that the source or modification would impact are less than these amounts:

(i) Carbon monoxide - 575 ug/m^3, 8 hour average.

(ii) Nitrogen dioxide - 14 ug/m^3, annual average,

(iii) Total suspended particulate - 10 ug/m^3, 24 hour average.

(iv) Sulfur dioxide - 13 ug/m^3, 24 hour average,

(v) Ozone - Any net increase of 100 tons/year or more of volatile organic compounds from a source or modification subject to PSD is required to perform an ambient impact analysis, including the gathering of ambient air quality data.

(vi) Lead - 0.1 ug/m^3, 24 hour average.

(vii) Mercury - 0.25 ug/m^3, 24 hour average.

(viii) Beryllium - 0.0005 ug/m^3, 24 hour average.

(ix) Fluorides - 0.25 ug/m^3, 24 hour average.

(x) Vinyl chloride - 15 ug/m^3, 24 hour average.

(xi) Total reduced sulfur - 10 ug/m^3, 1 hour average.

(xii) Hydrogen sulfide - 0.04 ug/m^3, 1 hour average.

(xiii) Reduced sulfur compounds - 10 ug/m^3, 1 hour average.

(b) The owner or operator of a proposed major source or major modification shall, after construction has been completed, conduct such ambient air quality monitoring as the Department may require as a permit condition to establish the effect which emissions of a pollutant (other than nonmethane hydrocarbons) may have, or is having, on air quality in any area which such emissions would affect.

(6) Additional Impact Analysis:

(a) The owner or operator of a proposed major source or major modification shall provide an analysis of the impairment to, soils and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial and other growth associated with the source or modification, the owner or operator may be exempted from providing an analysis of the impact on vegetation having no significant commercial or recreational value.

(b) The owner or operator shall provide an analysis of the air quality concentration projected for the area as a result of general commercial, residential, industrial and other growth associated with the major source or modification.

(7) Sources Impacting Class I Areas:

(a) Where a proposed major source or major modification impacts or may impact a Class I area, the Department shall provide written notice to the Environmental Protection Agency and to the appropriate Federal Land Manager within 30 days of the receipt of such permit application, at least 30 days prior to Department Public Hearings and subsequently, of any preliminary and final actions taken with regard to such application.

(b) The Federal Land Manager shall be provided an opportunity in accordance with OAR 340-20-230(3) to present a demonstration that the emissions from the proposed source or modification would have an adverse impact on the air quality related values (including visibility) of any federal mandatory Class I lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increment for a Class I area. If the Department concurs with such demonstration the permit shall not be issued.

[**Publications:** The publication(s) referred to or incorporated by reference in this rule are available from the office of the Department of Environmental Quality.]

Stat. Auth.: ORS Ch. 468

Hist.: DEQ 25-1981, f. & ef. 9-8-81; DEQ 5-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84; DEQ 14-1985, f. & ef. 10-16-85

Exemptions

340-20-250 (1) Resource recovery facilities burning municipal refuse and sources subject to federally mandated fuel switches may be exempted by the Department from requirements OAR 340-20-240 sections (3) and (4) provided that:

(a) No growth increment is available for allocation to such source or modification; and

(b) The owner or operator of such source or modification demonstrates that every effort was made to obtain sufficient offsets and that every available offset was secured.

NOTE: Such an exemption may result in a need to revise the State Implementation Plan to require additional control of existing sources.

(2) Temporary emission sources, which would be in operation at a site for less than two years, such as pilot plants and portable facilities, and emissions resulting from the construction phase of a new source or modification must comply with OAR 340-20-240(1) and (2) or OAR 340-20-245(1), whichever is applicable, but are exempt from the remaining requirements of OAR 340-20-240 and OAR 340-20-245 provided that the source or modification would impact no Class I area or no area where an applicable increment in known to be violated.

(3) Proposed increases in hours of operation or production rates which would cause emission increases above the levels allowed in an Air Contaminant Discharge Permit and would not involve a physical change in the source may be exempted from the requirement of OAR 340-20-245(1) (Best Available Control Technology) provided that the increases cause no exceedances of an increment or standard and that the net impact on a nonattainment area is less than the significant air quality impact levels. This exemption shall not be allowed for new sources or modifications that received permits to construct after January 1, 1978.

(4) Also refer to OAR 340-20-245(3) for exemptions pertaining to sources smaller than the Federal Size-Cutoff Criteria.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 25-1981, f. & ef. 9-8-81

Baseline for Determining Credit for Offsets

340-20-255 The baseline for determining credit for emission offsets shall be the Plant Site Emission Limit established pursuant to OAR 340-20-300 to 340-20-320 or, in the absence of a Plant Site Emission Limit, the actual emission rate for the source providing the offsets. Sources in violation of air quality emission limitations may not supply offsets from those emissions which are or were in excess of permitted emission rates. Offsets, including offsets from mobile and area source categories, must be quantifiable and enforceable before the Air Contaminant Discharge Permit is issued and must be demonstrated to remain in effect throughout the life of the proposed source or modification.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 25-1981, f. & ef. 9-8-81

Requirements for Net Air Quality Benefit

340-20-260 Demonstrations of net air quality benefit must include the following:

(1) A demonstration must be provided showing that the proposed offsets will improve air quality in the same geographical area affected by the new source or modification. This demonstration may require that air quality modeling be conducted according to the procedures specified in "the "Guideline on Air Quality Models". Offsets for volatile organic compounds or nitrogen oxides shall be within the same general air basin as the proposed source. Offsets for total suspended particulate, sulfur dioxide, carbon monoxide and other pollutants shall be within the area of significant air quality impact.

(2) For new sources or modifications locating within a designated nonattainment area, the emission offsets must provide reductions which are equivalent or greater than the proposed increases. The offsets must be appropriate in terms of short term, seasonal, and yearly time periods to mitigate the impacts of the proposed emissions. For new sources or modifications locating outside of a designated nonattainment area which have a significant air quality impact (OAR 340-20-225 definition (23)) on the nonattainment area, the emission offsets must be sufficient to reduce impacts to levels below the significant air quality impact level within the nonattainment area. Proposed major sources or major modification which emit volatile organic compounds and are located within 30 kilometers of an ozone nonattainment area shall provide reductions which are equivalent or greater than the proposed emission increases unless the applicant demonstrates that the proposed emissions will not impact the nonattainment area.

(3) The emission reductions must be of the same type of pollutant as the emissions from the new source or modification. Sources of respirable particulate (less than three microns) must be offset with particulate in the same size range. In areas where atmospheric reactions contribute to pollutant levels, offsets may be provided from precursor pollutants if a net air quality benefit can be shown.

(4) The emission reductions must be contemporaneous, that is, the reductions must take effect prior to the time of startup but not more than one year prior to the submittal of a complete permit application for the new source or modification. This time limitation may be extended as provided for in OAR 340-20-265 (Emission Reduction Credit Banking). In the case of replacement facilities, the Department may allow simultaneous operation of the old and new facilities during the startup period of the new facility provided that net emissions are not increased during that time period.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 25-1981, f. & ef. 9-8-81; DEQ 5-1983, f. & ef. 4-18-83

Emisison Reduction Credit Banking

340-20-265 The owner or operator of a source of air pollution who wishes to reduce emissions by implementing more stringent controls than required by a permit or by an applicable regulation may bank such emission reductions. Cities, counties or other local jurisdictions may participate in the emissions bank in the same manner as a private firm. Emission reduction credit banking shall be subject to the following conditions:

(1) To be eligible for banking, emission reduction credits must be in terms of actual emission decreases resulting from permanent continuous control of existing sources. The baseline for determining emission reduction credits shall be the actual emissions of the source or the Plant Site Emission Limit established pursuant to OAR 340-20-300 to 340-20-320.

(2) Emission reductions may be banked for a specified period not to exceed ten years unless extended by the Commission, after which time such reductions will revert to the Department for use in attainment and maintenance of air quality standards or to be allocated as a growth margin.

(3) Emission reductions which are required pursuant to an adopted rule shall not be banked.

(4) Permanent source shutdowns or curtailments other than those used within one year for contemporaneous offsets as provided in OAR 340-20-260(4) are not eligible for banking by the owner or operator but will be banked by the Department for use in attaining and maintaining standards. The Department may allocate these emission reductions as a growth increment. The one year limitation for contemporaneous offsets shall not be applicable to those shutdowns or curtailments which are to be used as internal offsets within a plant as part of a specific plan. Such a plan for use of internal offsets shall be submitted to the Department and receive written approval within one year of the permanent shutdown or curtailment. A permanent source shutdown or curtailment shall be considered to have occurred when a permit is modified, revoked or expires without renewal pursuant to

the criteria established in OAR 340-14-005 through 340-14-050.

(5) The amount of banked emission reduction credits shall be discounted without compensation to the holder for a particular source category when new regulations requiring emission reductions are adopted by the Commission. The amount of discounting of banked emission reduction credits shall be calculated on the same basis as the reductions required for existing sources which are subject to the new regulation. Banked emission reduction credits shall be subject to the same rules, procedures, and limitations as permitted emissions.

(6) Emission reductions must be in the amount of ten tons per year or more to be creditable for banking except as follows:

(a) In the Medford-Ashland AQMA emission reductions must be at least in the amount specified in Table 2 of OAR 340-20-225(20);

(b) In Lane County, the Lane Regional Air Pollution Authority may adopt lower levels.

(7) Requests for emission reduction credit banking must be submitted to the Department and must contain the following documentation:

(a) A detailed description of the processes controlled;

(b) Emission calculations showing the types and amounts of actual emissions reduced;

(c) The date or dates of such reductions;

(d) Identification of the probable uses to which the banked reductions are to be applied;

(e) Procedure by which such emission reductions can be rendered permanent and enforceable.

(8) Requests for emission reduction credit banking shall be submitted to the Department prior to or within the year following the actual emissions reduction. The Department shall approve or deny requests for emission reduction credit banking and, in the case of approvals, shall issue a letter to the owner or operator defining the terms of such banking. The Department shall take steps to insure the permanence and enforceability of the banked emission reductions by including appropriate conditions in Air Contaminant Discharge Permits and by appropriate revision of the State Implementation Plan.

(9) The Department shall provide for the allocation of the banked emission reduction credits in accordance with the uses specified by the holder of the emission reduction credits. When emission reduction credits are transfered, the Department must be notified in writing. Any use of emission reduction credits must be compatible with local comprehensive plans, Statewide planning goals, and state laws and rules.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 25-1981, f. & ef. 9-8-81; DEQ 5-1983, f. & ef. 4-18-83

Fugitive and Secondary Emissions

340-20-270 Fugitive emissions shall be included in the calculation of emission rates of all air contaminants. Fugitive emissions are subject to the same control requirements and analyses required for emissions from identifiable stacks or vents. Secondary emissions shall not be included in calculations of potential emissions which are made to determine if a proposed source or modification is major. Once a source or modification is identified as being major, secondary emissions must be added to the primary emissions and become subject to these rules.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 25-1981, f. & ef. 9-8-81

Stack Heights

340-20-275 [DEQ 25-1981, f. & ef. 9-8-81; Repealed by DEQ 5-1983, f. & ef. 4-18-83]

Visibility Impact

340-20-276 New major sources or major modifications located in Attainment, Unclassified or Nonattainment Areas shall meet the following visibility impact requirements:

(1) Visibility impact analysis:

(a) The owner or operator of a proposed major source or major modification shall demonstrate that the potential to emit any pollutant at a significant emission rate (OAR 340-20-225, definition (22)) in conjunction with all other applicable emission increases or decreases (including secondary emissions) permitted since January 1, 1984, shall not cause or contribute to significant impairment of visibility within any Class I area.

(b) Proposed sources which are exempted under OAR 340-20-245(3), excluding paragraph (3)(a)(A) are not required to complete a visibility impact assessment to demonstrate that the sources do not cause or contribute to significant visibility impairment within a Class I area. The visibility impact assessment for sources exempted under this section shall be completed by the Department.

(c) The owner or operator of a proposed major source or major modification shall submit all information necessary to perform any analysis or demonstration required by these rules pursuant to OAR 340-20-230(1).

(2) Air quality models. All estimates of visibility impacts required under this rule shall be based on the models on file with the Department. Equivalent models may be substituted if approved by the Department. The Department will perform visibility modeling of all sources with potential emissions less than 100 tons/year of any individual pollutant and locating closer than 30 Km to a Class I area, if requested.

(3) Determination of significant impairment: The results of the modeling must be sent to the affected land managers and the Department. The land managers may, within 30 days following receipt of the source's visibility impact analysis, determine whether or not impairment of visibility in a Class I area would result. The Department will consider the comments of the Federal Land Manager in its consideration of whether significant impairment will result. Should the Department determine that impairment would result, a permit for the proposed source will not be issued.

(4) Visibility monitoring:

(a) The owner or operator of a proposed major source or major modification which emit more than 250 tons per year of TSP, SO_2 or NO_x shall submit with the application, subject to approval of the Department, an analysis of visibility in or immediately adjacent to the Class I area impacted by the proposed project. As necessary to establish visibility conditions within the Class I area, the analysis shall include a collection of continuous visibility monitoring data for all pollutants emitted by the source that could potentially impact Class I area visibility. Such data shall relate to and

shall have been gathered over the year preceding receipt of the complete application, unless the owner or operator demonstrates that data gathered over a shorter portion of the year for another representative year, would be adequate to determine that the source of major modification would not cause or contribute to significant impairment. Where applicable, the owner or operator may demonstrate that existing visibility monitoring data may be suitable. Pursuant to the requirements of these rules, the owner or operator of the source shall submit, for the approval of the Department, a preconstruction visibility monitoring plan.

(b) The owner or operator of a proposed major source or major modification shall, after construction has been completed, conduct such visibility monitoring as the Department may require as a permit condition to establish the effect which emissions of pollutant may have, or is having, on visibility conditions with the Class I area being impacted.

(5) Additional impact analysis: The owner or operator of a proposed major source or major modification subject to OAR 340-20-245(6)(a) shall provide an analysis of the impact to visibility that would occur as a result of the source or modification and general commercial, residential, industrial, and other growth associated with the source or major modification.

(6) Notification of permit application:

(a) Where a proposed major source modification impacts or may impact visibility within a Class I area, the Department shall provide written notice to the Environmental Protection Agency and to the appropriate Federal Land Manager within 30 days of the receipt of such permit application. Such notification shall include a copy of all information relevant to the permit application, including analysis of anticipated impacts on Class I area visibility. Notification will also be sent at least 30 days prior to Department Public Hearings and subsequently of any preliminary and final actions taken with regard to such application.

(b) Where the Department receives advance notification of a permit application of a source that may affect Class I area visibility, the Department will notify all affected Federal Land Managers within 30 days of such advance notice.

(c) The Department will, during its review of source impacts on Class I area visibility pursuant to this rule, consider any analysis performed by the Federal Land Manager that is provided within 30 days of notification required by subsection (a) of this section. If the Department disagrees with the Federal Land Manager's demonstration, the Department will include a discussion of the disagreement in the Notice of Public Hearing.

(d) The Federal Land Manager shall be provided an opportunity in accordance with OAR 340-20-230(3) to present a demonstration that the emissions from the proposed source of modification would have an adverse impact on visibility of any Federal mandatory Class I lands, notwithstanding that the change in air quality resulting from emissions from such source of modification would not cause or contribute to concentrations which would exceed the maximum allowable increment for a Class I area. If the Department concurs with such demonstration, the permit shall not be issued.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 18-1984, f. & ef. 10-16-84; DEQ 14-1985, f. & ef. 10-16-85

Prevention of Significant Deterioration

General

340-31-100 (1) The purpose of these rules is to implement a program to prevent significant deterioration of air quality in the State of Oregon as required by the Federal Clean Air Act Amendments of 1977.

(2) The Department will review the adequacy of the State Implementation Plan on a periodic basis and within 60 days of such time as information becomes available that an applicable increment is being violated. Any Plan revision resulting from the reviews will be subject to the opportunity for public hearing in accordance with procedures established in the Plan.

Stat. Auth.: ORS Ch. 468
Hist: DEQ 18-1979, f. & ef. 6-22-79

Definitions

340-31-105 For the purposes of these rules:

(1) "Federal Land Manager" means, with respect to any lands in the United States, the Secretary of the federal department with authority over such lands.

(2) "Indian reservation" means any Federally recognized reservation established by Treaty, Agreement, Executive Order, or Act of Congress.

(3) "Indian Governing Body" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

Stat. Auth.: ORS Ch. 468
Hist: DEQ 18-1979, f. & ef. 6-22-79; DEQ 25-1981, f. & ef. 9-8-81

Ambient Air Increments

340-31-110 (1) This rule defines significant deterioration. In areas designated as class I, II or III, emissions from new or modified sources shall be limited such that increases in pollutant concentration over the baseline concentration shall be limited to those set out in Table 1.

(2) For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.

Stat. Auth.: ORS Ch. 468
Hist: DEQ 18-1979, f. & ef. 6-22-79

Ambient Air Ceilings

340-31-115 No concentration of a pollutant shall exceed:

(1) The concentration permitted under the national secondary ambient air quality standard; or

(2) The concentration permitted under the national primary ambient air quality standard; or

(3) The concentration permitted under the state ambient air quality standard, whichever concentration is lowest for the pollutant for a period of exposure.

Stat. Auth.: ORS Ch. 468
Hist: DEQ 18-1979, f. & ef. 6-22-79

Restrictions on Area Classifications

340-31-120 (1) All of the following areas which were in existence on August 7, 1977, shall be Class I areas and may not be redesignated:

(a) Mt. Hood Wilderness;
(b) Eagle Cap Wilderness;
(c) Hells Canyon Wilderness;
(d) Mt. Jefferson Wilderness;
(e) Mt. Washington Wilderness;
(f) Three Sisters Wilderness;
(g) Strawberry Mountain Wilderness;
(h) Diamond Peak Wilderness;
(i) Crater Lake National Park;
(j) Kalmiopsis Wilderness;
(k) Mountain Lake Wilderness;
(l) Gearhart Mountain Wilderness.

(2) All other areas, in Oregon are initially designated Class II, but may be redesignated as provided in this section.

(3) The following areas may be redesignated only as Class I or II:

(a) An area which as of August 7, 1977, exceeded 10,000 acres in size and was a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore; and

(b) A national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acreas in size.

Stat. Auth.: ORS Ch. 468
Hist: DEQ 18-1979, f. & ef. 6-22-79

Exclusions for Increment Consumption

340-31-125 [DEQ 18-1979, f. & ef. 6-22-79; Repealed by DEQ 25-1981, f. & ef. 9-8-81]

Redesignation

340-31-130 (1)(a) All areas in Oregon (except as otherwise provided under rule 340-31-120) are designated Class II as of December 5, 1974.

(b) Redesignation (except as otherwise precluded by rule 340-31-120) may be proposed by the Department or Indian Governing Bodies, as provided below, subject to approval by the EPA Administrator as a revision to the State Implementation Plan.

(2) The Department may submit to the EPA Administrator a proposal to redesignate areas of the State Class I or Class II provided that:

(a) At least one public hearing has been held in accordance with procedures established in the Plan;

(b) Other States, Indian Governing Bodies, and Federal Land Managers whose lands may be affected by the proposed redesignation were notified at least 30 days prior to the public hearing;

(c) A discussion of the reasons for the proposed redesignation, including a satisfactory description and analysis of the health, environmental, economic, social and energy effects of the proposed redesignation, was prepared and made available for public inspection at least 30 days prior to the hearing and the notice announcing the hearing contained appropriate notification of the availability of such discussion;

(d) Prior to the issuance of notice respecting the redesignation of an area that includes any Federal lands, the Department has provided written notice to the appropriate Federal Land Manager and afforded adequate opportunity (not in excess of 60 days) to confer with the Department respecting the redesignation and to submit written comments and recommendations. In redesignating any area with respect to which any Federal Land Manager had submitted written comments and recommendations, the Department shall have published a list of any inconsistency between such redesignation and such comments and recommendations (together with the reasons for making such redesignation against the recommendation of the Federal Land Manager); and

(e) The Department has proposed the redesignation after consultation with the elected leadership of local and other substate general purpose governments in the area covered by the proposed redesignation.

(3) Any area other than an area to which rule 340-31-120 refers may be redesignated as Class III if:

(a) The redesignation would meet the requirements of section (2) of rule 340-31-130;

(b) Tne redesignation, except any established by an Indian Governing Body, has been specifically approved by the Governor, after consultation with the appropriate committees of the legislature, if it is in session, or with the leadership of the legislature, if it is not in session (unless State law provides that the redesignation must be specifically approved by State legislation) and if general purpose units of local government representing a majority of the residents of the area to be redesignated enact legislation or pass resolutions concurring in the redesignation;

(c) The redesignation would not cause, or contribute to, a concentration of any air pollutant which would exceed any maximum allowable increase permitted under the classification of any other area or any national ambient air quality standard; and

(d) Any permit application for any major stationary source or major modification, subject to review under section (1) of this rule, which could receive a permit under this section only if the area in question were redesignated as Class III, and any material submitted as part of that application, were available insofar as was practicable for public inspection prior to any public hearing on redesignation of the area as Class III.

(4) Lands within the exterior boundaries of Indian Reservations may be redesignated only by the appropriate Indian Governing Body. The appropriate Indian Governing Body may submit to the EPA Administrator a proposal to redesignate areas Class I, Class II, or Class III: Provided, that:

(a) The Indian Governing Body has followed procedures equivalent to those required of the Department under section (2) and subsections (3)(c) and (d) of this rule; and

(b) Such redesignation is proposed after consultation with the state(s) in which the Indian Reservation is located and which border the Indian Reservation.

(5) The EPA Administrator shall disapprove, within 90 days of submission, a proposed redesignation of any area only if he finds, after notice and opportunity for public hearing, that such redesignation does not meet the procedural requirements of this paragraph or is inconsistent with rule 340-31-120. If any such disapproval occurs, the classification of the area shall be that which was in effect prior to the redesignation which was disapproved.

(6) If the EPA Administrator disapproves any proposed redesignation, the Department or Indian Governing Body, as appropriate, may resubmit the proposal after correcting the deficiencies noted by the EPA Administrator.

TABLE 1
(340-31-110)

MAXIMUM ALLOWABLE INCREASE

Micrograms per cubic meter

CLASS I

POLLUTANT	
Particulate matter:	
Annual geometric mean	5
24-hour maximum	10
Sulfur dioxide:	
Annual arithmetic mean	2
24-hour maximum	5
3-hour maximum	25

CLASS II

Particulate matter:	
Annual geometric mean	19
24-hour maximum	37
Sulfur dioxide:	
Annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	512

CLASS III

Particulate matter:	
Annual geometric mean	37
24-hour maximum	75
Sulfur dioxide:	
Annual arithmetic mean	40
24-hour maximum	182
3-hour maximum	700

ATTACHMENT 2
Agenda Item F
January 22, 1988 EQC Meeting

PROPOSED RULE REVISIONS

Refer to Attachment 1 of this Agenda Item for the full text and location of these revisions.

Revision 1

Definitions
340-20-225

(22) "Significant emission rate" means:
(a) Emission rates equal to or greater than the following for air pollutants regulated under the Clean Air Act:

Table 1: Significant Emission Rates for Pollutants Regulated under the Clean Air Act

Pollutant	Significant Emission Rate
(A) Carbon Monoxide	100 tons/year
(B) Nitrogen Oxides	40 tons/year
(C) Particulate Matter*:	
(i) TSP	25 tons/year
(ii) PM_{10}	15 tons/year
(D) Sulfur Dioxide	40 tons/year
(E) Volatile Organic Compounds*	40 tons/year
(F) Lead	0.6 ton/year
(G) Mercury	0.1 ton/year
(H) Beryllium	0.0004 ton/year
(I) Asbestos	0.007 ton/year
(J) Vinyl Chloride	1 ton/year
(K) Fluorides	3 tons/year
(L) Sulfuric Acid Mist	7 tons/year
(M) Hydrogen Sulfide	10 tons/year
(N) Total reduced sulfur (including hydrogen sulfide)	10 tons/year
(O) Reduced sulfur compounds (including hydrogen sulfide)	10 tons/year

NOTE: *For the nonattainment portions of the Medford-Ashland Air Quality Maintenance Area, the Significant Emission Rates for particulate matter and volatile organic compounds are defined in Table 2.

(b) For pollutants not listed above, the Department shall determine the rate that constitutes a significant emission rate.

(c) Any emissions increase less than these rates associated with a new source or modification which would construct within 10 kilometers of a Class I area, and would have an impact on such area equal to or greater than 1 ug/m^3 (24 hour average) shall be deemed to be emitting at a significant emission rate (see Table 2).

Revision 1

Table 2
(340-20-225)

Significant Emission rates for the Nonattainment Portions of the Medford-Ashland Air Quality Maintenance Area./

	Emission Rate					
	Annual		Day		Hour	
Air Contaminant	Kilograms	(tons)	Kilograms	(lbs)	Kilograms	(lbs)
Particulate Matter (TSP or PM_{10})	4,500	(5.0)	23	(50.0)	4.6	(10.0)
Volatile Organic Compound (VOC)	18,000	(20.0)	91	(200)	---	---

Revision 2

Table 3
(340-20-225)

Significant Air Quality
ambient air quality impact
which is equal to or greater than:

	Pollutant Averaging Time				
Pollutant	Annual	24-hour	8-hour	3-hour	1-hour
SO_2	1.0 ug/m^3	5 ug/m^3		25 ug/m^3	
TSP or PM_{10}	0.2 ug/m^3	1.0 ug/m^3			
NO_2	1.0 ug/m^3				
CO			0.5 mg/m^3		2 mg/m^3

Revision 2

(23) "Significant Air Quality Impact" means an ambient air quality impact which is equal to or greater than those set out in Table 3. For sources of volatile organic compounds (VOC), a major source or major modification will be deemed to have a significant impact if it is located within 30 kilometers of an ozone nonattainment area and is capable of impacting the nonattainment area.

Revision 3

Requirements for Sources in Attainment or Unclassified Areas
(Prevention of Significant Deterioration)
340-20-245 (3) and (4)

(c) A proposed major source or modification is exempted from the requirements for PM10 in OAR 340-20-220 to 340-20-270 if:

(i) The proposed source or modification received an Air Contaminant Discharge Permit prior to July 31, 1987, and meets all requirements of 40 CFR 52.21(i)(4)(ix), or

(ii) The proposed source or modification submitted a complete application for an Air Contaminant Discharge Permit prior to July 31, 1987, and meets all requirements of 40 CFR 52.21(i)(4)(x).

Revision 4

(4) Air Quality Models. All estimates of ambient concentrations required under these rules shall be based on the applicable air quality models, data bases, and other requirements specified in the Guidelines on Air Quality Models (Revised):, EPA 450/2-78-027R, U.S. Environmental Protection Agency, September 1986. ["Guidelines on Air Quality Models" (OAQPS 1.2-0.80, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, N.C. 27711, April 1978).] Where an air quality impact model specified in the "Guidelines on Air Quality Models (Revised)" is inappropriate, the model may be modified or another model substituted. Such a change must be subject to notice and opportunity for public comment and must be subject to notice and opportunity for public comment and must receive approval of the Department and the Environmental Protection Agency. Methods like those outlined in the "Interim Procedures for Evaluating Air Quality Models (Revised)" U.S. Environmental Protection Agency, 1984 ["Workbook for the Comparison of Air Quality Models" (U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, N.C. 27711, May 1978)] should be used to determine the comparability of models.

Revision 5

(C) The Department may exempt a proposed major source or major modification from monitoring for a specific pollutant if the owner or operator demonstrates that the air quality impact from the emissions increase would be less than the amounts listed below or that the concentrations of the pollutant in the area that the source or modification would impact are less than these amounts:

(i) Carbon monoxide - 575 ug/m^3, 8 hour average.

(ii) Nitrogen dioxide - 14 ug/m^3, annual average.

(iii) [Total suspended p] Particulate Matter

(I) TSP - 10 ug/m^3, 24 hour average

(II) PM_{10} - 10 ug/m^3, 24 hour average

(iv) Sulfur dioxide - 13 ug/m^3, 24 hour average.

(v) Ozone - Any net increase of 100 tons/year or more of volatile organic compounds from a source or modification subject to PSD is required to perform an ambient impact analysis, including the gathering of ambient air quality data.

(vi) Lead - 0.1 ug/m^3, 24 hour average.

(vii) Mercury - 0.25 ug/m^3, 24 hour average.

(viii) Beryllium - 0.0005 ug/m^3, 24 hour average.

(ix) Fluorides - 0.25 ug/m^3, 24 hour average.

(x) Vinyl chloride - 15 ug/m^3, 24 hour average.

(xi) Total reduced sulfur - 10 ug/m^3, 1 hour average.

(xii) Hydrogen sulfide - 0.04 ug/m^3, 1 hour average.

(xiii) Reduced sulfur compounds - 10 ug/m^3, 1 hour average.

Revision 6

Requirements for Net Air Quality Benefit

340-20-260 Demonstrations of net air quality benefit must include the following:

(1) A demonstration must be provided showing that the proposed offsets will improve air quality in the same geographical area affected by the new source or modification. This demonstration may require that air quality modeling be conducted according to the procedures specified in the "Guidelines on Air Quality Models (Revised)". Offsets for volatile organic compounds or nitrogen oxides shall be within the same general air basin as the proposed source. Offsets for total suspended particulate, PM10, sulfur dioxide, carbon monoxide and other pollutants shall be within the area of significant air quality impact.

Revision 7

(3) The emission reductions must be of the same type of pollutant as the emissions from the new source or modification. Sources of respirable particulate (less than ten [three] microns) must be offset with particulate in the same size range. In areas where atmospheric reactions contribute to pollutant levels, offsets may be provided from precursor pollutants if a net air quality benefit can be shown.

Revision 8

TABLE 1
(340-31-110)

MAXIMUM ALLOWABLE INCREASE

Micrograms per cubic meter

CLASS I

POLLUTANT	
Particulate matter:	
TSP, Annual geometric mean	5
TSP, 24-hour maximum	10
Sulfur dioxide:	
Annual arithmetic mean	2
24-hour maximum	5
3-hour maximum	25

CLASS II

Particulate matter:	
TSP, Annual geometric mean	19
TSP, 24-hour maximum	37
Sulfur dioxide:	
Annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	512

CLASS III

Particulate matter:	
TSP, Annual geometric mean	37
TSP, 24-hour maximum	75
Sulfur dioxide:	
Annual arithmetic mean	40
24-hour maximum	182
3-hour maximum	700

Revision 8

Ambient Air Increments

340-31-110 (1) This rule defines significant deterioration. In areas designated as class I, II or III, emissions from new or modified sources shall be limited such that increases in pollutant concentration over the baseline concentration shall be limited to those set out in Table 1.

(2) For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 18-1979, f. & ef. 6-22-79

WLS:k
AK119

ATTACHMENT 3
Agenda Item F
January 22, 1988 EQC Meeting

STATEMENT OF NEED FOR RULEMAKING

Pursuant to ORS 183.335(7), this statement provides information on the Environmental Quality Commission's intended action to adopt a rule.

Legal Authority

This proposal amends OAR 340-20-220 through -260. It is proposed under authority of ORS 468, including Section 310 which authorizes the Environmental Quality Commission to require sources of air contamination to obtain permits and Section 295 which authorizes the Commission to establish air purity standards.

Need for the Rule

The proposed rule adds the federal requirements for PM_{10} to the OAR. This addition is needed to maintain delegation to Oregon of the New Source Review program for major sources of air contaminant emissions. The proposed rule also includes provisions to implement the attainment strategy for the Class I PM_{10} areas and any other Oregon locations which are determined to be in nonattainment with the Ambient Air Quality Standards for PM_{10}.

Principal Documents Relied Upon

Title 40 Code of Federal Regulations Parts 51 and 52.

Regulations for Implementing Revised Particulate Matter Standards, Federal Register, Wednesday July 1, 1987, pp 24652-24715.

FISCAL AND ECONOMIC IMPACT STATEMENT

To the extent that the rules are a duplication of the federal regulations, adoption of these rules and delegation to the Department simplifies environmental administration. Lower costs should be incurred by the regulated community by retaining all air quality permit activities within the state.

These rules include some provisions for control of emissions in PM_{10} nonattainment areas which are more stringent than the federal requirements. This would increase pollution control costs for major sources locating in such areas. The increased costs are expected to impact a small number of sources. Since these requirements are a component of the strategy for achieving compliance with the ambient air quality standards for PM_{10}, the long term result will be to facilitate industrial growth in areas which currently exceed the standards. The rule will not affect the cost of obtaining a permit from the Department.

The cost to the Department of conducting the New Source Review program and the permit fees collected will not be significantly affected.

LAND USE CONSISTENCY STATEMENT

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

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

Goal 11 (public facilities and services) is deemed unaffected by the rule. The rule does not appear to conflict with other goals. Public comment on any land use issue involved is welcome and may be submitted in the same manner as indicated for testimony in this notice.

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

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

WLS:k
AK119.2

DRAFT

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Proposed revision of major new air source permit rules to include PM_{10}

Hearing Date: March 1988
Comments Due: March 15, 1988

WHO IS AFFECTED: Major new or modified industrial sources of significant quantities of PM_{10} emissions. PM_{10} is respirable particulate, or suspended particulate matter smaller than 10 microns in diameter.

WHAT IS PROPOSED: The Department of Environmental Quality is proposing to amend OAR 340--20-220 through -260 to add PM_{10} requirements already in force by the Environmental Protection Agency and to extend the nonattainment area requirements of current Oregon regulations to include PM_{10}.

WHAT ARE THE HIGHLIGHTS: The proposed rules establish a Significant Emission Rate for PM_{10}. Major PM_{10} sources in PM_{10} nonattainment areas would be required to apply the Lowest Achievable Emission Rate and provide offsets. Major PM_{10} sources subject to New Source Review in a PM_{10} attainment area would be required to apply Best Available Control Technology for PM_{10}. Establishes PM_{10} preconstruction monitoring exemption level and significant impact levels at the existing TSP levels.

HOW TO COMMENT: Copies of the complete proposed rule package are available from the Air Quality Division in Portland (811 S.W. Sixth Avenue) or the regional office nearest you. For further information contact Wendy Sims at (503) 229-6414.

Public hearings will be held before a hearings officer in March in Portland, Medford, Bend, and La Grande.

Oral and written comments will be accepted at the public hearings. Written comments may be sent to the DEQ Air Quality Division, 811 SW Sixth Avenue, Portland, OR 97204, but must be received by no later than March 15, 1988.

WHAT IS THE NEXT STEP: After the public hearings 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 April, 1988 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.

Public Testimony on proposed revisions to the State Ambient Air Quality Standards, the Emergency Action Plan and the State Implementation Plan will also be taken at these public hearings.

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

11/1/86

FOR FURTHER INFORMATION:

AD1909 (12/87)

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.

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item G, January 22, 1988

Request for Authorization to Hold a Public Hearing on Commitments for PM_{10} Group II areas as a Revision to the State Implementation Plan.

BACKGROUND

As outlined in the PM_{10} informational report (Agenda Item D), the Environmental Protection Agency (EPA) adopted new regulations for implementing new particulate matter standards on July 31, 1987. One concept presented in these regulations was the classification of all areas of the country into three categories based on their probability of meeting the new PM_{10} standards. All areas in Oregon have been classified into three categories as described by EPA using existing TSP and PM_{10} data. Those with a strong likelihood of violating the new standard are considered to be Group I, those with a moderate possibility of violating the standard are Group II and all other areas are included in Group III. This agenda item discusses the requirements for Group II areas.

A Group II "Committal SIP" committing to meet specific activities with enforcable milestones is required by EPA within 9 months of the PM_{10} standard promulgation. The specific milestones that commitments must be made to meet are:

1. Monitor PM_{10} at least to an extent consistent with minimum EPA requirements.

2. Report exceedances of the PM_{10} standard to EPA within 45 days of occurrence.

3. Report any violations of the PM_{10} standard immediately (when enough exceedances occur to constitute a violation, i.e. more than three measured exceedances of the daily standard in a three year period.)

4. Determine the adequacy of the SIP with respect to attainment and maintenance of the PM_{10} standard within 30 days of reporting a violation or in any case by September 1, 1990.

5. Submit a full control strategy within 6 months of determining the inadequacy of the SIP which demonstrates attainment within 3-5 years of the date EPA approves the committal SIP.

Authority for the Commission to Act

ORS Chapter 468.020 gives the Commission authority to adopt necessary rules and standards; ORS 468.305 authorizes the Commission to prepare and develop a comprehensive plan for air pollution control.

EVALUATION AND ALTERNATIVES

Four areas of the state have been identified Group II for PM_{10} after an examination of the available air quality data. The four areas are Portland, Oakridge, Bend and La Grande.

Portland, Oakridge and the Bend area have potential for exceeding the daily standard PM_{10} standard with impacts primarily from wood space heating. La Grande has the potential to exceed the annual PM_{10} standard with impacts coming from a combination of winter wood heating and summer and fall field and slash burning. EPA requirements for dealing with Group II areas are described clearly in the Federal Register of July 1, 1987. The primary required Department activity, aside from development of the committal SIP, involves expansion of the air quality monitoring network to include monitoring for PM_{10} at a high enough frequency to be able to determine the status of the area with respect to the new standards. The Department has already developed a proposed modification to the sampling network that will fulfill the monitoring requirements and expects to obtained EPA approval.

A revision to the State Implementation Plan that meets EPA committal requirements for Group II areas is included as Attachment III for Bend, La Grande and Portland. The Lane Regional Air Pollution Authority will be developing their own Oakridge committal SIP to submit to the EQC for approval. Since it is uncertain about the final status of each of the Group II areas, and should problems meeting the standard become apparent near the September 1, 1990 deadline for determining the status of the area, the possibility for needing a two-year extension to attain standards needs to be part of the committal SIP. Should any of the Group II areas be determined to violate the PM_{10} standard and require development of control strategies, the extension period may be required for proper evaluation, strategy development and implementation.

If an adequate committal SIP is not submitted to EPA as required, the state could be subject to sanctions.

If an adequate committal SIP is not submitted to EPA as required, the state could be subject to sanctions.

SUMMATION

1. The Environmental Protection Agency adopted new air quality standards for particulate matter referred to as PM_{10} on July 31, 1987.

2. All areas of the country are currently grouped into three categories depending on the probability of meeting the new PM_{10} standards. Oregon has areas in all three categories. Areas with a moderate probability of violating the standard are classified Group II and include Bend, La Grande, Oakridge and Portland.

3. The EPA requires that commitments be made in the State Implementation Plan within 9 months of their standard promulgation to perform additional sampling to determine the status of the Group II areas, promptly report exceedances of the standards and to provide an evaluation of the status of each area to EPA by no later than September 1, 1990. Within 6 months of determining that a Group II area is in non-attainment, a control strategy must be developed.

4. The Department has prepared a revision to the State Implementation Plan for the Bend, La Grande and Portland areas to make the commitments required by EPA. The Lane Regional Air Pollution Authority is developing the committal SIP for Oakridge.

DIRECTORS RECOMMENDATION

Based on the Summation, it is recommended that the Commission authorize a public hearing to take testimony on revision of the State Implementation Plan to provide for the required monitoring and evaluation of Oregon's Group II areas against the new standard for particulate matter.

Lydia Taylor for
Fred Hansen

Attachments:
1. Statement of Need for Rulemaking
2. Hearings Notice
3. Proposed Committal State Implementation Plan Revision for Group II areas (Bend, La Grande and Portland)

Spencer Erickson:sle
229-6458
January 6, 1988
GROUPII
AD1950

ATTACHMENT 1

Adgenda Item G, January 22, 1988, EQC Meeting.

STATEMENT OF NEED FOR RULE MAKING

Pursuant to ORS 183.335(7), these statements provide information on the intended action to ammend a rule.

(1) Legal Authority

This proposal ammends OAR 340-20-047. It is proposed under authority of ORS 468.305.

(2) Need for the Rule

The Environmental Protection Agency has adopted a new standard for particulate matter in air. All areas of the country have been classified as belonging to one of three groups depending on the probability of their meeting the new standard. EPA has mandated that states with areas in Group II (those areas having a moderate probability of not meeting the standard) commit to a program of ambient air monitoring, reporting exceedances and violations of the standard and ascertaining the status of each of the areas with respect to the new standard within a certain time period. The commitments must be made part of the State Implementation Plan by May, 1988. In addition, should an area be found to violate the standard, the state must proceed to develop and implement control strategies necessary to attain and maintain the standard within three years of the approval of the commitment.

(2) Principal Documents Relied Upon

a. Clean Air Act as Ammended (P.L. 97-95) August 1977.

b. DEQ Air Quality Annual Reports.

c. Federal Register Vol. 52 No. 126 pp 24681-84.

d. Code of Federal Regulations 40 CFR Part 50.

All documents referenced may be inspected at the Department of Environmental Quality, 811 SW 6th Av., Portland, OR, during normal business hours.

LAND USE COMPATIBILITY 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 qualtiy 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 issue involved is welcome and may be submitted in the same fashions as are indicated for testimony in this notice.

FISCAL AND ECONOMIC IMPACT

Adoption of this revision to the State Implementation Plan only commits the Department of Environmental Quality to provide for monitoring and assessment of compliance status of three areas of the state. Beyond the fiscal requirements for conducting air monitoring, adoption of this revision carries no fiscal or economic impact on the public or private sectors.

Public comment on any fiscal or economic issue is invited and may be submitted in the same fashions as are indicated for testimony in this notice.

Spencer Erickson:sle
229-6458
December 28, 1987
RULEMAKE.GII
AD1953

Oregon Department of Environmental Quality

ATTACHMENT 2

A CHANCE TO COMMENT ON...

A proposed revision to the ORS 340-20-047, the Oregon State Implementation Plan to commit to air quality monitoring in areas of the state designated as Group II for PM_{10}.

NOTICE OF PUBLIC HEARING

Hearing Date: March, 1988
Comments Due:

Who is Affected: Residents, industries and local governments of the Portland, Bend and La Grande areas.

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 adding commitments to the Environmental Protection Agency to monitor, report levels and evaluate the status of the Group II areas with respect to the new PM_{10} particulate standard.

What are the Highlights: Major elements of the rule change include:

1. Intensive ambient air monitoring for the affected area for one year.
2. Development of an emission inventory of all major sources in the affected area.
3. Evaluation of the area's compliance with the new particulate standard.

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 Spencer Erickson at 229-6458 (call toll-free, 1-800-452-4011).

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

(Time) 7 p.m.
(Date) March, 1988
(Place) Portland, Medford, Bend & La Grande

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 March 15, 1988.

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

FOR FURTHER INFORMATION:

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

What is the next step: After public hearing the Environmental Quality Commission may adopt rule amendments identical to the proposed amendments, adopt modified rule amendments on the same subject matter, or decline to act. The Commission's deliberation should come in April 1988 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.

Public testimony on proposed revisions to the State Ambient Air Quality Standards, the Emergency Action Plan and New Source Review Rules will also be taken at these public hearings.

Spencer Erickson:sle
December 28, 1987
CHANCE.GII
AD1949

ATTACHMENT 3

Section 5.4

OREGON STATE IMPLEMENTATION PLAN

COMMITMENTS FOR PM_{10} GROUP II AREAS

(Bend, La Grande and Portland)

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY

May 1988

5.4.0 INTRODUCTION

The U.S. Environmental Protection Agency (EPA) adopted revisions to the national particulate standards effective July 30, 1987. In that action, EPA eliminated the national standards for total suspended particulate and established annual and daily health standards for particles less then 10 micron aerodynamic diameter (PM_{10}). The new daily standard for PM_{10} is 150 ug/m^3 while the annual standard is 50 ug/m^3. Provisions for determining status with respect to the new standards are provided in Appendix K to 40 CFR 50. Oregon is adopting a PM_{10} standard equivalent to the federal standard and will reference 40 CFR 50 Appendix K in it's rules as the method for determining compliance with the new standard.

One EPA requirement for implementing the new standard is that all areas of the country initially be classified into one of three groups depending on their projected ability to meet the new standard. The classifications were based on all available data. If only Total Suspended Particulate (TSP) data was available, a national ratio was applied to estimate the PM_{10} levels. Any available PM_{10} data was also used in the estimate. Those areas showing a 95% or greater probability of exceeding one of the standards were classified as Group I, those areas having 20-95% probability of exceeding the standard were classified as Group II and all other areas were classed as Group III.

For those areas classed in Group II, the State Implementation Plan must contain a commitment to develop and operate a monitoring network to gather PM_{10} sufficient to determine the actual status of the area with respect to the standard, report any exceedances of the standard to the EPA regional office, and, should a sufficient number of exceedances be observed to constitute a violation of the standard, commit to proceed to develop a control strategy such as required for the Group I areas. In addition, EPA requires that states commit to develop an emission inventory of all Group II areas. The purpose of the emission inventory is to determine if emissions can increase within specified limits to cause the area to exceed the standard. The purpose of this section of the SIP is to provide commitments required by EPA.

5.4.2 GROUP II AREAS IN OREGON

Oregon has four areas in the Group II category:

1. Portland
2. Oakridge
3. Bend
4. La Grande

The Lane Regional Air Pollution Authority has responsibility for air monitoring in Lane County and has monitored TSP and PM_{10} levels in Oakridge. The Department has been monitoring TSP and PM_{10} for a number of years in the other three Group II areas. With the promulgation of the new PM_{10} standard, surveys of two of

the areas (Bend and La Grande) were conducted to determine if the monitoring site for TSP was well located for monitoring PM_{10}. In both cases, a different monitoring site was established which demonstrated higher levels of PM_{10} than the established TSP site and was considered to better represent the area's particulate levels.

In Bend, the historic site has been at the Deschutes County Courthouse. The survey, conducted in December 1986, determined that at least some of the residential areas of the city were more heavily impacted with PM_{10} than was the courthouse and, as a consequence of that study, the permanent monitoring site was moved to the area of the Kenwood School in the residential section of Bend. Sampling for PM_{10} at the new site commenced in December, 1987. An analysis of the historical PM_{10} and TSP data from courthouse site indicated that, if the area were to have a problem meeting the new standard, the daily standard would be the one most likely to be violated.

In La Grande, TSP data has been historically collected at the Observer Building in the central business district of the city. The survey conducted in late 1985 indicated that slightly higher values may be present at other sites and, when the Observer site became unavailable in September 1986, a new site was established at the Dockwiler residence to the east of the central business district. An examination of the historic TSP and PM_{10} data record indicated that the area may have difficulty meeting the annual PM_{10} standard but probably not the daily standard.

The Portland area has been monitored for PM_{10} since about 1982 and TSP for well over 15 years. An examination of the data record indicates that the area may have difficulty meeting the daily PM_{10} standard at the residential monitoring site at 58th and SE Lafayette. Since monitoring of the area has been performed at several sites in the last decade, it was not felt that a survey of the area for a new site was required.

5.4.2 MONITORING PM_{10} LEVELS

The Department has proposed a PM_{10} monitoring network to EPA Region X and has received final approval. Monitoring will be performed at the indicated sites on the network at the frequency approved in the network design. Basically, the monitoring for the first year of operation of the particulate network will be as indicated in Table I.

Table I

Oregon Group II PM_{10} Network

Site Number	Site	Sampling Frequency PM_{10} HV	PM_{10} MV	TSP HV
0904106	Residential Bend	1/6	1/1	
2614101	Residential N. Portland	1/6		1/6
2614123	Downtown Portland	1/6		1/6
2614230	Residential SE Portland	1/6	1/1	1/6
2614238	Industrial NW Portland	1/6		
3116115	Residential E. La Grande	1/6	1/1	

LEGEND: HV - Reference Method High Volume Sampler

MV - Medium Volume Sampler

LV - EPA Reference or acceptable Low Volume Sampler

Sampling Frequency - 1/1=daily, 1/6=once each 6 days

Note: MV samplers will be run during the winter heating season only except at La Grande where samples will be collected daily in all four seasons.

The Department will conduct monitoring according to Table I for one full year beginning January 1, 1988. After the first year's monitoring has been completed, maintenance monitoring according to the EPA required schedule in Table II will be maintained at the site in each area with the greatest expected maximum concentration of PM_{10}. In those areas where the daily standard is in danger of

being exceeded, the monitoring schedule will be determined by the highest daily level as described in Table II. In all instances, sample collection at frequencies greater than once every six days may be limited to the specific seasons of the year for which elevated levels are expected.

Table II

Long Term PM_{10} Monitoring Schedule

Previous year PM_{10} (highest daily value)	Sampling Frequency
less than 120 ug/m_3	Every six days
120 - 135 ug/m_3	Every other day
135 - 180 ug/m_3	Every day
180 - 210 ug/m_3	Every other day
greater than 210 ug/m_3	Every six days

For those areas where the standard in danger of being exceeded is the annual standard, a minimum sampling frequency of once every six days will be maintained at the site of the greatest expected concentration. To determine the greatest expectation concentration (either daily or annual levels), the most recent year of data at all sites in the area will be used unless circumstances suggest that use of a larger base of data would be justified. In such a circumstance, concurrence of the monitoring schedule with EPA will be required. Determination of the monitoring schedule will be made as a part of the annual network

review which will be accomplished by July 1 of each year for the preceding calender year. Implementation of the new monitoring schedule will commence by September 1 of the planned year.

5.4.3 REPORTING EXCEEDANCES TO EPA

When any monitoring in a Group II area is determined to have experienced an exceedance of the daily or the annual PM_{10} standard, the EPA Region X office will be notified of the event in writing within 45 days of the exceedance. If an exceedance of the daily standard is observed, daily sampling at the site will commence as expeditiously as possible and will continue for four consecutive calendar quarters.

5.4.4 NOTIFICATION OF VIOLATIONS TO EPA

Since the standard is statistical rather than deterministic, it is necessary to estimate the number of exceedances of the standard if all possible samples in the interval in question were actually collected by making allowance for incomplete sampling. The procedure for determining when the standard has been violated is outlined in 40 CFR 50 Appendix K.

When a number of exceedances sufficient to constitute a violation of the standard is observed, the EPA Region X office will be notified that a new area of non-attainment with the PM_{10} standard exists. A violation of the standard exists when the expected number of exceedances of the daily standard or the annual standard

for a calendar year exceeds 1.0 per year. At sites where less than daily samples are being collected, if an exceedance is noted, an adjustment for missing samples if made to any days not sampled from the exceedance day to the next sample day. Days meeting this definition are considered to also exceed the standard when using the adjustment. EPA has provided an exception to that consideration if the Department agrees to institute daily sampling upon observation of an exceedance. Since the Department will initiate daily sampling as soon as possible, the first exceedance observed will not be adjusted for incomplete sampling. Therefore, a total of four observed exceedances of the standard will constitute a violation of the daily PM_{10} standard.

Violations of the standard, either annual or daily, will be reported to EPA Region X as soon as the verified data becomes available. Reporting the violation to EPA will constitute an acknowledgement that a non-attainment problem exists and will trigger an examination of any existing control strategies to determine if they are sufficient to assure timely attainment and maintenance of the standard.

5.4.5 CONTROL STRATEGIES

Should monitoring in a Group II area indicate that the area is in non-compliance with the PM_{10} standard, an assessment of the adequacy of the existing SIP with respect to attainment and maintenance of the PM_{10} standard will be made and submitted to EPA within 30 days of the notification of violation or no later than

September 1, 1990. The assessment will include a determination of strategy enforceability, an evaluation of start-up, shut-down and malfunction regulations and generally the ability of the control strategy to attain and maintain the standard.

Should it be determined that existing control strategies, if any exist, are insufficient to attain and maintain the standard, an adequate control strategy will be developed. The control strategy will be adopted as a revision to the State Implementation Plan and submitted to EPA for approval within six months of notification of the non-attainment problem. The control strategy will be capable of bringing the area into attainment within 3 to 5 years of the date this committal SIP is approved by EPA. Since it is not yet known for certain if any problems exist in Group II areas, and if so, how difficult they will be to correct, the attainment extension from 3 to 5 years may be needed.

5.4.6 EVALUATION OF AREA STATUS AND REPORTING TO EPA

Provided that a violation of the PM_{10} standard is not reported to EPA sooner, after a total of three years of monitoring data has been collected, the Department will evaluate the status of each of the Group II areas to determine if there will be any problems maintaining the PM_{10} standards. A report on the final status evaluation of each of the Group II areas will be made to EPA by no later than September 1, 1990.

5.4.7 EMISSION INVENTORY

As part of the evaluation process, the Department will prepare both TSP and PM_{10} emission inventories for each of the Group II areas. An inventory of actual and allowable emissions will be prepared and submitted to EPA by no later than September 1, 1990. If monitoring indicates that an area is not in compliance with the PM_{10} standard under Section 5.4.5, then the emission inventory will be included as part of the assessment report with 30 days of the notification of violation. The emission inventory will contain estimates of both area and point sources with the capability of producing at least 10 tons per year of particulate. Starting in 1988, the emission inventory for the preceding calendar year will be prepared by no later than nine months from the last day of that year through at least 1990.

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item H, January 22, 1988, EQC Meeting

Request for Authorization to Conduct Public Hearings Concerning Proposed Rules Relating to Asbestos Control and Proposed Amendments to the Hazardous Air Contaminant Rules for Asbestos, OAR Chapter 340, Division 25, Section 465.

Background and Problem Statement

The Department is proposing the adoption of new asbestos abatement rules, and the adoption of amendments to existing asbestos control rules.

Asbestos is a naturally occurring mineral that separates into strong, very fine fibers. The fibers are heat resistant and extremely durable. These qualities have made asbestos very useful for strengthening materials, thermal and acoustical insulation, and fire protection. Asbestos has been widely used in the U.S. in over 2,000 commercial products, and can be found in industrial, commercial, institutional, and residential facilities built between the 1920's and mid-1970's.

There is no known safe level of exposure to asbestos, therefore, all asbestos exposure should be avoided, if possible. Even a single low-concentration exposure can trigger mesothelioma, an incurable form of cancer. In order for asbestos to be a health hazard, it must be released from a product or material into the air people breathe. Once inhaled, fibers can be transported throughout the body via the respiratory and circulatory systems, and can become permanently lodged in body tissues, especially the lungs. Symptoms of asbestos-related diseases generally do not appear for 15 years or longer after the first exposure, and may include lung cancer, mesothelioma, asbestosis, and other cancers of the esophagus, colon, and gastrointestinal system.

There is still no consensus among health officials on the health effects of eating or drinking asbestos-contaminated food or liquid, and no specific standards have yet been set by government agencies to limit the levels of contamination. Likewise, asbestos contact with the skin has not been proven to cause debilitating health effects. However, asbestos fibers may be carried on workers' clothing from a work site to other clean work areas, public areas, or to the workers' homes. These fibers may then be released from the clothes to the local atmosphere, thereby unnecessarily subjecting other workers, the public, and family members to airborne asbestos fibers.

In Oregon, the primary cause of high concentration asbestos releases to the environment has been determined to be the improper removal of asbestos-containing materials during building renovation and demolition activities, and improper waste handling methods. DEQ field inspections have determined that many contractors, and their workers, do not know how to identify asbestos-containing materials, and do not have the skills to properly work with and handle the material. Proper training of these workers and a strong compliance assurance program should provide the knowledge, skills, and incentive to protect the workers and their families, and also protect facility occupants, neighbors, and the public from inadvertent exposure to asbestos fibers. The proposed rules are intended to minimize asbestos releases from these sources.

ORS Chapter 741, Oregon Laws 1987, the enabling legislation for this program, focused on training workers to use proper work practices as a way to minimize asbestos fiber releases. Workers using the proper worker protection, work practices and engineering controls when disturbing asbestos-containing materials, would also protect the public from exposure to the fibers.

On October 22, 1986, the President signed into law the Asbestos Hazard Emergency Response Act (AHERA) of 1986 that requires, among other things, states to adopt rules requiring contractors and workers conducting asbestos abatement projects in any public or private K-12 school in the U.S. to be trained and accredited to USEPA and/or state standards prior to performing abatement work. These proposed rules would satisfy part of the state requirements under AHERA.

In addition, under AHERA, schools must inspect their facilities for asbestos-containing material, develop an asbestos management plan, and submit the plan to the state for approval by October 12, 1988. The state (in Oregon, the Department of Education) is required to approve or disapprove the plans within 60 days of receipt. Schools must then begin implementation of their plans by July 1989. Federal legislation (SB 981) is pending that would require many of the AHERA requirements for all publicly accessed buildings.

The 1987 Oregon Legislature adopted ORS Chapter 741 requiring the Commission to adopt rules relating to asbestos control by July 1, 1988. The Commission is required to:

1. Establish an asbestos abatement control program through contractor training and licensing, and worker training and certification, to include:

    a. Criteria for contractor training and licensing
    b. Criteria for worker training and certification
    c. Standardized training courses
    d. Procedure for inspecting asbestos abatement projects

The Commission must specifically address as a separate class, those contractors and workers who perform small scale, short duration renovating and maintenance tasks.

2. Establish the date, not later than December 31, 1988, after which a contractor or worker must be licensed or certified.

3. Establish criteria for granting extensions beyond December 31, 1988, for mandatory licensing and certification.

4. Establish a schedule for fees to support the asbestos control program.

The proposed rules are intended to establish an asbestos abatement control program that is compatible with other related federal and state asbestos regulations. To gain federal approval under AHERA of the Oregon contractor and worker training, licensing and certification program, the Department proposes to use the minimum training and licensing requirements established by USEPA under AHERA. To maintain compatibility with Oregon Accident Prevention Division (APD) rules, the Department proposes to update asbestos project work practice and engineering control standards to include contractors not presently regulated by APD. Additional program elements are being developed in consultation with the Oregon Asbestos Advisory Board (OAAB).

The OAAB was created by ORS Chapter 741, Oregon State Laws 1987, to:

1. Review and advise the Commission on proposed rules relating to the training, licensing and certification program,

2. Recommend methods of reciprocity with other states' programs,

3. Recommend methods to facilitate interagency coordination in asbestos-related manners.

The Board consists of 11 members: six from state agencies, two representing business, two from the public, and one from organized labor. The Board has met six times since October to advise the Department on the practicality of the program design.

To date, the Board has specifically addressed and made recommendations to the Department on the following topics: affected projects, affected persons, and training requirements. The Board has generally addressed but has not made formal recommendations to the Department on the following topics: training provider accreditation, grandfathering of prior training and reciprocity with other states, work practices and engineering controls, project inspections, and fees. The Board has not yet held discussions or provided recommendations to the Department on the following topics: effective dates and extensions, amendments to the Oregon NESHAPS rules, or the role of Regional Air Pollution Authorities.

The Board is expected to review the draft rules at a meeting on January 12, 1988.

The Department is requesting authorization to conduct public hearings even though the Draft Administrative Rules are still being reviewed by the Advisory Board. The Department will submit a copy of the draft rules to the Commission members at the time the draft rules are made available to the public as part of the public hearing notice.

By statute, the Commission has until July 1, 1988, to adopt the proposed rules. The Department would like to move toward an April 29, 1988, adoption. This would provide as much time as possible for affected parties to become trained and licensed or certified by the December 31, 1988, mandatory date.

The proposed rule adoption schedule would then be as follows:

- Request Authorization for Public Hearings on January 22.
- Hold Public Hearings on Proposed Rules during first week of March 1988.
- Request Legislative Emergency Board approval of additional asbestos staffing on March 24, 1988.
- Request Rule Adoption by Commission on April 29, 1988.

The Department plans to go to the Legislative Emergency Board for two purposes:

(1) Provide information on the possible program fee schedule, and

(2) Request authorization to expand asbestos program by adding more field inspectors to the staff.

The Department is, therefore, requesting authorization to conduct public hearings concerning the proposed adoption of new asbestos control rules and the proposed adoption of amendments to the existing Hazardous Air Contaminant Rules for Asbestos. A Statement of Need and Statement of Land Use consistency are attached.

The Commission is authorized to adopt asbestos abatement control rules by ORS Chapter 741, Oregon State Laws 1987 (House Bill 2367, 1987 Oregon Legislature).

A brief summary of the proposed new rules and amendments follows:

Summary of Proposed Rules and Alternatives

A. Affected Projects

The proposed rules would apply to all work, including demolition, renovation, repair, construction, or maintenance activity of any public or private facility that involves the removal, encapsulation, repair, enclosure, salvage, handling, or disposal of any asbestos-containing material which could potentially release asbestos fibers into the air.

The statute exempts projects performed in private residences if the project is performed by the owner/occupant. The rule will propose to exempt vehicle brake and clutch repair projects because the Accident Prevention Division already has a specific program that addresses these sources of asbestos fiber releases.

Asbestos abatement projects would be categorized into full-scale projects and small-scale projects. Small-scale projects would be those asbestos removal, renovation, encapsulation, repair, or maintenance procedures that disturb small amounts (for example: less than 10 linear feet or 11 square feet) of asbestos-containing material, and that are not large projects subdivided into smaller units in order to avoid the more rigorous work practices associated with large-scale projects. Examples of small scale projects are removal of small quantities of asbestos-containing insulation on pipes prior to a pipe valve repair task, and the removal of a small quantity of dry wall that contains asbestos. Persons performing small-scale projects may use less costly and less complex work practices.

The Commission, by statute, must address separately the training and licensing requirements placed on those persons performing small-scale projects. The OAAB is addressing this issue and will make recommendations to the Commission concerning the cut-off between large and small-scale projects and the training and licensing requirements linked to each category.

Establishing the cutoff between large and small-scale projects is an important issue. The issue is important because it will drive the decision that sets the level of training required for persons performing small-scale projects.

There are potentially over 1,000 persons who might choose to work on small-scale projects as a part of their trade and, therefore, will require training. The length, type and availability of training for these people will be an issue in terms of cost and practicality.

The Board, at this point, is in favor of requiring two days of formal training and licensing/certification for anyone conducting these small-scale projects. Two days' training is required under federal AHERA standards, for persons working in schools, however, the training providers need not be formally accredited by EPA or the states, nor do the trainees need formal certification.

The Department is exploring, with the Board, other ways of minimizing fiber releases from these small-scale projects that do not necessarily rely upon formally approved training certification.

B. Affected Persons

The rules would require contractors performing asbestos abatement projects to be licensed. Separate licenses may be required for contractors performing only small-scale projects. Supervisors and workers involved in large-scale projects would be certified. Workers on small-scale projects could also be certified. Facility owners intending to perform an asbestos abatement project would be required to either hire a licensed contractor or use appropriately trained and certified employees to conduct an abatement project.

The Department projects the following number of persons would be licensed or certified by 1988-89:

Large Projects		Small-Scale Projects	
Contractors	40	Contractors	30
Supervisors	100	Workers	1000
Workers	500		

To gain a license or certificate, a person would have to successfully complete a training course approved by the Department.

The Department and OAAB agree upon the proposed method (training, licensing, and certifying) of regulating those contractors, supervisor, and workers performing large-scale abatement projects. However, as described in A above, the method of regulating those persons performing small-scale projects has not yet been settled.

In Oregon alone, there are approximately 100,000 trades people who in the course of their normal work might disturb asbestos-containing material. If they choose to work with asbestos-containing material, they must first be able to identify the material. If they decide to proceed with a small-scale asbestos abatement project, would they fall into the regulated group that would need to be trained and licensed or certified.

Liability issues, regulatory compliance, and health considerations may keep most of the tradespeople from choosing to perform these projects. They would then call in a trained and licensed abatement contractor to handle the asbestos-containing material prior to beginning their own work.

C. Effective Dates and Extensions

The Commission must establish the date, no later than December 31, 1988, after which a contractor must be licensed and a worker must hold a certificate prior to performing an asbestos abatement task. The proposed rules would establish December 31, 1988, as that date, which would provide six to eight months for training courses to be approved, and persons to be trained, certified and licensed.

The Commission must establish criteria for granting extensions beyond December 31, 1988, for mandatory licensing and certification. The proposed rules would allow the Commission to grant a time extension if:

(a) Accredited training required for any of the categories of licensing or certification is not available in the State, and

(b) There is a public health or worker danger created due to the lack of appropriately licensed or certified persons to properly perform asbestos abatement activities.

D. Training Requirements

Training requirements would be specified for each category of contractor or worker. The training standards the Department is proposing are the minimum standards required by EPA under AHERA for asbestos abatement activities in schools. These requirements are becoming the national training standards. The Department proposes to adopt these standards as guidelines, so that as the national AHERA standards change, adjustment of training curriculum may proceed quickly without formal amendments to the rules. The standards would be compatible with the training required by the Oregon Accident Prevention Division (APD) regulations (OAR Chapter 437).

Training would range from two days for small-scale project workers to a minimum of four days for contractors and supervisors on large projects. Each training course would be required to provide hands-on skill training and an examination. Upon successful completion of the training, a worker would be certified by the course provider, and a contractor would be eligible to apply to the Department for a license.

Under AHERA, annual refresher training is required for large-scale project contractors, supervisors, and workers. The Department would adopt this requirement. Licenses and certifications would expire every year or every two years, respectively.

The OAAB and the Department have addressed the training requirements and have agreed upon the requirements for contractors, supervisors, and workers on large-scale projects. The primary unresolved issue related to training requirements is the amount of training that should be required for contractors and workers performing the small-scale projects.

Presently, the OAAB has recommended a formal two-day minimum training course that would be generally patterned after the federal AHERA standards. At least one of the two days would be devoted to hands-on skill training. The primary factors guiding the training requirements are practicality, cost, and availability of the training for the people who may choose to be licensed/certified at the small-scale level.

The Department recognizes a need for a strong awareness and education effort for the thousands of tradespeople who may encounter asbestos, but is not yet convinced that a full two-day training session is necessary for all tradespeople who will encounter asbestos-containing material.

E. Training Provider Accreditation

Training could be provided by any person, consulting firm, union or trade association, educational institution, public health organization or other entity accredited by the Department. The provider must satisfactorily demonstrate through application and submission of course agenda, faculty resumes, training manuals, examinations, equipment inventory, and performance during on-site audits by the Department that the minimum training provider requirements are met. Upon approval of a training course, the provider would be granted accreditation by the Department. Only those persons attending an accredited course would be eligible for licensing or certification.

F. Grandfathering of Prior Training, and Reciprocity with Other States

The 1987 Legislature suggested that training received prior to the adoption of these rules, if the training was adequate, should be recognized by the Department for licensing and certification purposes in order to avoid duplicate training and to minimize training costs to affected parties. Therefore, the proposed rules would allow a contractor or worker who successfully completed training between January 1, 1987, and rule adoption to seek approval of the prior training to satisfy licensing and certification requirements. The Department must first determine that the training received would meet the minimum initial training requirements set for Oregon under these proposed rules. The person would then be required to complete the appropriate refresher course in order to gain knowledge of Oregon laws and regulations relating to asbestos.

These rules, if adopted, would also allow the Department to establish reciprocity with other states for purposes of training, licensing, or certification. The Department would first have to determine that the standards of the other states were at least as stringent as those required in Oregon.

G. Work Practices and Engineering Controls

The Department is proposing to update the asbestos abatement project work practices and engineering controls to be consistent with the Oregon Accident Prevention Division (APD) regulations in OAR Chapter 437, Divisions 83 (Construction) and 115 (Asbestos). These work practices are national Occupational Safety and Health Administration regulations adopted by Oregon. APD regulations affect only those situations where there is an employer-employee relationship. Self-employed contractors and partnerships without employees are, therefore, unregulated by APD and, thus, are exempt from complying with these work practices. This group includes many of the small HVAC, electrical, and home remodeling contractors that frequently disturb asbestos-containing material in the course of their work.

Many of the asbestos abatement projects are conducted by people not subject to the APD regulations, therefore, they are not required to use the state-of-the-art asbestos project work practices and engineering controls that were developed to protect workers, their families, and the public health from asbestos exposure.

EPA adopted the same standards for government employees performing asbestos abatement. The Department proposes to adopt these same standards so that anyone performing this work would be required to employ at least the minimum work practices and engineering controls that are required to protect public health.

H. Amendments to Hazardous Air Contaminant Rules for Asbestos (OAR 340-25-465, National Emission Standards for Hazardous Air Pollutants, NESHAPS)

The Department proposes to amend the existing regulations (NESHAPS) that were delegated by the USEPA to the Department in 1975. The proposed amendments would update the rules to meet EPA requirements and provide consistency with the proposed asbestos rules for contractor licensing and worker training.

The definitions of "asbestos," "asbestos material," and "friable asbestos material" would be amended to reflect the most current EPA definitions of these terms.

The existing regulations require advance notification to the Department of intended demolition or renovation activities so that related asbestos abatement activities are known to the Department. The proposed amendments would specify a 10-day minimum advance notice where no time requirement is now specified. This notice requirement is consistent with federal

guidelines. Facility owners that now must report each time they intend to perform even a small-scale project would be allowed to report past quarter activities and upcoming quarter plans for performing these projects.

The proposed amendments would also reduce the number of facilities in which asbestos abatement is exempt from compliance with existing regulations. Presently, residences with three units and fewer are exempt. Proposed amendments would exclude only those projects conducted by owner occupants in their own residence.

I. Project Inspections

The proposed rules would allow the Department to conduct compliance inspections by entering training course classrooms, and abatement project work areas as needed. In addition, the Department would be able to accept evidence of violations of the rules from representatives of other agencies, specifically the APD and Regional Air Pollution Authorities. Inspections could include a request for proof that a training provider, contractor or worker is properly accredited, licensed or certified, as required.

Violators may be penalized by revocation or suspension of accreditation, licenses or certificates, and/or by civil penalty fines.

J. Fees

The Commission is authorized to establish a fee system to support administrative and compliance assurance activities by the Department. The Commission may set fees for training course accreditation, licensing and certification, and project notices. The fee structure contained in the proposed rules is based upon the revenues required to operate the program.

Fees have not yet been determined. The actual dollar values will depend upon the extent of regulation of the small-scale, short-duration contractors and workers. However, the Department informed the Legislature that accreditation fees would not exceed $1000/yr; license fees would not exceed $300/yr; and certification fees would not exceed $50/yr. Project notification fees were not specified but would probably not exceed $1000/project, depending upon the size and scope of the project. Projects in single family residences would not be assessed a fee.

Total fee revenues required (in addition to available EPA grant money) to operate the asbestos program would be approximately $465,000 for the 1988-1990 biennium.

K. Regional Air Pollution Authority

Regional Air Pollution Authorities may be delegated specific functions of this program. The proposed rules would allow Lane Regional Air Pollution Authority (LRAPA) (the only regional air pollution authority in Oregon) to establish, collect, retain, and expend project notification fees generated

in their jurisdiction. Regional Authorities would inspect for compliance and enforce the rules concerning project work practices and engineering controls, amended NESHAPS standards, and licensing and certification regulations. Regional Authorities would not have authority to approve, deny, suspend or revoke training accreditation, licenses, or certificates.

Summation

1. The 1987 Legislature created an asbestos abatement contractor and worker training, licensing and certification program that would be compatible with existing federal and Oregon regulations. This health protection-oriented program would satisfy part of the federal requirement for Oregon to adopt an asbestos abatement contractor and worker training and licensing program. The legislation requires the Commission to adopt the program rules by July 1, 1988.

2. The Oregon Asbestos Advisory Board (OAAB) created by the 1987 legislature is assisting the Department in developing rules to implement the program.

3. The Department is proposing new asbestos rules regarding: contractor and worker training, licensing and certification; training provider accreditation; training standards; asbestos abatement work practice standards; and fees. The Department is proposing to use the USEPA required minimum training standards, and Oregon APD work practice standards where applicable. The Department proposes that existing asbestos regulations be amended to update the rules and to maintain compatibility with the proposed contractor licensing and worker training requirements.

4. The effective date for mandatory licensing and certification would be January 1, 1989.

5. The Department requests authorization to conduct public hearings on these matters. Proposed rules will be available to the Commission and the public at least 30 days prior to public hearings. The public hearings would be held in early March 1988.

6. The Commission is authorized to adopt asbestos abatement control rules by Chapter 741, Oregon Laws 1987 (House Bill 2367, 1987 Oregon Legislature).

Director's Recommendation

Based upon the summation, it is recommended that the Commission authorize the Department to conduct public hearings to take testimony on proposed asbestos control rules concerning contractor licensing and worker training, and proposed amendments to the Hazardous Air Contaminant Rules, OAR Chapter 340, Division 25, Section 465.

Lydia Taylor
Fred Hansen

Attachments: I. Statement of Need for Rulemaking
II. Statement of Land Use Consistency

Phil Ralston:
229-5517
January 7, 1988

PR:k
AK178 (1/88)

Attachment I
Agenda Item H
1/22/88 EQC Meeting

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF ADOPTING NEW RULES, AND AMENDING OAR CHAPTER 340; DIVISION 25	)))	STATEMENT OF NEED FOR RULEMAKING

STATUTORY AUTHORITY:

Chapter 741, Oregon Laws 1987 requires the Commission to adopt rules to:

(1) Establish an asbestos abatement program that assures the proper and safe abatement of asbestos hazards through contractor licensing and worker training.

(2) Establish the date, no later than December 31, 1988, after which a contractor must be licensed and a worker must hold a certificate prior to performing asbestos abatement tasks.

(3) Establish criteria and provisions for granting an extension of time beyond December 31, 1988, for contractor licensing and worker certification.

(4) Establish a schedule for fees to support the asbestos control program.

NEED FOR THE RULES

Improper disturbance of asbestos-containing materials during facility renovation and demolition is a primary cause of high concentration asbestos fiber releases to the atmosphere. There is no known safe level of exposure to asbestos, therefore, all asbestos exposure should be avoided if possible. Many contractors and workers do not know how to identify asbestos-containing materials, and do not have the skills to properly work with and handle the material.

The 1987 Oregon Legislature recognized that proper training of people working with asbestos should provide the knowledge, skills, and incentive to protect the health of workers, their families, facility occupants, neighbors, and the public from inadvertent exposure to asbestos fibers.

The federal Asbestos Hazard Emergency Response Act (AHERA) of 1986 requires states to adopt, among other things, rules requiring training and accreditation for asbestos abatement contractors and workers in all public

and private K-12 schools. These proposed rules satisfy part of the state requirements under AHERA. The proposed rules would also provide work practice standards for asbestos abatement contractors and workers who are not presently regulated.

PRINCIPAL DOCUMENTS RELIED UPON

- ORS Chapter 741, Oregon Laws 1987.
- Federal Asbestos Hazard Emergency Response Act (AHERA) of 1986.
- AHERA implementation rules, specifically the "Model Accreditation Plan" published in the Federal Register of April 30, 1987 (40 CFR, Part 763).
- Existing Oregon Administrative Rules:

  *Hazardous Air Contaminant Rules for Asbestos: OAR Chapter 340, Division 25, Section 465.

  *Oregon Occupational Safety and Health Standards for Construction: OAR Chapter 437, Division 83.

  *Oregon Occupational Safety and Health Standards for Asbestos: OAR Chapter 437, Division 115.

The proposed rules and principal documents are available to interested parties at any of the Department of Environmental Quality offices in the state.

FISCAL AND ECONOMIC IMPACT

The new, more stringent regulations will increase the costs of asbestos abatement in this state for both public and private entities. Therefore, the public will experience an increase in the cost of building renovation. However, costs associated with basic training, and work practice standards and engineering controls for persons conducting asbestos abatement in schools will occur regardless of the proposed rules because they are required by federal AHERA standards. Likewise, training and specific work practice standards are presently required of persons regulated by APD rules.

Training costs may range up to $750, depending on the training course provider and level of training. Contractor licenses may range up to $300/yr, depending upon the level of license sought. Worker certification may range up to $50/yr, depending upon the level of certification sought. Project notification fees may range up to $1,000/project, depending upon the type of facility and/or the size of the project. Training course accreditation may range up to $1,000, depending upon the level of training offered. Laboratory analysis of materials suspected to contain asbestos

cost up to $50 per sample. Asbestos abatement project work practice and engineering control costs are not affected by these rules since they are dependent upon the rules adopted by the Oregon Accident Prevention Division.

The Department encourages interested parties to comment on the Fiscal and Economic Impact Statement, as well as the proposed rules.

PR:k
AK178.1 (1/88)

Attachment II
Agenda Item H
1/22/88 EQC Meeting

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF ADOPTING NEW RULES, AND AMENDING OAR CHAPTER 340; DIVISION 25	)))	LAND USE CONSISTENCY

The Department has concluded that the proposal conforms with Statewide Planning Goals and Guidelines. Specifically, the proposed rules comply with Goal 6 because the proposal ensures the proper and safe management of asbestos abatement projects and thereby provides protection for air, water, and land resource quality.

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

Public comment on any land use issue involved is welcome and may be submitted in the manner described in the accompanying public notice of Rules Adoption.

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 conflicts thereby brought to its attention.

PR:k
AK178.2 (12/87)

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item I, January 22, 1987 EQC Meeting

Request For Authorization to Conduct Public Hearings on Proposed Amendments to the General Groundwater Quality Protection Policy, OAR 340-41-029: General Policies, Groundwater Quality Management Classification System, Point Source Control Rules, Nonpoint Source Control, and Groundwater Quality Standards

Background

It is the public policy of the state as defined in Oregon Revised Statute (ORS) 468.710 to protect and improve public water quality for beneficial uses including: "public water supplies, for the propagation of wildlife and fish, and aquatic life, and for domestic, industrial, municipal, recreational and other beneficial uses." ORS 468.710, 468.715, and 468.720 go on to further state that "no waste be discharged to waters of the state without first receiving necessary treatment..."; that "all available and necessary methods" be used to prevent pollution and that waste not be allowed to "escape or be carried into the waters of the state by any means." ORS 468.700(7) includes in its definition of wastes "...substances which will or may cause pollution or tend to cause pollution of any waters of the state." "ORS 468.700(8) includes in its definition of waters of the state "...underground waters..."

Groundwater contamination can ruin groundwater as a resource for hundreds and even thousands of years. The contamination gradually will spread, affecting larger and larger areas, and eventually affecting the water quality of surface water discharge points. Groundwater provides the base flow for Oregon's lakes and streams.

Until recently, groundwater was thought to be relatively safe from pollution because of the treatment and filtration capacity of the soils and geologic materials above the aquifers. A new awareness of groundwater vulnerability along with increased analytical capabilities have resulted in increased groundwater quality assessment activities. These assessment activities have revealed that contamination is affecting more groundwater than was previously suspected. The number of known groundwater contamination areas in the state has increased over the last few years from a few to well over two-hundred, and the list is growing at a steady rate. Similar trends have been noted in other states throughout the nation.

The Environmental Quality Commission adopted a State-wide Groundwater Quality Protection Policy in August 1981. This Policy provided the Department of Environmental Quality with an overall strategy for protecting groundwater quality. It created the basic framework into which the Department integrated its groundwater quality program protection requirements. Adoption of the policy has been the foundation of the state's groundwater quality protection effort.

Since its adoption, however, the Department has experienced some difficulty in applying the general policy statements to specific complex groundwater problems. This has been particularly true in areas where groundwater problems are suspected, problem severity must be determined, and appropriate remedial actions devised and implemented. These difficulties have highlighted weaknesses in the existing groundwater policy and the Department's implementation program.

In response to these problems, the Department conducted a thorough evaluation of the General Groundwater Quality Protection Policy, evaluated its strengths and weaknesses, and evaluated various groundwater quality management alternatives that could be used to solve those problems. This analysis is contained in a discussion paper (Attachment A). The discussion paper was circulated for review and comment both within the Department and to members of the Interagency Advisory Committee for Groundwater Quality Protection.

A citizens advisory committee was formed to assist the Department in evaluating the need for modifications in the General Groundwater Quality Protection Policy. The committee assisted the Department in the development of the proposed amendments to this policy. The committee membership list is attached (Attachment B).

The following problems were identified in the then current General Groundwater Quality Protection Policy:

Problems with Existing Policy

1. The most significant statement contained in the policy is General Policy statement OAR 340-41-029(1)(a);

> "It is the responsibility of the EQC to regulate and control waste sources so that impairment of the natural quality of groundwater is minimized to assure beneficial uses of these resources by future generations."

This is a broad statement, and sets the overall groundwater quality management goal for the Department. There are, however, several phrases and words in this statement that are open to interpretation. These need definition and clarification. They are:

a. "impairment"

b. "natural quality"

c. "minimize"

d. "beneficial uses"

2. No formal water quality standards have been set for groundwater as has been for surface waters.

3. All aquifers of the state are not naturally suitable for the same beneficial uses. To maintain or protect existing and potential uses, different levels of protection may be necessary. The present policy does not address this problem.

4. The source control policies section states that highest and best practicable methods will be used to minimize pollutant loading to groundwater. It does not define what these methods are, nor does it establish the criteria by which the Department can evaluate highest and best practicable treatment.

5. Section 2(e) of the existing policy states that nonpoint sources shall use "best management" practices to minimize groundwater degradation. In many cases, best management practices and methods of implementation have not been developed for groundwater, as they have been for surface water.

6. Section (3) addresses problem abatement policies. It lacks guidance, however, in several key areas: (1) What determined the level of water quality that should be targeted? (2) Where should compliance be measured? (3) How should compliance be measured? (4) What should be done about groundwater degradation from past practices or nonpoint sources.

7. The present policy does not adequately stress the importance of contamination prevention.

8. The present policy does not clearly establish a common base for the groundwater quality protection activities of the various Department programs. Overlapping and inconsistent groundwater quality protection requirements are currently contained in the following Department administered programs:

   a. Solid Waste

   b. Water Quality

   c. RCRA

   d. CERCLA

   e. Spill Response

As a result of agency meetings, interagency meetings, citizens advisory committee meetings, and review of the existing policy (OAR 340-41-029), the following elements were identified as being essential goals of a revised policy:

Goals for Revised Policy

1. Maintain existing high-quality groundwater to meet both present and future beneficial use needs.

2. Identify the beneficial uses for which groundwater shall be protected.

3. Establish mandatory minimum groundwater quality protection requirements that would apply regardless of program or type of source. This goal is to remedy existing inconsistencies on how groundwater protection is applied.

4. Establish a consistent and scientifically valid method for determining if an activity or activities were significantly affecting groundwater quality.

5. Establish a consistent and thorough process for assessing contamination impacts on present or potential future beneficial uses, and determining levels of contamination that could safely be allowed.

6. Adopt, where possible, numerical groundwater quality standards to help guide staff and the regulated community in assessing the potential impact of contamination, and in determining appropriate clean-up levels.

7. Develop a policy that recognizes that all groundwaters are not naturally suitable for all beneficial uses, and that some aquifers, because of value or sensitivity, require extra protection, and that alternative management policies may be appropriate for different aquifers.

Major Elements in Proposed Rule Amendments

The proposed amendments combine elements from each of the alternative groundwater quality management approaches discussed in Attachment A. The specific rule language proposed is contained in Attachment G. For the most part the entire policy was rewritten. There were, however, portions of the existing General Groundwater Quality Protection Policy that were included in the proposed amendments. Most important among these, was the concept that impairment of groundwater quality should be minimized to assure beneficial use of the resource by future generations. The major elements in the proposed rules are summarized as follows:

1. Change the name of the section from "General Groundwater Quality Protection Policy" to "Groundwater Quality Protection". The regulations contained in OAR 340-41-029 are the groundwater quality regulations the Department uses to ensure groundwater quality protection. It became evident early in the discussions on the policy that the word policy connoted to some people that they were only guidelines and not rules.

2. Exempts removal and remedial actions conducted pursuant to Oregon Laws 1987 Chapter 735 (State Remedial Action Program) from the requirements of the proposed rules. The 1987 Oregon Legislature passed Senate Bill 122. That Legislation establishes a program for the removal and remediation of hazards to the public health, safety, welfare, and the environment. Contained in the Bill was the requirement for the Director to establish a Remedial Action Advisory Committee to make recommendations to the Director in establishing the levels, factors, criteria or other provisions for determining the degree of cleanup, and the selection of the required remedial action. A number of specified factors have to be considered in that process.

3. Reorganize the Basic Format. The existing Groundwater Quality Protection Policy contains an opening statement and the following three sections:

   a. (1) General Policies

   b. (2) Source Control Policies

   c. (3) Problem Abatement Policies

The proposed amendments contain three new sections and delete the problem abatement section. They are as follows:

a. (1) General Policies

b. (2) Groundwater Quality Management Classification System

c. (3) Point Source Control Rules

d. (4) Nonpoint Source Control

e. (5) Groundwater Quality Standards

The problem abatement policies are incorporated within the framework of the above sections.

4. Opening Statement: The amended opening statement would state that the rules establish the mandatory minimum groundwater protection requirements. By way of comparison, the existing opening statement says, "The following statements of policy are intended to guide...".(emphasis added)

5. The General Policies Section:

   a. Identifies beneficial uses of groundwater, with drinking water supply identified as being the highest and best use.

   b. Establishes that it is the policy of the EQC to maintain the highest possible groundwater quality, and protect it from contamination that could impair its beneficial uses.

   c. Establishes that the Department will implement its groundwater quality protection efforts based upon its priorities and resources.

   d. Identifies the authorities by which groundwater problem abatement measures may be implemented.

6. The proposed amendments contain a Groundwater Quality Management Classification System. The purpose of this system would be to allow the Environmental Quality Commission to classify groundwaters according to the management requirements determined to be necessary for that particular aquifer. For example, in certain areas of the state the natural groundwater quality is unsuitable for drinking. In those cases, it does not make sense to require certain groundwater protection requirements that are designed to protect the drinking water use of groundwater, such as, certain on-site sewage disposal rules. In other areas, unique uses or sensitivities of the groundwater may require that extra groundwater quality protection be implemented.

It is important to note that the system would be used to determine how the groundwater is to be managed, and is not a system that would classify groundwater strictly according to its quality. Therefore certain areas within a classification could contain groundwater that would be unsuitable for the use for which groundwater is being managed in the area.

The classification system contains three classes; I, II, and III. Class I would be where special groundwater protection is being implemented; Class II would be where standard protection measures are implemented and the groundwater would be managed to provide for its recognized beneficial uses; Class III would be where certain groundwater protection requirements that were designed to protect the groundwater from impairment of drinking water use could be modified.

All groundwater of the state would start out classified as Class II groundwater. The Environmental Quality Commission would then designate areas as Class I, or Class III on a case-by-case basis.

7. Point Source Control Rules: This section contains the specific groundwater protection requirements that would be implemented by the Department where a specific identifiable source or potential source of groundwater contamination could be identified. Consistent with the policy of maintaining highest possible groundwater quality identified in the General Policies section, and as required under water quality standards for each river basin, the highest and best practicable methods for prevention of groundwater contamination would be required. The requirements of the section would be implemented through all relevant Department programs and authorities.

The Point Source Control section contains regulations related to:

a. Permitted Operations:

1) Groundwater Monitoring Program Requirements

2) Reporting Requirements

3) Downgradient Monitoring Point Requirements

4) Compliance Point Requirements

5) Concentration Limits (measured at compliance points)

I. Existing Facilities

II. New Facilities

6) Action Requirements

I. Resampling

II. Assessment Plans

III. Preventative Action

IV. Remedial Action

7) Alternate Concentration Limits

b. Non-permitted activities: Spills, releases, past practices.

The regulations above would establish when groundwater monitoring would be required, when follow-up assessment work would be required, standards for groundwater protection, where those standards are to be measured, and when remediation would be required.

The main policy questions involved in the Point Source Control Rules and the direction given by the proposed policy are:

a. What should the standard be in measuring groundwater quality impacts, and determining what is acceptable and what is not?

While a strict non-degradation policy would provide the most complete groundwater protection, it would be impossible, in the Department's opinion, to implement, because we now realize that humans cannot exist without impacting in some way the environment around them. This has become increasingly apparent as recent advances in analytical technologies have allowed us to detect contaminants at lower and lower concentrations. Basing protection strictly on numerical standards would allow degradation of the groundwater up to the standard. Any additional contamination could result in groundwater exceeding standards. Numerical standards would not necessarily protect existing high quality water.

The proposed rules would establish a tiered system of groundwater protection. For existing facilities, where often there already are groundwater impacts, contamination could be allowed up to established numerical groundwater standards.

For new facilities where there are not any existing groundwater impacts, no significant (statistical determination) impacts on groundwater quality would be allowed. In either case, an exception could be granted by the Department or EQC to allow an alternative concentration limit, provided that the alternate concentration does not create a substantial present or future hazard to human health or the environment.

Certain members of the Citizens Advisory Committee on Groundwater Quality Protection thought that the alternate concentration limit section should include a process so that anyone could go to the Commission and request an alternative concentration limit be established; it could be either above or below the original concentration limit. This suggestion was not included in the proposed amendments. Under the proposed rules, only the permit holder or the Department could make such an application, similar to all other Department programs relative to the rights of permit holders.

b. Where should compliance with groundwater quality standards be measured? As close as possible to the source of contamination? At the property boundary? At the closest point of use?

In establishing the compliance point where standards must be met, the Department is in affect defining the mixing zone that would be allowed by the Department. The proposed rules would establish the compliance point at the waste management area boundary unless otherwise specified by the Department. In the Department's opinion, there will be numerous situations where the location of compliance points should be determined on a case by case basis because of unique characteristics of individual situations.

c. When and to what extent should the Department require remedial action?

Under the proposed rules, the Department could require remedial action sufficient to restore groundwater to specified concentration limits or alternative concentration limits at Department specified compliance points whenever those limits are, or are predicted to be, violated.

d. To what extent should the regulations contain specific, inflexible requirements, or to what extent should the regulations allow the Department to utilize the professional expertise and judgment of the staff in determining specific application requirements?

Certain members of the Citizens Advisory Committee on Groundwater Quality Protection stated that they were

concerned with the amount of discretion that was being given to the Department in how proposed rules would be applied, that this was not necessarily viewed as a bad approach, but, that it could be, depending upon how the Department used that authority. They stated that they recognized that increasing specificity in the rules could result in a lack of ability to tailor requirements to each unique situation.

8. The proposed amendments contain a section that prescribes the process by which the Department would address nonpoint source groundwater concerns. These are areas where no specific individual source of contamination can be identified, but contamination exists because of widespread land use activities, such as, urban development, on-site sewage disposal, or agricultural activity. The section contains procedures for identifying vulnerable areas and developing aquifer management plans to protect groundwater quality.

   The main policy question addressed in this section is how the Department should respond to groundwater degradation that results from activities that are beyond the scope of specific permit program activities.

9. Section (5) in the proposed amendments contains groundwater quality standards. Included are both narrative and numerical groundwater standards.

   The narrative portion states that consistent with the existing anti-degradation policy OAR 340-41-026(1)(a), existing high quality groundwaters which exceed those levels necessary to support recognized and legitimate beneficial uses shall be maintained. This statement along with those in the General Policies section would clearly establish that the goal for groundwater quality management in Oregon would be anti-degradation.

   The proposed numerical standards are based upon the U.S. Environmental Protection Agency's drinking water standards and proposed standards. Human consumption is identified as the beneficial use of groundwater that usually requires the highest level of water quality. The standards are meant to be used as yardsticks in determining the severity of impairment, and not to be used as acceptable groundwater quality goals. They would be used by the Department in establishing concentration limits at compliance points, and in determining remedial action requirements.

They could not necessarily be used in evaluating the potential impact of contamination on other beneficial uses of groundwater. In the Department's opinion there is not an adequate data base upon which to develop groundwater quality standards that could ensure protection of all recognized beneficial uses of groundwater for a significant number of common groundwater contaminants.

The following numbers from the U.S. Environmental Protection Agency drinking water regulations were included as proposed groundwater standards:

a. Adopted Primary Maximum Contaminant Levels.

b. Adopted Secondary Maximum Contaminant Levels.

c. Proposed Primary Maximum Contaminant Levels.

d. Proposed Primary Maximum Contaminant Level Goals.

The Department prepared a number of (5) different drafts of the proposed rules that emphasized different approaches to groundwater quality protection. These alternative approaches are discussed in detail in Attachment A. The Citizens Advisory Committee on Groundwater Quality Protection evaluated the merits of the different alternatives. Each approach has its own unique advantages and disadvantages. The proposed rule amendments developed by the Department staff and the Citizens Advisory Committee contain components from all of these approaches.

The existing rule language and the proposed new rule language are contained in Attachment G. The Department proposes to delete all of the existing language under OAR 340-41-029 and adopt the proposed new language.

Alternatives and Evaluation

The Alternatives are as follows:

1. Authorize the Department to conduct public hearings on the proposed amendments.

2. Do not authorize public hearings...

The Department believes that public hearings are needed to solicit comments and to raise important issues involving groundwater quality protection. Public testimony assists the Department staff in preparing the proposed rule amendments to be presented for Commission consideration and possible adoption.

Summation

1. The Department has had some difficulty in applying the existing General Groundwater Quality Protection Policy.

2. Individual programs have had to develop their own solutions to groundwater quality management. These solutions have not always resulted in consistent groundwater protection requirements.

3. The Department prepared an extensive review of the existing General Groundwater Quality Protection Policy and alternative approaches to groundwater management. This analysis is contained in Attachment A.

4. Beginning with the discussion paper referenced above, and with the assistance of an interagency advisory committee, and a citizens advisory committee, the Department prepared the proposed extensive groundwater quality protection rule revisions.

5. The proposed rule revisions would coordinate groundwater quality protection requirements by establishing minimum groundwater protection requirements. The proposed rules contain: General Policies, Groundwater Quality Management Classification System, Point Source Control Rules, Nonpoint Source Control, and Groundwater Quality Standards.

6. The Department believes that rule amendments are necessary in light of the increasing evidence of groundwater contamination, the potential impact of that contamination on beneficial uses of groundwater, and the difficulty the Department has had in adequately addressing these issues under the existing regulations.

7. The proposed rule amendments are extensive in both scope and potential impact. It should be recognized that the proposed rules are an initial attempt to address a major new area of concern, and that changes and improvements will undoubtedly be necessary as we gain experience in groundwater management. The Department will continue to evaluate proposals submitted and will propose future rule making actions as appropriate. Hearing testimony will undoubtedly raise additional issues which will be discussed as part of the hearing record evaluation and response.

Directors Recommendation

Based on the summation, the Department requests authorization from the Commission to proceed to public hearing to take testimony on the proposed amendments for groundwater quality protection, as presented in Attachment G.

Lydia Taylor for
Fred Hansen

Attachments: (7)

A. Discussion Paper - State Groundwater Quality Protection Program.
B. Membership List - Citizens Advisory Committee On Groundwater Quality Protection.
C. Hearing Notice.
D. Statement of Need for Rulemaking.
E. Fiscal and Economic Impact Statement.
F. Land Use Consistency Statement.
G. Proposed Rule Amendments and Rule References.

Greg A. Pettit:tas
WT13
229-6065
December 28, 1987

ATTACHMENT A

Discussion Paper

STATE GROUNDWATER QUALITY PROTECTION PROGRAM

Statewide Groundwater Quality Protection Policy

Groundwater Program Implementation

Groundwater Quality Standards and Aquifer Classification Alternatives

July 14, 1986

Water Quality Division
Department of Environmental Quality

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State Groundwater Quality Protection Program

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OREGON STATEWIDE GROUNDWATER QUALITY PROTECTION PROGRAM

I.

INTRODUCTION

The Environmental Quality Commission adopted a Statewide Groundwater Quality Protection Policy in August 1981. This policy provided the Department of Environmental Quality with an overall strategy for protecting groundwater quality. It created the basic framework into which the Department integrated its programs controlling waste discharges to groundwater. Since its adoption the policy has been the foundation of the state's groundwater quality protection effort.

Recently, however, the Department has experienced some difficulty in applying the general policy statements to specific complex groundwater problems. This has been particularly true in areas where groundwater problems are suspected and problem severity must be determined and appropriate remedial actions implemented. These difficulties have highlighted weaknesses in the existing groundwater policy and the Department's implementation program.

The purpose of the following report is to describe: (1) the existing statewide groundwater quality protection policy, (2) the Department's current policy implementation efforts, (3) the present policy weaknesses and implementation difficulties, (4) the groundwater programs of other

states, and finally (5) the potential groundwater quality standards and classification alternatives which could be established and how they are implemented.

II.

OREGON STATEWIDE GROUNDWATER QUALITY PROTECTION POLICY

Background

During the past ten years, the Department has presented to the Environmental Quality Commission several groundwater problems that resulted from different waste sources. These problems generally occurred where waste disposal sites or practices placed contaminants onto or into permeable soils allowing contaminants to migrate to and subsequently pollute nearby aquifers. The Commission and Department have examined these problems on a case-by-case basis and developed and adopted specific control requirements on a site-by-site basis. The actions taken by the Commission and Department to develop and adopt a Clatsop Plains aquifer protection plan is an example of this type of effort. However, as public interest and concern for groundwater quality grew there was a significant increase in groundwater protection legislation and regulation activities. Eventually, it became apparent there were severe limitations in the case-by-case approach. The Department's programs and regional offices were addressing an increasing number of problems and consistent regulatory response was becoming difficult. The lack of a comprehensive protection approach was affecting the Department's ability to protect the resource. If the Department was to effectively deal with groundwater contamination, it needed to establish an overall protection policy upon which groundwater quality protection actions would be based.

In the winter of 1979, the Environmental Quality Commission directed the Department to prepare a draft Statewide Groundwater Quality Protection Policy which would clarify and strengthen the groundwater protection program.

The Department in response to the Commission's directive presented a proposed Statewide Groundwater Quality Protection Policy to the Environmental Quality Commission in the Spring of 1980. The Commission then directed the Department to undertake a public review of the proposed policy. After a series of statewide public meetings, the Department revised the policy and presented it to the Commission in August 1981 where it was adopted as Oregon Administrative Rule 340-41-029.

Since its adoption, the Department has utilized the groundwater quality protection policy to guide its regulatory decisions to minimize groundwater contamination. In 1984, the Water Quality Division developed policy revisions to improve guidance for problem abatement activities. These revisions were adopted by the Commission in June 1984.

Presentation of Groundwater Policy

The present groundwater policy (OAR 340-41-029) is divided into three major Sections: General Policies, Source Control Policies, and Problem Abatement Policies. The following chapter discusses the specific contents of each policy section.

General Policies

The General Policy Section has five specific policy statements.

The first statement reads as follows:

(a) "It is the responsibility of the EQC to regulate and control waste sources so that impairment of the natural quality of groundwater is minimized to assure beneficial uses of these resources by future generations."

This statement identifies the intent of the Environmental Quality Commission to minimize the impairment of natural ground water quality* in order to assure beneficial** use of these resources by future generations. This statement is the cornerstone of the entire policy. It establishes the Commission's intent to control waste discharges to protect an aquifer's beneficial uses.

The second statement reads:

(b) "In order to assure maximum reasonable protection of public health, the public should be informed that groundwater --

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* The groundwater policy did not define the term to "minimize the impairment of natural water quality." The Department needs to specifically define this language if it is to have an effective groundwater quality protection program. The words minimize, impairment, and natural have to be defined.

** The groundwater policy does not identify beneficial uses. Neither the Environmental Quality Commission, Department of Environmental Quality, Water Resources Commission or Water Resources Department have formally identified groundwater beneficial uses. The Department if it is to have a workable groundwater quality program must address the issue of beneficial uses. The Department needs to identify what the recognized beneficial uses are relative to groundwater.

and most particularly local flow systems of water table aquifers -- should not be assumed to be safe for domestic use unless quality testing demonstrates a safe supply. Domestic water drawn from water table aquifers should be tested frequently to assure its continued safety for use."

This policy statement identifies the intent of the Environmental Quality Commission to caution the public not to assume that groundwater is safe for domestic use unless quality testing has demonstrated a safe supply. The policy encourages water quality testing of domestic well water, particularly, those wells located in shallow water table aquifers. The general public often assumes, with little or no water quality data, that well water is safe for consumption. The Commission did not want the public to make this assumption, but instead encourages water quality tests to demonstrate a safe supply.

The third statement reads:

(c) "For the purpose of making the best use of limited staff resources, the Department will concentrate its control strategy development and implementation efforts in areas where waste disposal practices and activities regulated by the Department have the greatest potential for degrading groundwater quality. These areas will be delineated from a statewide map outlining the boundaries of major water table aquifers prepared in 1980 by Sweet, Edwards & Associates, Inc. This map may be revised periodically by the Water Resources Department."

This policy statement identifies the Department's resource limitations and priorities for implementing the statewide groundwater control strategy. The policy directs the Department to focus its activities on those aquifers which have the greatest potential for contamination. The policy identifies

the major water table aquifers map prepared for the Department in 1979 as the starting point for priority activity.*

The fourth statement reads:

> (d) "The Department will seek the assistance and cooperation of the water Resources Department to design an ambient monitoring program adequate to determine long-term quality trends for significant groundwater flow systems. The Department will assist and cooperate with the Water Resources Department in their groundwater studies. The Department will also seek the advice, assistance, and cooperation of local, state, and federal agencies to identify and resolve groundwater quality problems."

This policy statement directs the Department to seek the assistance and cooperation of the Water Resources Department in designing an ambient groundwater monitoring program. Unlike surface waters which have an established statewide monitoring network to characterize and evaluated quality changes, groundwater is not monitored on a statewide basis.** Groundwater Monitoring is presently conducted on a problem-by-problem basis and is usually confined to relatively small geographic areas or individual contamination sources.

The fifth statement reads:

> (e) "The EQC recognizes and supports the authority and responsibilities of the Water Resources Department and Water Policy Review Board in the management of groundwater and protection of groundwater quality. In particular, existing programs to regulate well construction and to control the

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* Instead of identifying a specific resource for staff to use, the policy should encourage using the most up-to-date information available and the professional judgment of the Department's staff.

** There has been considerable discussion since this policy was adopted on the value of a statewide groundwater monitoring program. This issue is still being debated.

withdrawal of groundwater provide important quality protective opportunities. These policies are intended to complement and not duplicate the programs of the Water Resource Department."

The final general policy statement recognizes the authorities and responsibilities of the State Water Resources Commission and Water Resources Department to manage groundwater and to protect groundwater quality.

Source Control Policies

The Source Control Section of the policy has five separate policy statements.

The first statement reads:

(a) "Consistent with general policies for protection of surface water, highest and best practicable treatment and control of sewage, industrial wastes, and landfill leachates, shall be required so as to minimize potential pollutant loading to groundwater. Among other factors, energy, economics, public health protection, potential value of the groundwater resource to present and future generations, and time required for recovery of quality after elimination of pollutant loadings may be considered in arriving at a case-by-case determination of highest and best practicable treatment and control. For areas where urban density development is planned or is occurring and where rapidly draining soils overlay local groundwater flow systems and their associated water table aquifers, the collection, treatment and disposal of sewage, industrial waters and leachates from landfills will be deemed highest and best practicable treatment and control unless otherwise approved by the EQC pursuant to subsections (b) or (c) of this section."

This policy statement establishes the broad overall approach for controlling waste sources. It requires the highest and best practicable treatment for the control of sewage, industrial wastes, and landfill leachates to minimize potential groundwater pollution. For areas where urban densities were planned or occurring over rapidly draining soils overlaying water table aquifers the collection, treatment, and disposal of sewage, industrial wastes and landfill leachate was deemed the highest and best practicable treatment and control.

The second statement reads:

> (b) "Establishment of controls more stringent than those identified in subsection (a) of this section may be required by the EQC in situations where:
>
> (A) DEQ demonstrates such controls are needed to assure protection of beneficial uses;
>
> (B) The Water Resources Director declares a critical groundwater area for reasons of quality; or
>
> (C) EPA designates a sole source aquifer pursuant to the Federal Safe Drinking Water Act."

The second policy statement identifies circumstances where the Commission can require more stringent controls than those described in the first source control policy.

The third statement reads:

> (c) "Less stringent controls than those identified in subsection (a) of this section may be approved by the EQC for a specified area if a request, including technical studies showing that lesser controls will adequately protect beneficial uses is made by representatives of the area and if the request is consistent with other state laws and regulations."

The third policy statement identifies the potential for the Commission to establish less stringent controls if sufficient technical data demonstrates that beneficial uses could be protected with less controls.

The fourth statement reads:

(d) " Disposal of wastes onto or into the ground in a manner which allows potential movement to groundwater shall be authorized and regulated by the existing rules of the Department's Water Pollution Control Facility (WPCF) Permit, Solid Waste Disposal Facility Permit, or On-Site (Subsurface) sewage Disposal System Construction Permit, whichever is appropriate:

(A) WPCF permits shall specify appropriate groundwater quality protection requirements and monitoring and reporting requirements. Such permits shall be used in all cases other than for those covered by Solid Waste Disposal Facility Permit or On-site (subsurface) disposal permits.

(B) Solid Waste Disposal Facility Permits shall be used for landfills and sludge disposal not covered by NPDES or WPCF permits. Such permits shall specify appropriate groundwater quality protection requirements and monitoring and reporting requirements.

(C) On-site Sewage Disposal System Construction permits shall be issued in accordance with adopted rules. It is recognized that existing rules may not be adequate in all cases to protect groundwater quality. Therefore, as deficiencies are documented, the Department shall propose rule amendments to correct the deficiencies."

The fourth policy statement identifies the Department's permit programs which will be used to implement the groundwater quality protection policy.*

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* It should be noted that the Hazardous Waste Program and permit were not included in the original groundwater quality protection policy. The Department needs to revise the existing policy to include the Hazardous Waste program.

This includes the Water Pollution Control Facility (WPCF) permit; National Pollution Discharge Elimination System (NPDES) permit; Solid Waste Disposal Facility (SWDF) permit and the on-site waste disposal system permit programs.

The Final Source Control statement reads:

(e) "In order to minimize groundwater quality degradation potentially resulting from nonpoint sources, it is the policy of the EQC that activities associated with land and animal management, chemical application and handling, and spill prevention be conducted using the appropriate state-of-the-art management practices ("Best Management Practices")."

This policy statement identifies the need to utilize best management practices* to minimize groundwater quality contamination from non-point source activities.

Problem Abatement Policies

The Problem Abatement Policies Section has four policy statements.

(a) "It is the intent of the EQC to see that groundwater problem abatement plans are developed and implemented in a timely fashion. In order to accomplish this all available and appropriate statutory and administrative authorities will be utilized, including but not limited to: permits, special permit conditions, penalties, fines, Commission order, compliance schedules, moratoriums, Department orders, and geographic rules. It is recognized, however, that in some cases the identification, evaluation and implementation of abatement measures may take time and that continued degradation may occur while the plan is being developed and implemented. The EQC will allow short-term continued degradation only if the beneficial uses, public health, and groundwater resources are not significantly affected, and only if the approved abatement plan is being implemented on schedule."

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* The policy does not define the term best management practice. The Department needs to do this.

This first policy statement identifies the intent of the Commission to use all available and appropriate statutory and administrative authorities to protect groundwater quality. It also recognizes that short-term groundwater degradation may occur while long-term protection plans are implemented. This can only occur if public health and beneficial uses are not significantly affected.

The second statement reads:

> (b) "In areas where groundwater quality is being degraded as a result of existing individual source activities or waste disposal practices the Department may establish the necessary control and abatement schedule requirements to be implemented by the individual sources to modify or eliminate their activities or waste disposal practices through existing permit authorities. Department orders, or Commission orders issued pursuant to ORS Chapter 183."

This policy statement in this section identifies the abatement approach for existing individual source activities. The approach would rely upon existing permit programs and Department and Commission orders to implement the necessary controls and associated abatement schedules.

The third statement reads:

> (c) "In urban areas where groundwater is being degraded as a result of on-site sewage disposal practices and an areawide solution is necessary, the Department may propose a rule for adoption by the Commission and incorporation into the appropriate basin section of the State Water quality Management plan (OAR Division 41) which will achieve the following:
>
> (A) Recite the findings describing the problem;
>
> (B) Define the area where corrective action is required;
>
> (C) Describe the problem correction and prevention measures to be ordered;

(D) Establish the schedule for required major increments of progress.

(E) Identify conditions under which new, modified, or repaired on-site sewage disposal systems may be installed in the interim while the area correction program is being implemented and is on schedule;

(F) Identify the conditions under which enforcement measures will be pursued if adequate progress to implement the corrective actions is not made. These measures may include but are not limited to the measures authorized in ORS 454.235(2), 454.685, 454.645 and 454.317;

(G) Identify all known affected local governing bodies which the Department will notify by certified mail of the final rule adoption; and

(H) Any other items declared to be necessary by the Commission."

The third policy statement identifies the abatement approach for area-wide problems. It outlines the required procedures to be taken to implement an area-wide groundwater quality management plan.

The final policy statement reads:

(d) "The Department shall notify all known impacted or potentially affected local units of government of the opportunity to comment on the proposed rule at a scheduled public hearing and of their right to request a contested case hearing pursuant to ORS Chapter 183 prior to the Commission's final order adopting the rule."

This final policy statement directs the Department to notify all potentially affected local governmental units about groundwater quality protection decisions and abatement plan in their area and their rights to contest these actions.

Groundwater Quality Protection Program Policy Implementation

In Oregon the primary groundwater quality protection authority rests with the Environmental Quality Commission and the Department of Environmental Quality. The Water Resources Commission and Water Resources Department have the primary responsibility for groundwater quantity with some responsibilities for groundwater quality. The Department implements the Groundwater Quality Protection Policy with the Hazardous and Solid Waste, Water Quality, Laboratory, and Regional Divisions.

The Water Division regulates activities associated with industrial wastes, municipal wastes, on site waste disposal, underground injection, and non-point source pollution. The Hazardous and Solid Waste Division regulates activities associated with industrial and municipal solid waste landfills, spill response; and hazardous waste storage, treatment and disposal facilities. The Laboratory, and Regional Divisions provide monitoring, inspection and enforcement support to these major program areas, and play key roles in program implementation. Figure 1 depicts the organizational structure of the Department, highlighting the Divisions and their groundwater quality protection activities.

Each major program area implements the groundwater policy within the context of its specific program rules. The following sections describes the two major programs: the waste sources they regulate; and the rules each uses to implement its program.

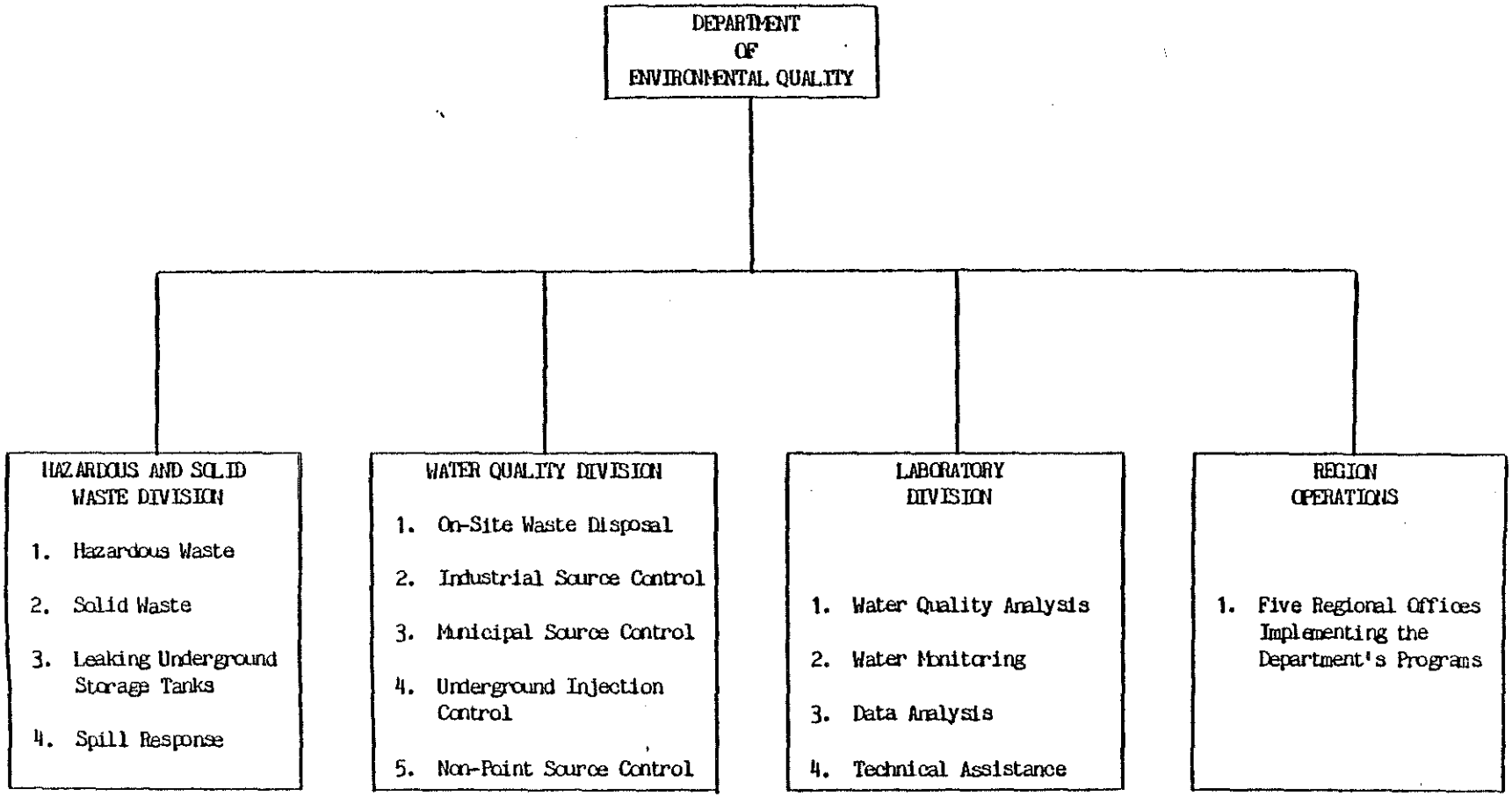

Figure 1. Organizational Chart

Hazardous and Solid Waste Program

The Hazardous and Solid Waste Program has several subprograms each directed at a potential pollution source including landfills, hazardous waste facilities, and spill response.

The Solid Waste Control subprogram described in OAR 340-61 is responsible for permitting landfills throughout the state. The program regulates the siting and management of new industrial and municipal facilities and the management and closure of existing sites. New proposed sites are required to conduct considerable site investigation work including: preliminary and detailed feasibility studies, hydrologic investigations, water quality monitoring, risk assessments and geologic studies. The information generated is analyzed to determine the landfill's potential impacts on ground and surface water resources and to determine the actions needed to assure water quality protection. The Solid Waste Facility Permit is then used to identify and implement the necessary protection systems. At the present time, new landfills and major expansions at existing facilities which pose a threat to ground or surface water quality are required to install synthetic liners and leachate collection and treatment systems.

Existing landfill sites are regulated by permit and the Department may include specific permit conditions that require groundwater protection and monitoring activities. When existing sites are closed, the Department may also require some continued monitoring or remedial action. The difficulties facing the solid waste subprogram are first, having set criteria on which to identify water quality problems associated with

existing sites and second, implementing the appropriate remedial actions to reduce groundwater quality impacts.

The Hazardous Waste subprogram described in OAR 340-100 through 340-110 regulates hazardous waste from "cradle-to-grave" with comprehensive rules covering waste generation, storage, transportation, treatment and disposal with manifests and permits. Groundwater quality protection is one major subprogram element. Extensive groundwater protection requirements are contained in OAR 340-104, OAR 340-105 and in Subpart F of 40 CFR Parts 265 and 264 (Appendix J). Of all the Department's subprograms, the hazardous waste subprogram has the most comprehensive requirements for site characterization and groundwater quality assessment. Specific detection, assessment and compliance monitoring programs are used to identify problems, determine problem extent and evaluate the remedial actions implemented to solve these problems.

Under the hazardous waste subprogram a facility cannot significantly impact background water quality. The subprogram regulations contain the statistical methods to establish background quality and to determine significant impact. All facilities operating or closing under this program are required to obtain a permit which contains detailed groundwater protection and monitoring requirements.

Water Quality Program

The Water Quality Program has several subprograms designed to address

specific source areas. The following paragraphs describe each of these subprograms.

The Sewage Disposal subprogram regulates the installation of individual on-site and municipal wastewater disposal systems. The on-site rules contain: procedures for site evaluation and system installation inspection; alternative waste disposal systems and special groundwater protection requirements. These rules also provide the means to limit or prohibit the installation of on-site waste disposal systems. On-site rule authority has been utilized in groundwater problem areas such as Clatsop Plains, North Florence, River Road/Santa Clara, and in Mid-Multnomah County to limit or prohibit on-site system installation. This subprogram also regulates the waste discharge activities of municipal sewage treatment facilities through the National Pollution Discharge Elimination System (NPDES) and State Water Pollution Control Facility (WPCF) permits.

The Industrial Waste subprogram regulates industrial waste activities through the administration of the National Pollution Discharge Elimination System (NPDES) and the State Water Pollution Control Facility (WPCF) Permits. These permits give the Department the opportunity to require existing, new or expanding facilities, if they are a threat to groundwater, to provide detailed site characterization and groundwater assessment information. This is used to determine what groundwater protection measures should be installed. The permit process provides the opportunity to prevent contamination by requiring that specific groundwater protection and monitoring technologies be implemented. The permit renewal process provides the opportunity to decide if additional protection techniques and monitoring are needed at existing facilities.

The Underground Injection Control (UIC) subprogram regulates waste injection into the ground. It is administered by the Industrial Waste Section. The specific subprogram regulations are described in OAR 340-44. In 1984, the Department received delegation to regulate waste injection into the ground by the U. S. Environmental Protection Agency under the provisions of the Safe Drinking Water Act. This subprogram has established specific waste injection activity classes and has identified the groundwater protection requirements for each class.

The Water Quality Planning subprogram is responsible for developing the necessary information to identify nonpoint source pollution problems and implementing the management programs necessary to minimize their existing and potential contamination. This subprogram has begun to develop nonpoint programs for agriculture, forestry, and urban runoff. The primary groundwater contamination concern from nonpoint sources is the use of chemicals, (fertilizers, pesticides, herbicides, etc.) which may migrate into the groundwater. The primary tool to control this contamination source is the use of best management practices. The land manager must use the best possible approach in applying chemicals to limit potential contamination.

Policy Strengths and Weaknesses

The two previous sections described in general terms the individual policy statements and the Departmental programs implementing these policies. In each section some notation or mention was made of different problems associated with various policy statements and/or the implementation effort.

This section will focus attention on a few key policy statements and the problems associated with their implementation. If the Department is going to have an effective groundwater quality protection program these problems must be addressed.

1. The first general policy statement reads as follows:

> "It is the responsibility of the EQC to regulate and control waste sources so that impairment of the natural quality of groundwater is minimized to assure beneficial uses of these resources by future generations."

Policy Strength

This is a strong statement and the cornerstone of the entire groundwater policy. It has been interpreted by the Department to mean that groundwater needs to be protected for potential as well as present beneficial uses.

The policy clearly requires changes in natural groundwater quality be minimized to protect beneficial uses. It also requires that use determination go beyond present use and consider potential groundwater use. For example, even if a particular aquifer is not presently being used for drinking water, it shall be protected for its potential drinking water beneficial use, if its natural water quality is sufficient to meet drinking water standards. An industry would be prohibited from discharging contaminates to the groundwater that would threaten this potential

beneficial use. A regulated source cannot assume that unused groundwater need not be protected.

The EQC adopts throughout the groundwater policy additional policy statements which support this initial concept and attempt to provide the means to achieve beneficial use protection.

Policy Weakness

Neither the Commission, the Department, the Water Resources Commission or the Water Resources Department has established specific groundwater beneficial uses. Therefore, the Departmental programs are left with the task of identifying present and future uses without established criteria or methods. In the absence of established beneficial uses, the Department has assumed, that since groundwater is available to the general public and ORS 432.545 gives individuals the statutory right to use groundwater for domestic uses, the Department should protect groundwater for drinking water beneficial use. This is a blanket assumption which is unrealistic in all situations.*

Lastly, the phrase "minimize impact on natural water quality" is vague and subject to broad interpretations. The policy fails to define natural water quality or how it should be determined nor does the policy provide a definition for "minimize" or guidance on how the various programs should determine this.

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* Not all natural background quality is suitable for drinking water.

Implementation Problems

The problems associated with implementing this groundwater policy statement can be seen with a brief review of a few subprograms. The Solid Waste Subprogram, for example, requires a permit applicant to submit a comprehensive geotechnical feasibility study for a proposed landfill site.

The goal is to locate a proposed site in a relatively secure geologic setting with a liner and leachate collection and treatment facilities. The proposed facility design may also include provisions for groundwater monitoring to detect possible contamination. In the context of the Groundwater Quality Protection Policy this approach should minimize the potential impact on the groundwater.

Policy implementation difficulty arises when an existing facility begins to discharge leachate not contained by the collection system. How does the Department evaluate this leachate plume? At what point does it become a danger to the groundwater and its existing or potential beneficial uses? At what point does the Department require remedial action? On what does the Department base its regulatory action? What water quality standards should the Department use to evaluate water quality data? Once the problem is described how much remediation is necessary? At what point should the facility be required to clean the groundwater, to protect existing and future beneficial uses?

Briefly, the Solid Waste Subprogram needs to have the Department establish some guidance on how they should determine existing and potential beneficial uses downgradient from a facility. This subprogram also needs

to have initial criteria adopted possibly the primary and secondary drinking water standards adopted as groundwater quality standards. These then could be used to evaluate the water quality data collected at existing facilities to determine if additional remedial actions are necessary to control contamination and protect downgradient users.

The Industrial Waste subprogram implements this groundwater protection policy statement in much the same way as the solid waste program. As new industrial sources are proposed, the subprogram reviews the facility plans to determine if appropriate design criteria have been considered to protect groundwater quality. This may include the use of lined wastewater treatment ponds to limit potential contaminate discharge to the groundwater. In conducting this review, the subprogram may also evaluate the waste stream and establish specific discharge standards for wastes placed on the ground. The subprogram may also require a facility to discharge its waste to a publicly owned treatment works (POTW) to minimize the impact on natural groundwater quality.

The Industrial Waste Subprogram, however, also has the same difficulty addressing existing contaminating sources as the solid waste subprogram. As a source problem is discovered and examined to determine its effect on groundwater, there are no formally adopted groundwater standards* to evaluate the impact on existing and potential beneficial uses. Instead the

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* The State of Oregon has not adopted groundwater quality standards. Therefore, the Environmental Quality Commission and the Department of Environmental Quality do not presently have formally adopted numeric groundwater standards to guide their regulatory actions protecting groundwater quality as they implement the Statewide Groundwater Quality Protection Policy.

industrial waste subprogram must rely on the federal and state drinking water standards, state surface water standards and water quality protection criteria identified in specific reference documents to determine the impact. These standards have been useful, but the lack of specific groundwater standards, applicable to all Departmental regulatory programs, has led to some inconsistencies and inequitabilities in program implementation. The subprogram must still address the questions of whether the plume will impact beneficial uses and what measures would minimize its impact.

As in the solid waste subprogram the industrial waste subprogram needs guidance on determining downgradient beneficial uses.

2. The first source control policy reads as follows:

> "Consistent with general policies for protection of surface water, highest and best practicable treatment and control of sewage, industrial wastes, and landfill leachates, shall be required so as to minimize potential pollutant loading to groundwater. Among other factors, energy economics, public health protection, potential value of the groundwater resource to present and future generations, and time required for recovery of quality after elimination of pollutant loadings may be considered in arriving at a case-by-case determination of highest and best practicable treatment and control. For areas where urban density development is planned or is occurring and where rapidly draining soils overlay local groundwater flow systems and their associated water table aquifers, the collection, treatment and disposal of sewage, industrial wastes and leachates from landfills will be deemed highest and best practicable treatment and control unless otherwise approved by the EQC pursuant to subsections (b) and (c) of this section."

Policy Strength

This is a strong requirement to set the highest and best practicable treatment and control of sewage, industrial, and landfill waste criteria to protect groundwater. It is even a stronger requirement to set collection and treatment as the standard for urbanizing areas overlying rapidly draining soils over water table aquifers. As a general policy, this sets a strong requirement.

Policy Weakness

The weakness of this policy statement is no agency guidelines have been established to judge what is the "highest and best treatment". The various departmental programs have not identified what "highest and best treatment" would apply in different situations. For example, the highest and best treatment for a single-family residence may very well be a sand filter under the on-site program. The Water Quality Division has also not identified the "highest and best treatment" for nonpoint sources.

The Department must establish a clear definition for the term "rapidly draining" to provide additional guidance to staff. This definition should have both an agricultural and geologic component.

Implementation Problems

The difficulty in implementing this policy statement can be readily seen in the water quality program. The sewage waste disposal and industrial waste control subprograms are continually confronting the issue of identifying highest and best treatment without specific guidance or criteria. For example, a small community may propose to employ an innovative sewage disposal technology. But without guidance or criteria to evaluate the proposed treatment technology the sewage disposal subprogram must independently decide whether it is the highest and best treatment to minimize potential pollutant loading to groundwater. This may result in approving for use a new system which may contaminate groundwater. The industrial waste subprogram has the same problem -- it must evaluate proposed treatment technologies without established criteria for making a highest and best determination.

To implement this policy statement, the Department or each individual subprogram must develop a methodology for determining highest and best treatment, and establish it in rule form.

The second portion of this policy statement makes a clear requirement for collection and treatment in urbanizing areas over rapidly draining soils overlaying water table aquifers. As clear as this statement is, it provides the Department and the Commission with a substantial challenge. There are several urbanizing areas which fit this definition, none the least of which is the Mid-Multnomah County cesspool area. The challenges and difficulties of implementing this policy in this situation even with

the strong supporting state statute regulating a threat to drinking water can be readily seen. But if the state is going to protect its groundwater resources as it has its surface waters, these policies and particularly this policy needs to be implemented.

3. The last source control policy reads as follows:

> "In order to minimize groundwater quality degradation potentially resulting from nonpoint sources, it is the policy of the EQC that activities associated with land and animal management, chemical application and handling, and spill prevention be conducted using the appropriate state-of-the-art management practices ("Best Management Practices")."

Policy Strength

This policy statement directs the use of best management practices to minimize the impact from nonpoint sources. There are numerous nonpoint source activities, i.e., agriculture chemical application, which may significantly affect groundwater quality. The policy definitely intends strict control of these potential pollution sources to protect groundwater resources.

Policy Weakness

Best management practices have not been developed and adopted for many of the activities in question. The policy has not clearly defined what is a best management practice. The Department also needs to have a stronger

nonpoint source program specifically directed at groundwater protection if this policy is to be implemented.

Implementation

The most apparent problem associated with this policy is the lack of appropriate best management practices. This can be seen readily in the area of agriculture and silviculture chemical use. The Department has been working most recently on the problem of groundwater contamination from pesticide use. Even if pesticide residues are found, the Department does not have chemical application BMP's to refer to. If the issue of nonpoint source chemical contamination of groundwater is to be addressed, the

Department must develop a stronger NPS program and adopted the needed BMP's. Even if BMP's are identified and future degradation limited these is still the question of how to cleanup any existing contamination.

Summary

In summary, the policy sets the overall intent to minimize the impact on natural groundwater quality to provide for beneficial use of the resource for future generations. It does not, however, establish beneficial uses for aquifers or provide the levels of contamination that would be judged an adverse impact on natural groundwater quality. Nor does the policy define what natural groundwater quality is or how it is to be determined.

Therefore the Department's programs approach protection on a case-by-case basis. These efforts have succeeded in some situations but for consistent regulatory measures some specific clarification is necessary.

The lack of established aquifer beneficial uses throughout the state makes the implementation of the statewide groundwater quality protection policy difficult. In the absence of established uses or a process to establish them the Department has to determine the existing and potential beneficial uses on an individual case-by-case basis. This may bring additional factors into consideration which are not necessarily consistently applied or based on objective criteria. Groundwater quality protection is, therefore, not always based on a tangible set of objective criteria.

In addition, to the problems associated with new and expanded facilities, the Department must address the difficult situations at existing facilities. In many cases, existing facilities were installed before the Department established a groundwater protection program and the knowledge, expertise and requirements needed to review facility designs adequately. As problems are identified at these facilities, the Department must have a consistent approach throughout the state to evaluate potential contamination and identify necessary remedial actions. The Department must have the ability to examine the leachate plumes and make rational judgments on groundwater quality impact. It must also determine how this contamination will impact the existing and future beneficial uses. The development of groundwater standards and/or an aquifer classification system may provide the Department with the tools to make many of these judgments.

In order to effectively implement the statewide groundwater protection policy, the Department must resolve the identified vague policy language and develop and adopt additional groundwater protection rules.

III.

GROUNDWATER QUALITY PROTECTION PROGRAMS

The growing national interest in groundwater protection has generated considerable legislative and rulemaking activity. This can readily be seen in the number of states which have adopted or are in the process of adopting state groundwater protection programs. The following chapter describes several selected state programs to highlight the various protection approaches being used throughout the county.

State Groundwater Protection Program

Wisconsin

The Wisconsin groundwater quality protection program implements statewide numeric standards.[3,11,12] The Department of Natural Resources (DNR) is responsible for the overall program implementation with assistance from the Department of Health and other state agencies with programs that might affect groundwater quality.

Under this program the DNR establishes groundwater quality standards (Appendix F) for substances already detected or suspected of entering the state's groundwater. They also specify procedures for: determining whether a standard has been attained or exceeded, establishing points of standards compliance, and evaluating the water quality data developed.

The program is implemented by establishing a point of standards compliance for each source and requiring monitoring at this point. The monitoring data identifies contamination levels. If the standards are exceeded, immediate enforcement action is taken against the source. To give an early warning of possible problems, the DNR also establishes prevention action limits which are established and monitored upgradient of the point of standards compliance. The preventive action limits are set for each individual source based on background water quality. They are established according to the following methodology:

1. For field pH, the preventive action limit can be one pH unit above or below the pH of the background water quality.

2. For field temperature, the preventive action limit can be 3 standard deviations or 10°F (5.6°C), whichever is greater, above or below the temperature of the background water quality.

3. For all other indicator parameters, the preventive action limit can be the background water quality for that parameter plus 3 standard deviations or the background water quality plus the increase of that parameter listed in Table 1, whichever is greater.

Note: The standard deviation for a group of samples is equal to the square root of the value of the sum of the squares of the difference between each sample in the sample group and the mean for that sample group divided by the number of samples in the sample group where the sample group has 30 or more samples and by one less than the number of samples in the sample group where the sample group has less than 30 samples.

Table 1

Methodology for Establishing Preventive Action Limit
for Indicator Parameters

Parameter	Minimum Increase (mg/l)
Alkalinity	100
Biochemical oxygen demand (BOD5)	25
Boron	2
Calcium	25
Chemical oxygen demand (COD)	25
Magnesium	25
Nitrogen series	
- Ammonia nitrogen	2
- Organic nitrogen	2
- Total nitrogen	5
Potassium	5
Sodium	10
Field specific conductance	200 micromhos/cm
Total hardness	100
Total organic carbon (TOC)	1
Total organic halogen (TOX)	25

New York State

The New York State groundwater quality protection program is based on classifying of groundwater, establishing specific groundwater quality and effluent standards and/or limitations.[3,6] The State Department of Environmental Conservation is responsible for implementing the program with the assistance of the State Department of Health. The purpose of the New York program is to protect groundwater which can be used as a potable water supply. Aquifers are classified according to their ability to provide potable water. Class GA waters are high quality water that are best used as a source of potable water.

Class GSA waters are designed as an source of potable mineral water, water which can be converted to fresh potable water, and water which can be used

as the raw material for the manufacture of sodium chloride or its derivatives or similar products. These waters are afforded less stringent protection.

Class GSB waters are designed as receiving waters for waste disposal. These are usually saline waters with chloride concentration in excess of 1000 mg/l or a total dissolved solids concentration in excess of 2000 mg/l.

Under the New York approach the state has established groundwater quality standards (Appendix E) that will protect Class GA waters for water supply use. These standards are used to identify contaminated water that may be a threat to human health and welfare. The state also used these levels to base enforcement actions against sources. For any discharges into Class GA the state has established effluent standards and/or limitations.

These limitations are not necessarily more stringent than the groundwater standards. They are effluent measurements at the point of discharge before any pollutant attenuation. This may allow a source to discharge effluent with contaminate concentrations much higher than the groundwater standards. But as the effluent percolates down through the soil and enters the groundwater, unsaturated and saturated zone attenuation mechanisms reduce contamination levels. The Department of Environmental Conservation works with each source to identify the appropriate monitoring program necessary to test the groundwater leaving a site against the established standards and to assure that sufficient attenuation has occurred.

Michigan

The Michigan groundwater protection program relies upon enforcing nondegradation rules.[5] The Department of Natural Resources (DNR) and Water Resources Commission are responsible for developing and implementing these rules. The purpose of the nondegradation rules is to protect the public health and welfare and to maintain groundwater quality of all usable aquifers for individual, public, industrial, and agricultural water supplies.

Under this program the DNR administers rules that require a source to submit an extensive hydrogeological study that describes; the chemical, physical, and biological quality of the aquifer; the soils treatment capability and the groundwater monitoring plan. Based on this report the DNR evaluates the potential impact of the source on background water quality. The rules also identify the parameters which all sources must monitor and provide the DNR the ability to require additional parameters based on the source type. The DNR utilizes the water quality data generated to determine the adequacy of groundwater protection measures and to establish the remedial actions needed.

Connecticut

The Connecticut groundwater program is based on an Aquifer Classification system.[1,3,8] This system is considered a model among states using aquifer classifications systems. The Connecticut Department of Environmental Protection is responsible for implementing the program.

Under this program aquifers are classed as below:

1. Class GAA groundwater is to be used for public and private drinking supplies without treatment. The only allowable discharges into groundwater of this class are wastewaters of human or animal origin and other minor cooling and clean-water discharges.

2. Class GA is assigned to groundwater to be used for private drinking-water supplies without treatment. Discharges are restricted to those which pose no permanent threat to untreated drinking-water supplies.

3. Class GB groundwater may have to be treated to be potable because of existing or past land uses. Discharges are allowed including certain treated industrial wastewaters as long as they can be attenuated sufficiently by the soils to not threaten future potability without treatment.

4. Class GC groundwater may be suitable for some waste-disposal practices if land-use practices or hydrogeologic conditions render it more suitable for that purpose than for development as a potable-water supply. Downgradient surface water must, however, be of medium-to-poor quality.

The state then sets specific standards designed to protect each aquifer class (Appendix G).

Montana

The Montana groundwater protection approach is based on a classification system.[3,7,10] Groundwater quality management in Montana is the primary responsibility of the Water Quality Bureau of the Department of Health and Environmental Sciences.

The Montana groundwater classification system consists of the following four classes:

Class I -- Suitable for public and private water supplies, culinary and food processing purposes, irrigation, livestock and wildlife watering, and for commercial and industrial purposes with little or no treatment.

These ground waters must have a specific conductance less than 1,000 micromhos/cm at 25°C.

Class II -- Marginally suitable for public and private water supplies, culinary and food processing uses and suitable for irrigation of some agricultural crops, for drinking water for most wildlife and livestock, and for most commercial and industrial purposes.

These waters may be used for municipal or domestic water supplies in areas where better water quality is not available.

These groundwaters must have a specific conductance ranging from 1,000 to 2,500 micromhos/cm at 25°C.

Class III -- Suitable for some industrial and commercial uses and as drinking water for some wildlife and livestock and for irrigation of some salt-tolerant crops using special water management practices.

In some cases these waters are the only economically feasible source for municipal or domestic water supplies.

These groundwaters must have specific conductance ranging from 2,500 to 15,000 micromhos/cm at 25°C.

Class IV -- May be suitable for some industrial, commercial and other uses, but are unsuitable, for practical purposes, untreatable for higher class beneficial uses.

These groundwaters must have specific conductance greater than 15,000 micromhos/cm 25°C.

The state implements the classification system with its groundwater pollution control permits. At the time the permit application is made, the groundwater beneath the site is classified. Once the class is established, the above described numeric and narrative groundwater quality standards are applied.

The State employs a type of non-degradation policy by stating "any groundwater whose existing quality is higher than the established groundwater quality standards for its classification must be maintained at that high quality". No degradation may occur unless it has been demonstrated to the Board of Health and Environmental Sciences that a change is justifiable as a result of necessary economic or social development and will not preclude present or anticipated use of such waters. The non-degradation policy, however, does not apply to changes in groundwater quality, whether or not standards are violated, from non-point source pollutants for lands or operations where all reasonable land, soil and water conservation practices have been applied.

Florida

The Florida groundwater program is based on an aquifer classification system which is strictly related to the total content of dissolved solids.[3] The Florida Department of Environmental Regulation implements this program. The three-class system is as follows:

Class G-I -- All groundwaters in single-source aquifers having a TDS content of less than 10,000 mg/1.

Class G-II -- All groundwaters obtained from other than single-source aquifers with a TDS content of less than 10,000 mg/1.

Class G-III -- All groundwater with a TDS content greater than or equal to 10,000 mg/1. Discharges into these waters will be

considered on a case-by-case basis to insure against danger to the public health, safety and welfare.

In addition to establishing aquifer classes, Florida has established specific criteria for any discharges into Class G-I and G-II (Appendix H).

Idaho

Idaho is in the process of establishing aquifer classification system with numeric standards applied to the classes.[2] The classes are as follows:

Class I: Special Resource Groundwaters are suitable for public or private drinking water supplies without treatment. Groundwaters to be classified as Class I -- Special Resource Groundwaters must not exceed any of the quality standards established by the State. In addition, Class I -- Special Resource Groundwaters must exhibit at least one of the following characteristics:

1. The groundwater is an irreplaceable source of drinking water, in that no reasonable alternative source of drinking water is available to a substantial population; or

2. The groundwater is ecologically vital, in that the aquifer provides base flow for a particularly sensitive ecological system that, if polluted, would destroy a unique habitat; or

3. Intensive protection of the groundwater is necessary to maintain or restore an appropriate beneficial use; or

4. Intensive protection of (groundwater) quality is in the paramount interest of the people of Idaho.

Class II: Domestic Water Supplies are suitable for public and private drinking water supplies but may require minimal or occasional treatment for such use. Groundwaters to be classified as Class II -- Domestic Water Supplies must not exceed any of the quality standards established by the State for this class.

Class III: Limited Use Groundwaters may be suitable for agricultural water supplies, industrial water supplies or other beneficial uses. Groundwater to be classified as Class III -- Limited Use Groundwaters must be unfit for current or future use as a public or private drinking water supply due to the quality, quantity or location of such groundwater.

These classes and the standards to be applied to each (Appendix I) are now under consideration by the State Legislature.

Federal Groundwater Strategy

The U.S. Environmental Protection Agency is presently developing a national groundwater protection program.(4) This program is based on an aquifer classification program.

The classes of groundwater are as follows:

Class I: Special Groundwaters are those that are highly vulnerable to contamination because of the hydrological characteristics of the areas under which they occur and that are also characterized by either of the following two factors:

1. Irreplaceable, in that no reasonable alternative source of drinking water is available to substantial populations; or

2. Ecologically vital, in that the aquifer provides the base flow for a particularly sensitive ecological system that, if polluted, would destroy a unique habitat.

Class II: Current and Potential Sources of Drinking Water and Waters Having Other Beneficial Uses are all other groundwaters that are currently used or are potentially available for drinking water or other beneficial use.

Class III: Ground Waters Not Considered Potential Sources of Drinking Water and of Limited Beneficial Use are groundwaters that are heavily saline, with Total Dissolved Solids (TDS) levels over 10,000 mg/l, or are otherwise contaminated beyond levels that allow cleanup using methods reasonably employed in public water system treatment. These ground waters also must not migrate to Class I or II groundwaters or have a discharge to surface water that could cause degradation.

EPA will accord different levels of protection to each class as described in the examples below:

To prevent contamination of Class I groundwaters EPA will initially discourage by guidance, and eventually ban by regulation, the siting of new hazardous waste land disposal facilities over Special Groundwaters. Some restrictions may also be applied to existing land disposal facilities. Further, Agency policy will be directed toward restricting or banning the use in these areas of those pesticides which are known to leach through soils and are a particular problem in groundwater. EPA's general policy for cleanup of contamination will be the most stringent in these areas, involving cleanup to background or drinking water levels.

Groundwaters that are current and potential sources of drinking water (Class II) will receive levels of protection consistent with those now provided for groundwater under EPA's existing regulations. In addition, where groundwaters are vulnerable to contamination and used as current source of drinking water, EPA may ban the siting of new hazardous waste land disposal facilities, initially through guidance, and later through regulation. While EPA's cleanup policy will assure drinking water quality or levels that protect human health, exemptions will be available to allow a less stringent level under certain circumstances when protection of human health and the environment can be demonstrated. EPA may establish some differences in cleanup depending on whether the groundwater is used as a current or potential source of drinking water or for other beneficial purposes.

Groundwaters that are not considered potential sources of drinking water and have limited beneficial use (Class III) will receive less protection than Class I or II. Technology standards for hazardous waste facilities generally would be the same as for Class I and Class II. With respect to cleanup, should the hazardous waste facility leak, waivers establishing less stringent concentration limits would be considered on a case-by-case basis. Waivers would not be available, however, when a facility caused contamination that precluded future use. EPA's Superfund program will not focus its activities on protecting or improving groundwater that has no potential impact on human health and the environment.

In the following section, we will examine four alternative groundwater standard and or aquifer classification systems. Each of these alternatives can be utilized to address the problems described in the Oregon groundwater program.

IV.

STATEWIDE GROUNDWATER QUALITY POLICY, STANDARDS, AND AQUIFER CLASSIFICATION ALTERNATIVES

Purpose/Applicability

There are several alternative groundwater quality protection approaches as described in the previous section. The purpose of this section is to identify and describe the "generic" groundwater quality standard setting and aquifer classification alternatives and how the Department may implement each one.

Numeric Standards

The first alternative to be considered is the use of numeric groundwater quality standards. Under this alternative, the Department would develop an extensive list of parameters which have a potential for impacting groundwater quality. The Environmental Quality Commission would adopt water quality standards or maximum concentration limits for these parameters. Then the Department would work directly with these standards to determine whether an existing source was in compliance. This alternative would require individual facilities to develop extensive site characterization information including geology, hydrology, and assess background and downgradient water quality. The Department would use this information to determine whether the source caused downgradient groundwater

to exceed established groundwater quality standards. If a standards violation occurred, the source would be required to clean up to the identified standard.

Under this approach the first determination would be to establish background water quality and compare it against the standard. Next the downgradient water quality would be determined and compared against the standards. If the downgradient concentration violated the identified standards* and background concentration did not, enforcement action would be taken requiring additional treatment and/or controls.

The Department could take a second and possibly more restrictive approach to implementing this alternative by comparing downgradient water quality to the the standards and restricting groundwater degradation to only a fraction of the established standard. For example, with the first approach if background NO_3 - N levels were 1 mg/L, and the established standard 10 mg/L, a site could contaminate the groundwater from 1 mg/L to just below 10 mg/L. With the second approach, using the same background and established NO_3 - N standard, the Department could restrict groundwater degradation at the site to only 5 percent of the standard thus allowing a NO_3 - N concentration increase of only 0.5 mg/L at the site boundary. Therefore, instead of having concentrations just below the 10 mg/l standard, the downgradient level would be 1.5 mg/l.

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* Under this alternative it is assumed that a strict interpretation of standards violation would be implemented. If downgradient water quality exceeded standards even by just 1 mg/L, it would be considered a violation.

To implement the numeric groundwater standards approach, the Department would have to develop two areas of information. First, specific numeric standards would have to be established for the entire state. This would be accomplished by identifying the specific parameters of interest and developing specific maximum allowable concentration levels necessary for the protection of public health and safety. Second, comprehensive facility site information would have to be developed. A monitoring program would have to be established at each site to identify statistically valid background and downgradient water quality.

The Department in implementing this alternative, could also establish specific indicator parameters that would be monitored for at each site. These indicator parameters would give the Department the opportunity to identify general changes in water quality which in turn would trigger more intense source investigations.

Regardless of which approach is selected this alternative would have the disadvantage of allowing some level of contamination. It would also lead to a proliferation of standards which would not only have to be set but also monitored. For existing sources, there would be no consideration of existing or potential beneficial uses, natural attenuation rates downgradient from the site, or the cost vs. benefit of remedial action measures. Instead, if violations in numeric standards occurred, the source would be required to clean up to the standard.

The numeric groundwater standards have a clear advantage of establishing formal criteria to compare site groundwater monitoring data against to

determine the extent of water quality impact. This would provide a definite basis to take remedial actions.

Aquifer Classification System

A second groundwater protection alternative is to establish an aquifer classification system. Under the aquifer classification approach, the Department would have to establish the criteria for classifying an aquifer. Then as each source is evaluated, the Department would require the source to identify the specific aquifer characteristics including aquifer quality, quantity, flow direction, flow rate, depth, present, and potential future beneficial uses that would provide the basis for classifying the aquifer at that particular site. Once the classification was made, specific regulatory controls would be identified for each class to protect the identified uses. It is not necessary to pre-classify every aquifer in the state prior to implementing an aquifer classification approach. The Department would only have to develop the criteria to classify an aquifer. Each source would have to complete its own detailed hydrogeologic study and groundwater quality assessment to classify the aquifer beneath the proposed or existing site.

The Department under this system would first establish aquifer classification criteria such as present beneficial uses, aquifer quality, future beneficial uses and/or aquifer productivity. For an example, the Department would, for a classification system based on quality, define the specific aquifer quality criteria. Many of the present quality

classification systems are based on the level of total dissolved solids. The State of Florida uses a TDS of 10,000 mg/l as the cutoff between its aquifer classes. Another classification system approach might be based on the present beneficial use of the water. Potential contamination sources would then be regulated to protect those uses. A third alternative classification system approach might be to combine present water quality with present and/or potential beneficial uses of the aquifer. The State of Connecticut has taken this approach. They have identified aquifer beneficial uses and the present water quality. If a particular use can be provided by the aquifer, this use is protected. If a potential future use for the aquifer is prohibited by the present water quality, the classification system allows for establishing control programs to improve the aquifer's quality. If no uses are provided, the aquifer may become a surface waste discharge zone. A forth classification system would be based on present and future beneficial uses of an aquifer and be protected for the designated beneficial uses.

This alternative would designate all aquifers in the state as protected for all beneficial uses. Then two alternate classes would be set up: one for a more protected status, and one where all beneficial uses cannot be met. These alternate classes would require a hydrologic study of the aquifer and a nomination to the Commission for a change in the aquifer's status.

This method would have several advantages: Aquifers would have a designated class to start with, and an extensive hydrologic study would only be needed if a change in the classification of the aquifer is desired.

All aquifers would be protected for all future uses and any change would require a careful review of the needs and uses within the aquifer.

Numeric Standards/Aquifer Classification System

The third alternative is to establish an aquifer classification system and then establish numeric standards for each classification. This would be a complex and comprehensive alternative. However, it would also allow a great deal of flexibility in identifying the present aquifer uses, the potential future uses and the standards needed to protect these uses. This would give the Department the ability to reasonably evaluate on a case-by-case situation the source control activities necessary to protect the aquifer for its existing and potential beneficial uses.

For example, if an aquifer is classified as a unique aquifer or a sole source drinking water aquifer, the Department could set strict numeric standards to protect these uses now and in the future. If, on the other hand, an aquifer was classified as non-drinking water, the Department would be given the flexibility of developing numeric standards for that aquifer that would not necessarily maintain quality levels of a drinking water aquifer. And finally, if an aquifer was classified as having natural quality that could not support most if not all uses of that water, the Department could set numeric standards for discharges into that aquifer which would be considerably less restrictive than an aquifer that was needed for drinking water purposes.

In summary, the Department could have situations through the classification/numeric standards alternative that would mandate no waste discharges to an aquifer. It might also have situations where waste discharges could be allowed under certain strict criteria. And finally, the Department may encounter situations where discharge could be allowed with little or no control of waste discharge.

The advantage of this alternative is that it provides some flexibility to match numeric standards with aquifer use. A potential disadvantage is that it may allow wastes to be discharged to some aquifers, thus allowing some degradation.

To implement this alternative, the information described under both the numeric and aquifer classification approaches described above would have to be developed. This would call for detailed numeric standards for each aquifer classification and detailed aquifer classification criteria. For example, if an aquifer was classified for drinking water use, the Department would have to identify each individual numeric standard necessary to protect that aquifer for this use or have a procedure in place to develop new numeric standards for additional substances. levels. Once the class and standards had been identified, the Department would have to develop the actual implementation approach at a particular site to meet those standards. The Department would identify a primary point where the numeric standards would be tested. This point would determine whether a facility had met or violated the standards. To provide an early indication of whether the discharges would exceed the standards, the Department may also establish secondary point of compliance.

Water quality data collected at this zone would indicate whether a source would likely violate the standards at the primary point of standards compliance* and give the facility time to develop a remedial action plan.

At an existing site under this alternative the Department would be following the same standards setting procedures and utilize the data to determine if remedial action was needed to protect the aquifer.

This approach gives the Department a great deal of flexibility in determining facility control requirements dependent on aquifer class. The implementation of this alternative, however, would also require considerably more detailed information on aquifers and aquifer use. This is because considerable areal and vertical variation in water quality may exist within a limited geographic area due to the heterogeneous geologic and hydrologic characteristics.

Non-Degradation

The forth alternative to be considered is non-degradation. Under this approach, the Department would not allow the groundwater quality to

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* The paper assumes for the purpose of discussion that the point of standards compliance is a vertical plane extending from the surface down through the uppermost aquifer, and any aquifers hydraulically interconnected to it, at some prescribed horizontal distance from the site and perpendicular to the groundwater flow. It should be noted that for purposes of this paper, the focus of groundwater protection is on the uppermost aquifer and all hydraulically interconnected aquifers. The present groundwater policy should be revised to include a complete discussion of what groundwater is covered.

degrade below its present background quality.* It would establish background water quality levels for each facility. The various industrial, municipal, agricultural and commercial facilities would not be allowed to degrade the water below the established background concentrations. This could require both strict and not so strict controls on source activities. It could, however, provide the clearest protection of the groundwater resources for present and future generations.

The advantage of the nondegradation approach would be that all facilities would be required to maintain their discharges so as not to affect background water quality. In areas of good quality water, this approach would have the effect of maintaining that good quality background water for present and future beneficial uses. The disadvantage of this approach is that in some developed areas, particularly high density industrial areas, where background water quality may not be very good or adequate to provide for existing and potential beneficial uses of the groundwater, the facility may not have an incentive to control its contamination.** For example, in the industrialized north Portland area, a facility located downgradient of several existing sources, may establish a background water quality which

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* The paper assumes for purposes of the discussion that background water quality is the quality of the groundwater immediately upgradient of the particular site in question. The Department however may wish to review this definition and define background as the aquifer's overall quality in a particular area. This might give everyone the same starting point but the furthest downgradient source may be unfairly judged by all the upgradient discharges.

** A new source should not be allowed to pollute groundwater just because existing groundwater is contaminated. The goal should be to improve the quality, not just maintaining existing quality to provide for likely beneficial uses.

would not require it to discharge higher quality effluent. This certainly would not provide adequate groundwater protection and it would hamper the Department's efforts to clean up the groundwater contamination. It would not support a goal of general improvement in groundwater quality to provide for potential beneficial uses.

In areas where new facilities were being installed in relatively undeveloped areas, the identification and classification of background water quality may provide adequate protection of that resource and adequate controls on the new facility to prevent water quality degradation.

This approach does however have a built-in long-term advantage of gradually cleaning up individual sources. This occurs as upgradient sources are forced to implement remedial actions to maintain discharges above background levels. As downgradient water quality improves, each subsequent downgradient source would be required to upgrade its facility to maintain the increasing quality of the background water. This, however, could be a very long process and not a necessarily fair system because downgradient sources might not see improvement in background quality for decades.

In order to implement the non-degradation alternative, the Department would need to identify background water quality and the quality of water discharging from the site. The approach used in the RCRA program to establish background quality and then prohibit a facility from significantly increasing* parameter concentrations downgradient could be

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* The regulations specifically define how significant increase is to be statistically determined.

used to implement this alternative. Background quality in the RCRA program is established immediately upgradient from the regulated unit and not the general aquifer background in the area. However, this approach does not take into consideration the beneficial uses of the aquifers being impacted. If an aquifer, for example, was unproductive as a drinking water supply aquifer, this alternative would still require strict controls. Also, if existing contamination was discovered at a site, the regulatory response would be to clean up to background. This could restrict professional judgments which may allow existing contamination to attenuate over time after eliminating the contaminant source.

Non-degradation could be modified to include a provision to allow for a mixing zone making the standard an anti-degradation area.

A source would monitor at the facility boundary for degradation; if degradation was detected, the source would move to clean up, but would be allowed by the DEQ program responsible to allow an alternate boundary to be set to meet background quality again, but not beyond the property boundary. This type of procedure would have the advantage of requiring a slightly less stringent option, while still maintaining good water quality outside a small zone. The disadvantage is some degradation will take place within the groundwater aquifer.

Summary/Conclusions

An obvious conclusion is no single alternative will completely satisfy the needs of a groundwater protection program. Each provides a degree of protection and in some cases more or less protection than may actually be needed.

The strict numeric standards approach may not adequately protect existing pristine or unique aquifers. For example, consider an aquifer which is the main water source for a pristine lake presently used for drinking water without treatment. The adoption of numeric standards to protect the aquifer for drinking water purposes does not provide the same level of protection to the receiving lake. If, for example, NO_3 - N levels are maintained below standards in the groundwater it does not take into consideration the effect that these concentrations may have when discharged to the lake and exposed to increased oxygen, temperature, and sunlight. This may stimulate the algal aging growth process, accelerating eutrophication, and ultimately destroying the lake as a drinking water source. Therefore, consideration of strict numeric standards are probably not adequate for all situations. The total hydrologic cycle and potential uses must be considered in selecting the applicable approach. Choice of this approach would have to include some flexibility to address both ends of the protection spectrum; the discharges into the aquifer and the aquifer's discharges to surface waters.

The aquifer classification system has more regulatory flexibility. It requires stricter controls for higher use aquifers and less stringent

controls for lower quality aquifers. However, it is too general to be implemented effectively in some cases.

The combined aquifer classification and numeric standards alternative increases regulatory flexibility and provides numeric standards to determine if controls are adequate. It does, however, allow some aquifers to become receiving waters for surface discharges depending on how the numeric standards are applied. This may allow some aquifers to degrade.

The non-degradation alternative provides the best protection to the aquifer and is relatively easy to implement. It is the most restrictive alternative however, and does not permit professional judgments. It is not possible to consider aquifer usability or whether to allow present contamination to continue or dissipate naturally after the problem source is corrected.

The key for current and future groundwater protection is to prevent contaminants from entering the aquifer. The costs for remedial action necessary to halt and eliminate contamination are very high. The emphasis on prevention will save considerable resources in future clean-up efforts.

The existing contamination must be documented and dealt with in a logical and comprehensive approach. The treatment of each individual source must be within the same framework to obtain as much consistency and equitability as possible.

The basic groundwater quality protection alternatives presented in this section each try to achieve these goals. The Environmental Quality

Commission and Department must critically examine these alternatives to decide which alternatives or combination will adequately provide the needed protection.

The groundwater quality protection program must prevent new contaminant discharges and control and reduce present pollution. The implementation alternative selected must provide an adequate tool to accomplish both goals. The alternative must give the Department the basis for requiring controls at new installations to prevent any degradation in quality and it must provide the regulatory framework to correct existing contamination. The prevention/correction concepts have equal importance and they may require two very separate approaches.

The development of groundwater standards are an important step in solving the question of groundwater contamination. However, establishing a concentration limit for a particular parameter only provides an end point which is usually associated with the waters ability to be placed to a certain use. The Department should not be in the position of allowing an aquifer to degrade to a point just below that use ability. It should adopt the position stated in the Groundwater Quality Protection Policy of "minimizing impact on natural water quality". In other words, the Department should be implementing a nondegradation approach in undeveloped areas and for new facilities. In areas where development has degraded water quality and the Department is renewing existing permits and solving existing problems, it needs water quality standards as the guiding mechanism for remedial action.

V.

REFERENCES

1. Connecticut Water Quality Standards and Criteria. Draft Revisions, State of Connecticut, Dept. of Environmental Protection, Water Compliance Unit, 1982.

2. Development of Policy and Quality Standards for Protection of Idaho's Groundwater. 206(j) Project -- Task I Completion Report, June 1984.

3. Groundwater Contamination in the United States. Veronica I. Pye, Ruth Patrick, John Quartes, University of Pennsylvania Press, Philadelphia, 1983.

4. Ground-Water Protection Strategy for the Environmental Protection Agency. August 1984.

5. Michigan Department of Natural Resources, Water Resources Commission General Rules, 1983.

6. Groundwater Classification, Quality Standards and Effluent Standards and/or Limitations, New York State, Department of Environmental Conservation, 1978.

7. Proceedings of the Sixth National Ground-Water Quality Symposium. State, County, Regional and Municipal Jurisdiction of Ground-Water Protection (Two-Tiered Basis), September 22-24, 1982, Atlanta, Georgia.

8. Protecting the Nation's Groundwater from Contamination, Volume II, Congress of the United States, Office of Technology Assessment, October 1984.

9. Selected State and Territory Ground-Water Classification System. U. S. Environmental Protection Agency, May 1985.

10. Western State Ground Water Management. prepared by the staff of the Western States Water Council, October 1982.

11. Wisconsin Act 410, Groundwater Management, 1983.

12. Wisconsin Administrative Code, Chapter NR 140.

VI.

APPENDIXES

Appendix A - State Groundwater Protection Policy Background Document

Appendix B - Statewide Groundwater Policy Implementation Document

Appendix C - Groundwater Policy Implementation Document

Appendix D - Numeric Standards for Review

Appendix E - State of New York Groundwater Protection Rules

Appendix F - State of Wisconsin Groundwater Protection Rules

Appendix G - State of Connecticut Aquifer Class Standards

Appendix H - State of Florida Aquifer Class Standards

Appendix I - State of Idaho Proposed Groundwater Program

Appendix J - RCRA - 40 CFR Part, 265 and 264, Subpart F

Appendix K - Additional Case Studies

ATTACMENT B

MEMBERSHIP LIST

CITIZENS ADVISORY COMMITTEE ON GROUNDWATER QUALITY PROTECTION

Member	Association
Ms. Gail Achterman* Chairperson	Lawyer - Stoel, Rives, Boley, Fraser, & Wyse
Mr. Roy Burns** Chairperson	Public Works Manager - Lane County Public Works
Ms. Kris Hudson	State President - League of Women Voters
Mr. John Charles	Executive Secretary - Oregon Environmental Council
Mr. Jess Eblen	Environmental Engineer - Oreida
Ms. Carol Lieberman	State Coordinator for Water Quality and Toxics - Sierra Club
Mr. Pat Davis	Rancher/Wheatgrower - N.E. Oregon
Mr. Bill Weber	Landfill Manager - Valley Landfills
Dr. Rick Johnson Ph.D.	Research Scientist - Oregon Graduate Center
Dr. Charles Schade M.D.	County Health Officer - Multnomah County
Mr. Dave Childs	Wheatgrower - Central Oregon

* Chairperson untill January of 1987, resigned from committee when appointed to Governors staff.

** Accepted Chair of Committee when Ms. Achterman resigned.

GAP:h
WH2270

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

NOTICE OF PUBLIC HEARING

Hearing Date: Noted Below
Comments Due: April 3, 1988
5:00 p.m.

WHO IS AFFECTED: All businesses, residents, industries, and local governments in the State of Oregon.

WHAT IS PROPOSED: The Department proposes to amend the existing General Groundwater Quality Protection Policy as contained in the Oregon Water Quality Rules Chapter 340, Division 41, Section 029.

WHAT ARE THE HIGHLIGHTS: Over the last several years evidence of groundwater quality problems has increased in the State of Oregon. The Environmental Quality Commission adopted a General Groundwater Quality Protection Policy in August of 1981. The Department of Environmental Quality has had difficulty in applying the policy to some specific problem situations. Consequently, the Department proposes to amend the policy to include more specific guidance on how groundwater quality protection is to be implemented. The proposed amendments to the policy include the following:

a) **General Policies:** This section establishes the general policies that are to guide groundwater protection activities.

b) **Groundwater Quality Management Classification System:** This section describes a system for classifying groundwater according to its management needs.

c) **Point Source Rules:** These rules establish the specific requirements for groundwater quality protection for point sources.

d) **Nonpoint Source Control:** This section establishes the procedure the Department will follow in minimizing groundwater quality impacts from nonpoint sources.

e) **Groundwater Quality Standards:** This section establishes narrative and numerical groundwater quality standards.

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

11/1/86

FOR FURTHER INFORMATION:

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

HOW TO COMMENT:

Public Hearings Schedule:

Portland -- March 1, 1988, 9:00 a.m. to 12:00 noon, Room 4, Department of Environmental Quality Headquarters, 811 SW 6th Ave., Portland, Oregon

Eugene -- March 7, 1988, 1:00 p.m. to 4:00 p.m., Main Room of Harris Hall, Public Service Building, 125 E. 8th, Eugene, Oregon

Medford -- March 8, 1988, 1:00 p.m. to 4:00 p.m. Room 106 and 107, Justice Building, 100 S. Oakdale, Medford, Oregon

Bend -- March 14, 1988, 2:00 p.m. to 5:00 p.m., Commission Room, Police Station, 720 NW Wall St., Bend, Oregon

Pendleton -- March 16, 1988, 1:00 p.m. to 4:00 p.m., Department of Environmental Quality Conference Room, State Office Building, 700 SE Emigrant St., Pendleton, Oregon

Ontario -- March 15, 1988, 2:00 p.m. to 5:00 p.m., City Council Chambers, City Hall, 444 SW 4th St., Ontario, Oregon

A Department staff member will be appointed to preside over and conduct the hearings. Written comments should be sent to:

Department of Environmental Quality
Water Quality Division
Planning and Monitoring Section
811 S.W. Sixth Avenue
Portland, OR 97204

The comment period will end on April 3, 1988, at 5:00 p.m.

For more information or copies of documents, contact Greg Pettit at 229-6065 or toll-free 1-800-452-4011.

WHAT IS THE NEXT STEP:

After the public testimony has been received and evaluated, the proposed amendments will be revised as appropriate, and will be presented to the Environmental Quality Commission for their consideration. The Commission may adopt rule amendments, adopt modified rule amendments, or decline to adopt rule amendments and take no further action.

WQ59

STATEMENT OF NEED FOR RULE MAKING

Pursuant to ORS 183.335(7), this statement provides information on the Environmental Quality Commission's intended action to adopt rules.

(1) **Legal Authority.**

Oregon Revised Statute (ORS) 468.015 and 468.020 provide the Commission with the authority to establish the policies, rules, and standards necessary and proper in performing the functions vested by law in the Commission, including the policies and purposes of ORS Chapter 468. It is the public policy of the state as defined in ORS 468.710 to protect and improve public water quality for beneficial uses including: "public water supplies, for the propagation of wildlife and fish, and aquatic life, and for domestic, industrial, municipal, recreational and other beneficial uses." ORS 468.710, 468.715, and 468.720 go on to further state that "no waste be discharged to waters of the state without first receiving necessary treatment..."; that "all available and necessary methods" be used to prevent pollution and that waste not be allowed to "escape or be carried into the waters of the state by any means." ORS 468.700 (7) includes in its definition of wastes "...substances which will or may cause pollution or tend to cause pollution of any water of the state." ORS 468.700(8) includes in its definition of waters of the state "...underground waters..." ORS 468.735 provides that the commission by rule may establish standards of quality and purity for the waters of the state in accordance with the public policy set forth in ORS 468.710.

(2) **Need For Rule**

Over the last few years there has been a rapid increase in the number of groundwater contamination incidents that the Department has had to respond to. Current rules lack the specific direction and specificity the Department needs to respond to these incidents, and to ensure that future contamination of groundwater is minimized. The proposed rule amendments contain general policies, a groundwater quality management classification system, point source control rules, nonpoint source control, and groundwater standards.

Adoption of the proposed rule amendments, modification of those amendments, or no action may be taken by the Commission after the hearing record has been evaluated.

(3) **Principal Documents Relied Upon in this Rulemaking**

Discussion Paper, State Groundwater Quality Protection Program, July 14, 1986, Oregon Department of Environmental Quality.

Federal Register, Vol. 44, No. 140, July 19, 1979, National Secondary Drinking Water Regulations.

Federal Register, Vol. 50, No. 219, November 13, 1985, Part III, Part IV, National Primary Drinking Water Regualtions, Proposed Rule.

Groundwater Protection Strategy for the Environmental Protection Agency, August 1984.

Groundwater Quality Protection State and Local Strategies, Prepared by Committee on Groundwater Quality Protection, National Research Council, 1986.

Groundwater - Saving the Unseen Resource, The National Groundwater Policy Forum, November 1985.

Oregon Revised Statutes 468.005-468.035, 468.700-468.740.

GAP:h
WH2267

ATTACHMENT E

FISCAL AND ECONOMIC IMPACT

Adoption and implementation of the proposed revisions to the groundwater quality protection rules could result in increased costs to local governments, small and large businesses, industries, private and public utilities, and individuals. Specifically, increased cost for groundwater monitoring, hydrogeological assessments, groundwater quality protection capital construction improvements, increased operating cost, and remediation of contaminated groundwater could be incurred.

In addition, a wide range of individuals and government entities could incur cost for the development and implementation of aquifer management plans and best management practices. These would primarily relate to the control of nonpoint sources of groundwater contamination.

Long term economic benefits would be gained by the protection of groundwater from contamination that would result in loss of its availability to meet beneficial uses. Alternate water supplies would have to be made available, or groundwater quality treatment and remediation implemented. Such cost saving would benefit potential responsible parties, public and private water supply systems, individual groundwater users, irrigators, industrial groundwater users, local, state, and federal government entities.

Reduced contamination of groundwater as a result of the proposed rules would result in reduced public exposure to toxic and carcinogenic contaminants. This would result in reduced illnesses, increased productivity, and reduced medical expenses.

In summary, the fiscal and economic impacts are not well defined. There would be immediate cost to achieve compliance, and long term benefits and cost savings. Public comment on any fiscal and economic impact is welcome and may be submitted in the same manner as indicated for testimony on this notice.

GAP:h
WH2271

LAND USE CONSISTENCY

The Department has concluded that the proposal conforms with statewide planning goals and guidelines.

Goal 6 (Air, Water, and Local resource Quality):

The proposed revisions to the water quality regulations are designed to more clearly protect and maintain groundwater quality statewide.

Goal 11 (Public Facilities and Services):

To attain compliance with the revised regulations, additional costs for capital improvements, service area expansion, and operation of wastewater treatment facilities may be incurred. Additional planning to insure timely, orderly and efficient provision of services, and construction of facilities to provide necessary availability of services and needed capacity, to meet groundwater quality protection plans may be necessary.

Public comment on any land use issue is welcome and may be submitted in the same manner as indicated for testimony in this notice. It is requested that local, state, and federal agencies review the proposed action and comment on possible conflicts with their programs affecting land use, and with statewide planning goals within their expertise and jurisdiction. The Department of Environmental Quality intends to ask the Department of Land Conservation and Development to mediate any appropriate conflicts brought to our attention by local, state, and federal authorities.

GAP:h
WH2272

Following is the existing language under Oregon Administrative Rule (OAR) 340-41-029. The Department proposal would delete all of the existing language (bracketed) and replace it with the amended rule.

Existing Language Proposed to be Deleted.

[GENERAL GROUNDWATER QUALITY PROTECTION POLICY

340-41-029 GENERAL POLICIES

The following statements of policy are intended to guide federal agencies and state agencies, cities, counties, industries, citizens, and the Department of Environmental Quality staff in their efforts to protect the quality of groundwater:

(1) GENERAL POLICIES

(a) It is the responsibility of the EQC to regulate and control waste sources so that impairment of the natural quality of groundwater is minimized to assure beneficial uses of these resources by future generations.

(b) In order to assure maximum reasonable protection of public health, the public should be informed that groundwater -- and most particularly local flow systems or water table aquifers -- should not be assured to be safe for domestic use unless quality testing demonstrates a safe supply. Domestic water drawn from water table aquifers should be tested frequently to assure its continued safety for use.

(c) For the purpose of making the best use of limited staff resources, the Department will concentrate its control strategy development and implementation efforts in areas where waste disposal practices and activities regulated by the Department have the greatest potential for degrading groundwater quality. These areas will be delineated from a statewide map outlining the boundaries of major water table aquifers prepared in 1980 by Sweet, Edwards & Associates, Inc. This map may be revised periodically by the Water Resources Department.

(d) The Department will seek the assistance and cooperation of the Water resources Department to design an ambient monitoring program adequate to determine long-term quality trends for significant groundwater flow systems. The Department will assist and cooperate with the Water resources Department in their groundwater studies. The Department will also seek the advise, assistance, and cooperation of local, state, and federal agencies to identify and resolve groundwater quality problems.

(e) The EQC recognizes and supports the authority and responsibilities of the Water Resources Department and Water Policy Review Board in the management of groundwater and protection of groundwater quality. In particular, existing programs to regulate well construction and to control the withdrawal of groundwater provide important quality protective opportunities. These policies are intended to complement and not duplicate the programs of the Water Resources Department.

(2) SOURCE CONTROL POLICIES

(a) Consistent with general policies for protection of surface water, highest and best practicable treatment and control of sewage, industrial wastes, and landfill leachates, shall be required so as to minimize potential pollutant loading to groundwater. Among other factors, energy, economics, public health protection, potential value of the groundwater resource to present and future generations, and time required for recovery of quality after elimination of pollutant loadings may be considered in arriving at a case-by-case determination of highest and best practicable treatment and control. For areas where urban density development is planned or is occurring and where rapidly draining soils overlay local groundwater flow systems and their associated water table aquifers, the collection, treatment and disposal of sewage, industrial wastes and leachates from landfills will be deemed highest and best practicable treatment and control unless otherwise approved by the EQC pursuant to subsections (b) or (c) of this section.

(b) Establishment of controls more stringent than those identified in subsection (a) of this section may be required by the EQC in situations where:

(A) DEQ demonstrates such controls are needed to assure protection of beneficial uses:

(B) The Water Resources Director declares a critical groundwater area for reasons of quality; or

(C) EPA designates a sole source aquifer pursuant to the Federal Safe Drinking Water Act.

(c) Less stringent controls then those identified in subsection (a) of this section may be approved by the EQC for a specific area if a request, including technical studies showing that lesser controls will adequately protect beneficial uses is

made by representatives of the area and if the request is consistent with other state laws and regulations.

(d) Disposal of wastes into or into the ground in a manner which allows potential movement to groundwater shall be authorized and regulated by the existing rules of the Department's Water Pollution Control Facility (WPCF) Permit, Solid Waste Disposal Facility Permit, or On-Site (Subsurface) Sewage Disposal System Construction Permit, whichever is appropriate:

(A) WPCF permits shall specify appropriate groundwater quality protection requirements and monitoring and reporting requirements. Such permits shall be used in all cases other than for those covered by Solid Waste Disposal Facility Permit or On-Site (subsurface) Sewage Disposal Permits.

(B) Solid Waste Disposal Facility Permits shall be used for landfills and sludge disposal not covered by NPDES or WPCF permits. Such permits shall specify appropriate groundwater quality protection requirements and monitoring and reporting requirements.

(C) On-Site Sewage Disposal System Construction Permits shall be issued in accordance with adopted rules. It is recognized that existing rules may not be adequate in all cases to protect groundwater quality. Therefore, as deficiencies are documented, the Department shall propose rule amendments to correct the deficiencies.

(e) In order to minimize groundwater quality degradation potentially resulting from nonpoint sources, it is the policy of the EQC that activities associated with land and animal management, chemical application and handling, and spill prevention be conducted using the appropriate state-of-the-art management practices ("Best Management Practices").

(3) PROBLEM ABATEMENT POLICIES

(a) It is the intent of the EQC to see that groundwater problems abatement plans are developed and implemented in a timely fashion. In order to accomplish this all available and appropriate statutory and administrative authorities will be utilized, including but not limited to: permits, special permit conditions, penalties, fines, Commission orders compliance schedules, moratoriums, Department orders, and geographic rules. It is recognized, however, that in some

cases the identification, evaluation and implementation of abatement measures may take time and that continued degradation may occur while the plan is being developed and implemented. The EQC will allow short-term continued degradation only if the beneficial uses, public health, and groundwater resource are not significantly affected, and only if the approved abatement plan is being implemented on schedule.

(b) In areas where groundwater quality is being degraded as a result of existing individual source activities or waste disposal practices the Department may establish the necessary control and abatement schedule requirements to be implemented by the individual sources to modify or eliminate their activities or waste disposal practices through existing permit authorities, Department orders, or Commission orders issued pursuant to ORS Chapter 183.

(c) In urban areas where groundwater is being degraded as a result of on-site sewage disposal practices and an areawide solution is necessary, the Department may propose a rule for adoption by the Commission and incorporation into the appropriate basin section of the State Water Quality Management Plan (OAR Division 41) which will achieve the following:

(A) Recite the findings describing the problem,

(B) Define the area where corrective action is required,

(C) Describe the problem correction and prevention measure to be ordered,

(D) Establish the schedule for required major increments of progress,

(E) Identify conditions under which new, modified, or repaired on-site sewage disposal systems may be installed in the interim while the area correction program is being implemented and is on schedule,

(F) Identify the conditions under which enforcement measures will be pursued if adequate progress to implement the corrective actions is not made. These measures may include but are not limited to the measures authorized in ORS 454.235(2), 454.685, 454.645, and 454.317.

(G) Identify all known affected local governing bodies which the Department will notify by certified mail of the final rule adoption, and

(H) Any other items declared to be necessary by the Commission.

(d) The Department shall notify all known impacted or potentially affected local units of government of the opportunity to comment on the proposed rules at a scheduled public hearing and of their right to request a contested case hearing pursuant to ORS Chapter 183 prior to the Commission's final order adopting the rules.]

Stat. Auth.: ORS Ch. 468
Hist: DEQ 24-1981, f. & ef. 9-8-81
Adopted by the EQC 6/29/84

Following is the amended rule language (underlined) that is proposed to replace existing rule language under Oregon Administrative Rule (OAR) 340-41-029, and new definitions that would be included in the definitions Section OAR 340-41-006.

GROUNDWATER QUALITY PROTECTION

340-41-029 The following regulations establish the mandatory minimum groundwater quality protection requirements for federal and state agencies, cities, counties, industries, and citizens. Other federal, state, and local programs may contain additional or more stringent groundwater quality protection requirements. Unless specifically exempted by statute, groundwater quality protection requirements must meet or be equivalent to these regulations. Removal and remedial actions conducted pursuant to Oregon Revised Statutes (ORS) 466.540 to 466.590 shall not be subject to the requirements of these rules (340-41-029).

(1) GENERAL POLICIES:

(a) Groundwater is a critical natural resource providing domestic, industrial, and agricultural water supply; and other legitimate beneficial uses; and also providing base flow for rivers, lakes, streams, and marshes.

(b) Groundwater, once polluted, is difficult and sometimes impossible to clean up. Therefore, it is the policy of the EQC to emphasize the prevention of groundwater contamination, and to control waste discharges to groundwater so that the highest possible groundwater quality is maintained.

(c) All groundwaters of the state shall be protected from pollution that could impair existing or potential beneficial uses for which the natural water quality of the aquifer is adequate. Among the recognized beneficial uses of groundwater, domestic water supply is recognized as being the highest and best use and the use that would usually require the highest level of water quality.

(d) Subsection (5)(d) of this rule contains numerical groundwater quality standards. The purpose of these standards is to indicate when groundwater is not suitable for human consumption. They are to be used by the Department and the public to aid in evaluating the significance of a particular chemical concentration. These standards should not be construed as acceptable groundwater quality goals because it is the policy of the EQC (340-41-026(1)(a)) to maintain and preserve the highest possible groundwater quality.

(e) For pollutant parameters for which groundwater quality standards have not been established, or for evaluating adverse impacts on beneficial uses other than human consumption, the Department shall make use of the most current and scientifically valid information available in determining at what levels pollutants may affect present or potential beneficial uses.

(f) In order to apply appropriate and reasonable groundwater quality protection, all groundwater shall be classified and managed according to the classification system described in Subsection (2) of this rule.

(g) The Department shall develop, implement and conduct a comprehensive groundwater quality protection program. The program shall contain strategies and methods for problem abatement and control of both point and nonpoint sources of groundwater pollution. The Department shall seek the assistance of federal, state, and local governments in implementing the policy.

(h) In order to assure maximum reasonable protection of public health, the public should be informed that groundwater, and most particularly local flow systems or water table aquifers, should not be assumed to be safe for domestic use unless quality testing demonstrates a safe supply. The Department shall work cooperatively with the Water Resources Department and the Health Division in identifying areas where groundwater contamination may affect beneficial uses.

(i) The Department shall concentrate its groundwater quality protection implementation efforts in areas where practices and activities have the greatest potential for degrading groundwater quality, and where potential groundwater quality contamination would have the greatest adverse impact on beneficial uses. Therefore, the Department shall implement these rules based upon priorities it establishes which reflect the agency's available resources and the severity of threat to the groundwater and to public health.

(j) The Department shall work cooperatively with the Water Resources Department to characterize the physical and chemical characteristics of the aquifers of the state. The Department will seek the assistance and cooperation of the Water Resources Department to design an ambient monitoring program adequate to determine representative groundwater quality for significant groundwater flow systems. The Department shall assist and cooperate with the Water Resources Department in its groundwater studies. The Department shall also seek the advice, assistance, and cooperation of local, state, and federal agencies to identify and resolve groundwater quality problems.

(k) It is the intent of the EQC to see that groundwater problem abatement plans are developed and implemented in a timely fashion. In order to accomplish this, all available and appropriate statutory and administrative authorities will be utilized, including but not limited to: permits, special permit conditions, penalties, fines, Commission orders, compliance schedules, moratoriums, Department orders, and geographic rules. It is recognized, however, that in some cases the identification, evaluation and implementation of abatement measures may take time and that continued degradation may occur while the plan is being developed and implemented. The EQC may allow short-term continued degradation only if the beneficial uses, public health, and groundwater resources are not significantly affected, and only if the approved abatement plan is being implemented on a schedule approved by the Department.

(2) GROUNDWATER QUALITY MANAGEMENT CLASSIFICATION SYSTEM:

(a) All groundwaters of the state shall be classified by the EQC for the purposes of determining groundwater quality protection requirements. It is not the purpose of the classification system to describe existing water quality, but to establish for an aquifer the appropriate management requirements to protect its beneficial uses. In classifying groundwater, the EQC shall consider at least the following:

(A) The natural quality of the groundwater, and the existing and potential beneficial uses for which the natural water quality is adequate.

(B) The social, environmental, and economic importance of the groundwater resource to present and future citizens of the State.

(b) All groundwaters of the state shall be classified according to one of the following classifications:

(A) **Class I Groundwater:** Shall be managed as special resource groundwater to the citizens of the state, and requires the highest level of protection.

Groundwaters to be classified as Class I must exhibit one of the following characteristics:

(i) The groundwater is an irreplaceable source of drinking water, in that no reasonable alternative source of drinking water is available to a substantial population; or

(ii) The groundwater is ecologically vital, in that the aquifer provides base flow for a particularly sensitive ecological system that, if polluted, would substantially impair a valuable habitat; or

(iii) Intensive protection of the groundwater is necessary to maintain or restore an appropriate beneficial use.

(B) **Class II Groundwater:** Shall be managed to provide for recognized beneficial uses, and recharge for base flow of rivers, lakes, and streams. Class II groundwaters may require standard treatment for such use.

(C) **Class III Groundwater:** Shall be managed as limited use groundwaters that are not suitable for human consumption without extensive treatment. Class III groundwaters shall be managed to maintain or improve existing groundwater quality, except as provided by subsection (g)(C) of this section.

(c) All groundwaters of the state shall be designated Class II groundwaters unless classified otherwise by the EQC.

(d) All actions of the EQC classifying groundwaters as Class I or Class III shall be made through rule adoption only after a opportunity for public review and comment.

(e) Any person may submit proposals to the EQC for consideration for a Class I or a Class III groundwater designation. These proposals shall be submitted as petitions requesting rule adoption in accordance with ORS 183.390 and OAR 340-11-47. All such proposals shall include the following information:

(A) The reasons as related to Subsection (2)(a) of this rule that the proposal is being made and appropriate supporting information;

(B) A description of the aquifers hydrogeologic characteristics. This must include description of the area geology; groundwater quality, quantity, direction of flow and hydraulic gradients, velocity, recharge, discharge, interaction with other aquifer units, and interaction with surface waters;

(C) A precise (legal) description of the proposed Class I or Class III groundwater area vertical and horizontal boundaries; and

(D) A discussion of aquifer management needs.

(f) The EQC shall make one of the following findings on a proposal for a change in groundwater classification designation: (1) classification as proposed is appropriate, (2) the information presented does not support a change in classification as proposed, or (3) the information presented was inadequate upon which to base a decision for a change in groundwater classification.

(g) The following specific management requirements are established to protect the groundwater quality for the beneficial uses of the identified Groundwater Class.

(A) For each Class I groundwater area designated, the EQC shall adopt an aquifer management plan. The aquifer management plan shall identify specific source control, nonpoint source control, and other requirements necessary to adequately protect the aquifer. Class I groundwaters shall not be used for either direct or indirect discharge of wastes that results in an increase over background concentrations of pollutants.

(B) Groundwater quality management for Class II groundwaters shall meet the requirements of this rule (340-41-029).

(C) For each Class III groundwater area designated, the EQC will adopt an aquifer management plan. The aquifer management plan shall identify the specific source control, nonpoint source control, and other requirements that shall be exempted from the requirements of this rule and other OAR 340 regulatory programs as referenced therein. Any exemption from these requirements, including discharge of waste to groundwater, may be allowed by the Department provided it does not impair a beneficial use of the groundwater for which the natural water quality is adequate, or have a deleterious effect upon ecosystems which may be influenced by the groundwater.

(3) **POINT SOURCE CONTROL RULES:**

The following point source control rules apply to all aquifer classifications, except as provided in specific additions or exemptions included in the aquifer management plan for Class I or Class III aquifers:

(a) In order to minimize groundwater quality degradation potentially resulting from point source activities point sources shall employ the highest and best practicable methods to prevent the movement of pollutants to groundwater. Among other factors, available technologies, cost, public health protection, site characteristics, pollutant toxicity and persistence, and state and federal regulations shall be considered in arriving at a case-by-case determination of highest and best practicable methods.

(b) Activities that could result in the disposal of wastes onto or into the ground in a manner which allows potential movement of pollutants to groundwater shall be regulated by utilizing all available and appropriate statutory and administrative authorities, including but not limited to: permits, fines, Commission orders, compliance schedules, moratoriums, Department orders, and geographic rules. These groundwater quality protection requirements shall be implemented through the Department's Water Pollution Control program, Solid Waste Disposal program, Individual On-Site (Subsurface) Sewage Disposal System Construction program, Hazardous Waste Facility (RCRA) program, Underground Storage Tank program, Underground Injection Control program, Emergency Spill Response program, Remedial Action program, or other programs, whichever is appropriate.

(c) **Permitted Operations:**

(A) Program permits shall, as deemed necessary by the Director, specify appropriate groundwater quality protection requirements and monitoring and reporting requirements. Water Pollution Control Facility (WPCF) permits may be used in cases other than for those covered by Solid Waste Disposal Facility permits, NPDES permits, Individual On-Site (subsurface) Sewage Disposal permits, Underground Storage Tank permit, or Hazardous Waste Facility permit.

(B) The Department shall evaluate, based on available resources and priorities of the Department, new and existing permitted sources and determine the potential for adverse impacts to beneficial uses. Where the Department determines that there is a potential adverse groundwater quality impact, it may require through the above referenced permits and rules, and other appropriate statutory and administrative authorities, the following groundwater quality protection program requirements:

(i) **Groundwater Monitoring Program Requirements.** The permittee or permit applicant shall submit to the Department for approval a groundwater monitoring program plan. The groundwater monitoring program shall be capable of determining rate and direction of groundwater movement and monitoring the groundwater immediately downgradient from the waste management area. A background monitoring point shall be located where water quality is not affected by contamination from the waste management area. The plan, unless otherwise specified by the Department, shall include, but not be limited to, detailed information on the following:

1. System Design:

a. Well Locations.

b. Well Construction.

c. Background Monitoring Point.

d. Downgradient Monitoring Point.

e. Water Quality Compliance Point.

2. Sample Collection and Analysis:

a. Parameters to be Sampled.

b. Sampling Frequency.

c. Sample Collection Methods.

d. Sample Handling and Chain of Custody

e. Analytical Methods.

f. Acceptable Minimum Detection Limits.

g. Quality Assurance and Quality Control Plan.

3. Data Analysis Procedure:

a. Statistical Analysis Method.

b. Frequency of Analysis.

(ii) **Reporting Requirements.** The facility permit shall specify monitoring and assessment reporting requirements.

(iii) **Downgradient Monitoring Point Requirements.** The permittee shall monitor the aquifer directly downgradient from the waste management area to ensure immediate detection of waste discharged. This shall be known as the downgradient monitoring point.

(iv) **Compliance Point Requirements.** The Department shall specify the point at which groundwater quality must be at or below the concentration limits specified in the permit. Unless otherwise specified by the Department, the compliance point will be the waste management area boundary. The compliance point may not necessarily be the same as the downgradient monitoring point.

(v) **Concentration Limits.**

(1) **Compliance Point Concentration Limit at Existing Facilities.** For facilities operating under a Department approved permit, on, or before the effective date of these rules, groundwater quality shall be restored and maintained at the compliance point to the concentration limits that are to be specified in the facility permit. The permit specific concentration limits may be

above background, but shall not exceed groundwater quality standards as listed in Section 5 of this rule, or background, whichever is greater, unless otherwise established by the EQC/Director according to the procedure contained in Subsection (3)(c)(B)(vii) of this Section.

(2) **Compliance Point Concentration Limit at New Facilities.** For facilities permitted after the effective date of these rules, concentration limits at the compliance point will be the background values, unless otherwise established by the EQC/Director according to the procedure contained in Subsection (3)(c)(B)(vii) of this Section.

(vi) **Action Requirements.**

(1) **Resampling:** If monitoring indicates a statistically significant increase (increase or decrease for pH) in the value of a parameter monitored, the permittee shall immediately resample. If the resampling confirms the change in water quality the permittee shall: (a) report the results to the Department within 10 days; and (b) prepare and submit to the Department within 30 days an assessment plan and time schedule unless otherwise specified by the Department.

(2) **Assessment Plan and Time Schedule:** The assessment plan must provide for an assessment of the source, extent, and potential dispersion of the contamination; and the evaluation of potential remedial action that may be taken to restore and/or maintain groundwater quality, and the action that would be necessary to achieve a specified concentration limit at the Department approved compliance point. Remedial action plans shall identify two phases of remedial action. Phase one will evaluate the effect of actions that prevent the release of additional pollutants that may eventually move into the groundwater. Phase two will evaluate effect of groundwater contamination containment and treatment actions.

(3) **Preventive Action:** In order to prevent additional contamination, the Department may order the implementation of phase one remedial action when a significant change in water quality at a downgradient monitoring point is detected.

(4) **Remedial Action Requirements:** Upon Department approval, remedial action shall be implemented by the permittee or responsible party, if the assessment indicates a concentration limit or alternate concentration limit is or will be violated at a compliance point.

(vii) **Alternate Concentration Limit.**

(1) Upon request by the liable person, permittee, Department, or permit applicant, and after opportunity for public review and comment an alternate concentration limit to the concentration limits specified in Subsection (3)(c)(B)(v) of this Section may be granted.

(2) The Director may grant such alternate concentration limits for concentrations up to, but not exceeding numerical groundwater quality standards of Section (5) of this rules, and for compounds for which there are no standards. Alternate concentration limits, in excess of a numerical groundwater quality standard, may only be granted by the EQC.

(3) The EQC or Director, as specified in item (2) above, may grant on a case-by-case determination an alternate concentration limit for a pollutant if it is found that the constituent will not pose a substantial present or potential hazard to human health or the environment as long as the alternate concentration limit is not exceeded. In establishing alternate concentration limits, the EQC or Director shall consider the effects on groundwater quality, interconnected surface water quality, and associated effects on beneficial uses. Among others, the following factors shall be considered:

a. The physical and chemical characteristics of the pollutant, including its potential for migration;

b. The hydrogeologic characteristics at the facility and the surrounding area;

c. The quantity of groundwater and the direction of groundwater flow.

d. The proximity and withdrawal rates of groundwater users.

e. The current and future uses of groundwater in the area.

f. The existing quality of the groundwater, including other sources of contamination and their cumulative impact on water quality.

g. The potential for health risks caused by exposure to the pollutant.

h. The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to the pollutant.

i. The persistence and permanence of potential adverse effects.

j. The proximity and interconnections with surface water in the area.

k. The potential effect on interconnected surface water.

l. The potential effect of the pollutant on ecosystems of the area.

m. The comparative feasibility and cost of obtaining the concentration limit and the alternative concentration limit.

(4) At the time of the initial proposal for Class 3 aquifer designation, or at some other time, alternative concentration limits for a variety of pollutants may be adopted as part of the aquifer management plan.

(d) **Non-permitted Activities: Spills, releases, past practices:**

Except as provided otherwise under statutory or administrative authorities, when a non-permitted activity could result in or has resulted in the pollution of groundwater the Department may require the liable person to:

(A) Conduct a groundwater assessment program capable of determining the extent, magnitude, source, dispersion and rate of the contamination.

(B) Determine potential affects of the contamination on the water quality of interconnected surface waters, and groundwaters.

(C) Determine potential of the contamination to affect existing, potential, or future beneficial uses of the groundwater, or any other interconnected waters of the state.

(D) Implement remedial action including but not limited to restoration of groundwater quality to a Department approved concentration limit at a Department specified compliance point.

(i) The concentration limit will be established at background levels unless otherwise established according to the procedure contained in Subsection (3)(c)(B)(vii) of this Section.

(ii) The compliance point shall be established by the Department as close as is practicable to the source of contamination. Among other factors, available technologies, cost, public health protection, site characteristics, pollutant toxicity and persistence, and existing and future beneficial uses will be considered in arriving at a case-by-case determination of compliance point location.

(4) **NONPOINT SOURCE CONTROL:**

(a) In order to minimize groundwater quality degradation potentially resulting from nonpoint sources, it is the policy of the EQC that activities associated with land and animal management, be conducted using the appropriate best management practices.

(b) In order to adequately maintain and preserve groundwater quality in areas within the state where pollution from nonpoint sources is affecting or has the potential to affect groundwater quality, the Department, subject to resource limitations, shall identify aquifers that are vulnerable to nonpoint source contamination. Any Class I, Class II, or Class III aquifer may be designated as an aquifer vulnerable to pollution from nonpoint sources. In the identification of vulnerable aquifers the following information shall be considered:

(A) Evidence of existing contamination.

(B) Characteristics of soils, land use practices, irrigation practices, climate, depth to groundwater, infiltration rates, hydraulic conductivity, vertical and horizontal groundwater velocities, and other factors identified by the Department as being related to aquifer vulnerability.

(C) The advice and recommendations of the Water Resources Department, Oregon Department of Agriculture, and the United States Geological Survey.

(c) It shall be the policy of the Department to work cooperatively with state, local, and federal agencies in developing and establishing best management practices for the control of nonpoint sources. Agencies involved in this process will include but not be limited to: the Oregon Department of Agriculture, the Oregon Department of Forestry, the EPA Office of Pesticides, the Oregon State Cooperative Extension service, and the United States Department of Agriculture.

(d) The Department shall work cooperatively with state, local and federal agencies in developing aquifer management plans for aquifers that have been identified as being vulnerable to groundwater contamination under paragraph (4)(b) of this section. The purpose of the management plan will be to maintain or restore groundwater quality sufficient to provide for the beneficial uses of the groundwater. Requirements of this Section may be met by appropriate groundwater quality protection mechanisms developed, required, or implemented by other local, state, or federal agencies.

(e) In areas where groundwater is being degraded as a result of on-site sewage disposal practices and an areawide solution is necessary, the Department may propose a rule for adoption by the EQC and incorporation into the appropriate basin section of the State Water Quality Management Plan (OAR 340 Division 41) which will:

(A) Recite the findings describing the problem and the aquifer impacted;

(B) Define the area where corrective action is required;

(C) Describe the problem correction and preventative measures to be ordered;

(D) Establish the schedule for required major increments of progress;

(E) Identify conditions under which new, modified, or repaired on-site sewage disposal systems may be installed in the interim while the area correction program is being implemented and is on schedule;

(F) Identify the conditions under which enforcement measures will be pursued if adequate progress to implement the corrective actions is not made. These measures may include but are not limited to measures authorized in ORS 454.235(2), 454.685, 454.645, and 454.317;

(G) Identify all known affected local governing bodies which the Department will notify by certified mail of the final rule adoption; and

(H) Accomplish any other objectives declared to be necessary by the EQC.

(f) The Department shall notify all known impacted or potentially affected local units of government of the opportunity to comment on the proposed rule at a scheduled public hearing and of their right to request a contested case hearing pursuant to ORS Chapter 183 prior to the EQC's final order adopting the rule.

(5) **GROUNDWATER QUALITY STANDARDS:**

(a) In accordance with OAR 340-41-026(1)(a) existing high quality groundwaters which exceed those levels necessary to support recognized and legitimate beneficial uses shall be maintained except as provided in 340-41-026(1)(a).

(b) Human consumption is recognized as the highest and best use of groundwater and as the use which usually requires the highest level of water quality. The following numerical standards reflect the suitability of groundwater for human consumption. They are not to be construed as acceptable groundwater quality management goals. They are to be considered by the Department and the public in considering the significance of a particular

chemical concentration, and in determining the level of remedial action necessary to restore polluted groundwater for human consumption.

(c) [1]**Numerical Groundwater Quality Standards:**

Inorganic Compounds	[2]Standard mg/L
Arsenic	0.05
Asbestos	7.1 Million fibers per liter
Barium	1.0
Cadmium	0.01
Chloride	250.0
Chromium	0.05
Copper	1.3
Fluoride	4.0
Iron	0.3
Lead	0.05
Manganese	0.05
Mercury	0.002
Nitrate-N	10.0
Nitrite-N	1.0
Selenium	0.01
Sulfate	250.0
Total Dissolved Solids	500.0
Zinc	5.0

[1]All standards except total dissolved solids are for total (unfiltered) concentrations.
[2]Unless otherwise specified.

Volatile Organic Compounds	[2]Standard mg/L
Trichloroethylene	0.005
Carbon Tetrachloride	0.005
Vinyl Chloride	0.001
1,2-Dichloroethane	0.005
Benzene	0.005
1,1,Dichloroethylene	0.007
1,1,1-Trichloroethane	0.200
p-Dichlorobenzene	0.005
Trihalomethanes	0.100
(the sum of concentrations bromodichloromethane, dibromochloromethane, tribromomethane (bromoform), and trichloromethane (chloroform))	

[2]Unless otherwise specified.

Synthetic Organic Compounds	[2]Standard mg/L
Acrylamide	[3]ND
Alachlor	[3]ND
Aldicarb, aldicarb sulfoxide and aldicarb sulfone	0.009
Carbofuran	0.036
Chlorodane	[3]ND
Cis-1,2-Dichloropropane	0.006
O-Dichlorobenzene	0.620
2,4-D	0.100
EDB	[3]ND
Epichlorohydrin	[3]ND
Ethylbenzene	0.680
Heptachlor	[3]ND
Heptachlor Epoxide	[3]ND
Lindane	0.004
Methoxychlor	0.100
Monochlorobenzene	0.060
PCBs	[3]ND
Pentachlorophenol	0.220
Styrene	0.140
Toluene	2.000
2,4,5-TP	0.010
Toxaphene	0.005
Trans-1,2-Dichloroethylene	0.070
Xylene	0.440

[2]Unless otherwise specified.
[3]None detected -- detection limit must be at 0.001 mg/L or less.

Microbiological	Standard
Total Coliforms	Less than 1 (Organisms/100 ml)
Giardia	Less than 1 (Organisms/100 ml)
Viruses	Less than 1 (Organisms/100 ml)

Miscellaneous	Standard
Color	15 Color unit
Foaming Agents MBAS	0.5 mg/L
Turbidity	5 NTU

New definitions to be included in the definition section (OAR 340-41-006).

Alternate Concentration Limit -- Means the maximum acceptable level of a pollutant allowed in groundwater at a Department specified compliance point as determined by the Director or EQC, and adopted in accordance with the requirements contained in OAR 340-41-029(b)(B)(vi).

Background Water Quality - Means the quality of water immediately upgradient from a source, or potential source of contamination.

Natural Water Quality -- Means the state of water quality that would exist as a result of natural conditions, unaffected by anthropogenic sources of contamination.

Nonpoint Source Pollution -- Means pollution that results from widespread land use activities and cannot be traced to a specific source.

Point-Source Pollution -- Means pollution that results from a specific activity that can be traced to a specific source.

Compliance Point -- Means the point or points where groundwater quality concentration limits must be met.

Monitoring Point -- Means a point or points established to immediately detect downgradient from a facility a discharge to the aquifer where groundwater quality is assessed. It may or may not be the some as the compliance point.

Concentration Limit -- Means the maximum acceptable concentration of a pollutant allowed in groundwater at a Department specified compliance point.

Waste Management Area - Means any area where waste, or material that that could become waste if released to the environment, is located or has been located.

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item J, January 22, 1988, EQC Meeting

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

Problem Statement

The Department's Hazardous Waste Program has determined that during the 1987-1989 biennium, a fee revenue short-fall of $494,000 will occur. The shortfall is the difference between the projected fee revenues included in the Program's proposed 1987-1989 budget, and actual fee revenues.

Background

Prior to the 1987 Legislative Session, a 9-member Hazardous Waste Program Funding Committee, made up of representatives from the regulated industries in Oregon, reviewed the overall hazardous waste program and recommended an approach for long-term funding of the program. The committee looked at the required activities and effort necessary to maintain an authorized state program and also evaluated other aspects of an effective hazardous waste program for Oregon. The committee found that the Department's current program was understaffed and underfunded to adequately cover the demands of the program.

Funding for the hazardous waste program is derived from three sources: A U.S. Environmental Protection Agency grant, State General Fund, and other funds (primarily fees from the regulated community). The committee recommended a balanced funding approach. It agreed that there should be increases in the fees paid by generators of hazardous waste and by facilities that treat, store or dispose of hazardous waste (TSD facilities). The committee also felt that an increase in state general funds was warranted. Historically, the program has received little general

fund support and has primarily been funded by federal grant money and fees on industry. These recommendations were included in the Department's proposed budget for fiscal years 1988 and 1989.

In 1987, the Oregon Legislature significantly increased general fund support for the hazardous waste program, as the funding committee had recommended. The program received approximately $761,011 in general funds for the current biennium. Another $300,000 in general fund support was reserved in the Emergency Fund, if necessary. The Department is returning to the Emergency Board on January 28 seeking $283,800 of the reserved amount.

As noted above, the funding committee's recommendations also included an increase in the amount of fees paid by generators of hazardous waste and by hazardous waste TSD facilities. The committee agreed that fees should be increased to provide a total of approximately $1,510,000 in revenue for the biennium. On July 13, 1987, the Commission adopted amendments to the hazardous waste fee schedules, calculated to generate this amount of revenue. The new fees were assessed in September 1987.

The Department now finds that the fee revenue for this year is not what was anticipated. The new fee schedule did not produce the required $755,000 (one-half of the $1,510,000) for 1988. Approximately $508,000 has been received for 1988. The fee revenue shortfall of $494,000 for the biennium is the difference between the projected biennial fee revenues of $1,510,000 and actual fee revenues for the first year and the anticipated revenues for the second year, totaling $1,016,000.

The Department received a commitment from the funding committee to produce fee revenue totaling $1,510,000. The Department believes the committee has the responsibility to recommend and support fee changes which will achieve that revenue level.

The Department proposes to reconvene the funding committee to determine how to best overcome the shortfall in fees. This proposal will then be taken forward for public hearing, and following review of comments, be proposed to the Commission for rule adoption. Since the Department's rules require that annual hazardous waste fees be paid by July 1, this rulemaking should be completed by June 1988. In order for the Department to meet this schedule, the Department must request authorization now to conduct a public hearing in March. Statements of Need and of Land Use Consistency are attached. The Commission is authorized to adopt hazardous waste fees by ORS 466.165.

Alternatives and Evaluation

As stated previously, the hazardous waste program is funded from three sources: A Federal EPA grant, State General Fund, and Other Funds (primarily fee revenues). For the current biennium, the federal grant is $928,875. State General Fund contribution is $761,011. Fee revenue was projected to be $1,510,000. However, based upon fees collected to date, only about $1,016,000 will be received. This results in a shortfall in fee revenue of $494,000.

There are several alternatives to addressing the fee shortfall. The Department could propose a fee schedule at this time. Instead, the Department proposes to reconvene the Hazardous Waste Program Funding Committee and to seek its recommendation and support. Once a course of action is agreed upon, the Department will take the proposal to public hearing. As noted above, in order to allow sufficient time for this process to be completed, prior to the next billing for 1988, the Department must request hearing authorization now.

It should be noted that this action is only a temporary measure to address an immediate funding problem. In the long-term, the Department must reevaluate the hazardous waste fee structure, to both encourage appropriate waste management alternatives, such as waste reduction and recycling, and to ensure a dependable and consistent source of revenue to support the program. These issues were raised by several commentors when the fee schedules were amended in July 1987. The Department is committed to reviewing the entire program funding issue with the Hazardous Waste Program Advisory Committee. This is a broader-based committee than the funding committee, in that it is comprised of representatives from industry, environmental groups and the public. The Commission may anticipate that the Department will return with a more comprehensive revision of its hazardous waste fee rules, prior to the next biennium.

Summation

1. The Department's hazardous waste program has a current shortfall in fee revenue of approximately $494,000 for the biennium.

2. The Department proposes to take this matter to the Hazardous Waste Program Funding Committee for recommendations. The Department will then carry the Committee's proposal forward to public hearing in the form of a revised fee schedule.

3. The Department views this proposal as an emergency measure only and is committed to reviewing its long-term funding approach.

4. The Department requests authorization to conduct a public hearing on this matter.

5. The Commission is authorized to adopt annual fees for generators and for TSD facilities by ORS 466.165.

Directors Recommendation

Based upon the summation, it is recommended that the Commission authorize a public hearing to take testimony on proposed amendments to the hazardous waste fee schedules in OAR 340-102-065 and 340-105-113.

Fred Hansen

Attachments I: Statement of Need for Rulemaking
II: Statement of Land Use Consistency

Bill Dana:f
ZF2800
229-6015
January 7, 1987

Attachment I
Agenda Item J
1/22/88, EQC Meeting

Before the Environmental Quality Commission
of the State of Oregon

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

1. Statutory Authority

ORS 466.165 provides that fees may be required of hazardous waste generators and of owners and operators of hazardous waste treatment, storage or disposal sites (TSD facilities). The fees shall be in amounts determined by the Commission to be necessary to carry on the Department's monitoring, inspection and surveillance program established under ORS 466.195 and to cover related administrative costs.

2. Statement of Need

Fee increases are needed to offset a current biennial shortfall in fee revenue of approximately $494,000 in the Department's hazardous waste program.

Failure to raise fees would result in a reduction of program commitments during fiscal years 1988 and 1989. This reduction could increase the threat to public health, safety and the environment, from the mismanagement of hazardous waste, and could result in the loss of the state's authorization to manage the federal hazardous waste program.

3. Principal Documents Relied Upon

a. Oregon Revised Statutes, Chapter 466
b. Oregon Administrative Rules, Chapter 340, Divisions 102 and 105.

4. Fiscal and Economic Impact

The proposal would amend the existing annual compliance determination fees for generators of hazardous waste and for owners and operators of hazardous waste TSD facilities. The exact amount of fee increase will be based on the recommendations of a funding committee comprised of industry representatives.

ZF2800.1

Attachment II
Agenda Item J
1/2/88, EQC Meeting

Before the Environmental Quality Commission
of the State of Oregon

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

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

ZF2800.2

K

Modification
to the
Proposed Rules
Underground Storage Tank Program
ORS 466.705 through ORS 466.995

Underground Storage Tank Permit Required

340-150-020 (1) After February 1, 1989, no person shall install, bring into operation, operate or decommission an underground storage tank without first obtaining an underground storage tank permit from the department.

(2) Permits issued by the department will specify those activities and operations which are permitted as well as requirements, limitations and conditions which must be met.

(3) A new application must be filed with the department to obtain modification of a permit.

(4) After February 1, 1989, permits are issued to the person designated as the permittee for the activities and operations of record and shall be automatically terminated:

(a) Within 120 days after any change of ownership of property in which the tank is located, ownership of tank or permittee unless a new underground storage tank permit application is submitted in accordance with these rules;

(b) Within 120 days after a change in the nature of activities and operations from those of record in the last application unless a new underground storage tank permit application is submitted in accordance with these rules;

(c) Upon issuance of a new or modified permit for the same operation;

<u>(5) The department may issue a temporary permit pending adoption of additional Federal underground storage tank technical standards.</u>

January 21, 1988

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item K , January 22, 1988

Proposed adoption of Interim Underground Storage Tank Rules, OAR 340-150-010 through 340-150-150 and OAR 340-012-067.

BACKGROUND

The background information for these regulations is contained in the EQC staff report provided to the Commission prior to the October 9, 1987 EQC meeting. This staff report is included as Attachment X.

PUBLIC HEARINGS

As authorized by the commission on October 9, 1987, public hearings on the proposed rules were held at 10:00 A.M. on:

- o December 1, 1987 in Portland, Oregon
- o December 2, 1987,in Eugene, Oregon
- o December 3, 1987 in Medford, Oregon
- o December 4, 1987 in Bend, Oregon
- o December 4, 1987 in LaGrande, Oregon

A one hour informational meeting was held prior to each hearing to describe and answer questions on both the proposed Federal and Oregon underground storage tank programs.

In general, people expressed concern about introducing another environmental program, the cost of the program and provided suggestion on how to make the rules more workable. As a result of testimony certain changes have been made to the proposed UST rules. These changes are shown in Attachment IX. Attachment I contains the modified rules that are proposed for adoption today. A summary of the oral and written testimony is contained in Attachment V.

INFORMATIONAL MEETINGS

The comments at the informational meetings were somewhat different than the formal testimony. Individuals who commented were concerned about the financial impact of both the state and federal programs and environmental costs associated with their underground tank.

Many expressed concern about the availability and cost of insurance that will be required in the future. Several believed that this requirement would cause them to close their businesses. They were concerned that small rural gas stations would close, leaving Oregon's rural citizens without convenient motor vehicle fuel.

Others expressed concern about the bureaucracy and the cost of the UST program, both to the citizens of the state and to each tank owner. They felt that there were already too many regulations for small business.

CHANGES IN THE PROPOSED RULES

As a result of the oral and written testimony, the proposed rules have been modified as follows:

- o They were edited and the sections were arranged chronologically to improve readability.
- o A section was added to describe the tanks that are excluded from these regulations.
- o The 60 days in which an owner must respond when permit conditions change has been extended to 120 days.
- o The Department must now issue a permit within 30 days, rather than 90 days.
- o A permit application is not now required when a tank is decommissioned.
- o A permit application fee is not now required for a change in permit conditions.
- o Mandatory decommissioning was clarified. It is now required for any tank that is taken out-of-service for a 24 month period after February 1, 1988.
- o The requirement "that any person who deposits a regulated substance into a tank must notify the tank owner of these regulations" is now limited to a one year period, February 1, 1989 to February 1, 1990.
- o "Prohibiting persons from depositing regulated substances into an underground tank" was delayed until August 1, 1989 to allow adequate time for the tank owner to be notified of these rules by the sellers of regulated substances and tanks.
- o While previously limited to 10 years, a permit is now perpetual if the annual compliance fee is paid. Authority

to revoke permits for non-compliance is retained.

A more detailed description of the changes to these rules is shown in Attachment IX where additions to the rules are shown underlined and deletions to the rules are shown with strikeovers.

RULEMAKING SCHEDULE

On April 17, 1987, the Federal Government published Proposed Rules for the Underground Storage Tank Program. These Proposed Federal Rules guided the development of these interim state underground storage tank rules.

The final Federal Underground Storage Tank Program Rules are scheduled to be adopted in April 1988 and to be effective in June 1988. Following their adoption, the Department will propose the adoption of additional state rules which encompass the federal rules. Ultimately, the Department intends to seek federal approval for the Oregon Underground Storage Tank Program in 1989.

PROPOSED RULES

The Department is proposing adoption of interim rules which provide for regulation of six areas of immediate concern to the Department:

(1) Establishment of a permit and fee program;
(2) Requirements for revocation and denial of a permit;
(3) Requirements for distributors of regulated substances and sellers of underground storage tanks;
(4) Interim performance standards governing the installation of underground tanks;
(5) Standards for decommissioning of underground storage tanks, and
(6) Penalty provisions.

DISCUSSION

Tanks are continuing to be installed, removed from the ground and abandoned in place. National studies conducted by the American Petroleum Institute and the EPA show that poor installation of underground tanks and corrosion of underground tanks are the two major causes of leaks. Since the enactment of the 1984 Hazardous and Solid Waste Amendments, the installation of underground storage tanks has been regulated by the Environmental Protection Agency under Interim Rules. Final Federal rules have been proposed and are scheduled for adoption in June 1988.

The Department is proposing Interim Underground Storage Tank rules

to support the policy statement of ORS 466.705 through ORS 466.995; "public policy is to protect the public health, safety, welfare and the environment from the harmful effects of underground tanks used to store regulated substances".

Presently, the installation of underground tanks are governed by the Federal interim rules. These rules do not cover operation or decommissioning of underground tanks. However, the proposed Federal rules contain retroactive requirements for tanks that are decommissioned prior to their adoption. These retroactive requirements would be a burden on an owner who decommissions an underground tank prior to the their adoption. The Department is proposing rules that require the owner to apply for a permit prior to the installation, bringing into operation, or decommissioning of a tank. This process will allow the Department to provide guidance to the tank owner, thus minimize future conflicts with the Federal rules.

In accordance with ORS 466.705 through ORS 466.995, the proposed rules require a tank owner to apply for a permit within 90 days following the adoption of rules. ORS 466.705 through ORS 466.995 limits the effective date of the Underground Storage Tank Compliance Permit until one year after the adoption of rules. Rules are proposed that authorize the Department to issue, modify, deny or revoke a permit. These proposed rules allow the Department to revoke or deny a permit if it finds a false statement or misrepresentation in the permit application or finds violation of the conditions of the permit, rules, or statutes.

The 1987 Oregon Legislature authorized fees for funding of the Underground Storage Tank Program. A proposed rule requires that a fee of $25 per tank be submitted to the Department with the permit application and that an annual compliance fee of $25 per tank be paid for each year of operation. The proposed rules provide that these fees will be reduced to $20 for any application received after July 1, 1989, consistent with ORS 466.705 through ORS 466.995.

The proposed permit rules follow the Federal Interim Underground Storage Tank Regulations by requiring the owner of an underground storage tank currently in operation, the owner of a tank taken out of operation between January 1, 1974 and May 1, 1988 and the owner of a tank taken out of operation prior to January 1, 1974 that contains a regulated substance to apply for an underground storage tank permit provided that the tank has not been permanently decommissioned by removing or filling the tank with an inert, solid material. Additionally, the proposed rules require that the tank owner, the land owner in which a tank is located, and the proposed permittee sign the permit application. The owner or permittee is required to furnish information to the Department relating to underground storage tanks on the permit application

furnished by the Department.

Paralleling ORS 466.705 through 466.995 , the Department is proposing a rule, OAR 340-150-150, that limits the distribution of regulated substances to only those tanks operating under a permit issued by the Department. An additional proposed rule, OAR 340-150-140, will require that distributors and sellers of regulated substances and sellers of underground storage tanks inform their customers in writing of the permit requirements. ORS 466.705 through ORS 466.995 does not allow these rules to become operative any sooner than one year following the adoption of rules. To allow time for the distributors of regulated substances and sellers of tanks to inform their customers, the rule limiting delivery of product will not become operative for 18 months after the effective date of these rules.

The current Federal rules concerning installation of underground storage tanks cannot be enforced by the Department. Under this arrangement the Department is limited to providing guidance about the Federal rules. By adopting the Federal rules, the Department will have the authority to enforce these installation requirements. The Department is proposing rules that adopt the federal interim standards specified in Subtitle I, Section 9003(g) of the Resource Conservation and Recovery Act (RCRA), and use as guidance an EPA publication entitled "The Interim Prohibition: Guidance for Design and Installation of Underground Storage Tanks".

The Department is proposing rules for owners or permittees who decommission tanks prior to the adoption of the Federal rules. In addition, the proposed rules add requirements for disposing of a tank, disposing of the tank contents, reporting and cleaning up a release from an underground tank. ORS 466.704 through ORS 466.995 specifies that environmental regulations adopted by the Commission governing underground storage tanks should not interfere with or abridge the authority of the State Fire Marshal with regard to regulation of combustible or explosion hazards. These proposed interim decommisioning rules do not conflict with the rules currently in effect within local fire jurisdictions. Future amendments to these rules on decommissioning will be developed jointly with the State Fire Marshal and local agencies so as to avoid conflicts, yet meet or exceed the final Federal underground storage tank rules.

Rules are proposed for civil penalties for any person who violates underground storage tank rules, statutes or conditions of an order or permit.

ALTERNATIVES AND EVALUATION

If the Department does not proceed with rulemaking regulating

underground storage tanks to include all federal provisions, then the federal EPA will administer the program in Oregon. However, both the Oregon Legislature and the Underground Storage Tank Advisory Committee have considered the alternatives. The Legislature with the support of the Underground Storage Tank Advisory Committee has directed the Department to operate the underground storage tank program within Oregon.

The proposed rules are the minimum required to initiate the requirements of ORS 466.705 through ORS 466.995 and to provide funding for the State Underground Storage Tank Program.

Implementation of technical standards, enforcement actions, corrective actions and certain other programs (e.g. financial responsibility) are requirements for EPA approval of the state program. If the Department does not implement each of these areas as specified by Subtitle I of the 1984 Hazardous and Solid Waste amendments to RCRA, operation of the state program in lieu of the federal program will be delayed.

The permit program is essential to update the current information on the UST database (e.g. installation of new tanks, change in ownership of existing tanks, removal and abandonment of existing tanks). In addition, the UST Advisory Committee believed it essential to identify and inform the land owner in which the tanks were located, the tank owners, and the permittee of responsibilities and liabilities associated with underground storage tanks. Without this requirement, landowners and many tank owners may remain unaware of their responsibilities under the new underground storage tank program.

Additional provisions of the permit program require that owners of tanks not in operation but which still store regulated substances be required to complete a permit application. The Department is aware that many abandoned tanks have not been registered and are potential sources of environmental pollution. Delays in adopting the permit rule will delay the Department's ability to keep up to date tank information and to inform all responsible parties of potential liabilities.

Technical standards for the installation of underground tanks are currently regulated by the EPA. The Department is proposing to adopt these exact requirements. The EPA, however, is limited in its oversight of tank installations. Precover inspections are not conducted by the EPA. Without adoption of installation standards, the Department has no direct authority to inspect or enforce compliance.

Oregon's universe of underground storage tanks is large, greater than 22,000 tanks. If the proposed rule prohibiting distributors from depositing regulated substances into tanks without permits is not adopted, the Department will be unable to adequately enforce

its permit program. The regulation of distribution of substances to permitted tanks does not take effect until August 1, 1989, thereby allowing ample time for tank owners and operators to become aware of permit requirements.

Since the passage of Subtitle I of the 1984 Hazardous and Solid Waste amendments to RCRA, the Department has been aware of the many underground storage tanks being removed from the ground or abandoned in place. At the time of decommissioning, environmental damage can occur or be identified. The Department is proposing minimal decommissioning requirements, consistent with the proposed federal rules. Without rule adoption, the Department will be unaware of tanks that have been removed and any cleanup of releases. Decommissioning information will enable the Department to adequately assess future resource requirements. Furthermore, the EPA has proposed retroactive site assessment requirements for tanks that are decommissioned improperly. These proposed rules require that, unless the tank is decommissioned using American Petroleum Institute Document 1604 as guidance, a complete environmental site assessment will be required. API 1604 is not an environmental guideline. Rather it specifies procedures to reduce the structural, fire and explosion risks. The Department is proposing decommissioning rules so that tank owners and operators may be able to avoid costly retroactive requirements.

The Department has drafted the proposed rule based on recommendations from its Underground Storage Tank Advisory Committee. This committee is comprised of 38 individuals representing regulated industry, environmental groups, environmental attorneys, educators, engineers and scientists, the insurance industry, and the public. See Attachment VIII.

The proposed rule defines the terms used herein, establishes who shall apply for a permit, revocation and denial requirements, permit fee, information to be contained in the permit application, installation standards, decommissioning requirements, and civil penalties.

SUMMARY

1. Subtitle I of the Resource Conservation and Recovery Act (RCRA) authorizes the implementation of a Federal underground storage tank program and encourages the development of state operated programs.

2. Since May of 1985, the EPA has regulated the installation of underground storage tanks and used as a guidance document, "The Interim Prohibition: Guidance for Design and Installation of Underground Storage Tanks".

   The Office of the State Fire Marshal has regulated certain

underground storage tank installations.

3. The 1985 Oregon Legislature passed ORS 468.901 - 468.917 granting authority to the Department to develop a state-wide uniform underground storage tank program.

4. The 1987 Oregon Legislature passed ORS 466.705 through ORS 466.995 which expands the Department's authority over underground storage tanks to include all federal provisions and certain additional state requirements.

5. Based on the authority of ORS 466.705 through ORS 466.995, the Department proposes that certain interim underground storage tank rules be adopted enabling the Department to begin development of an underground tank program which will ultimately meet all the provisions required for state program approval.

   The subject of the interim rules includes the following:

   (a) Adoption of interim rules comparable to the current federal rules regarding the installation of underground storage tanks;

   (b) A fee program of $25.00 per tank per year for the first two years, then $20.00 per tank per year thereafter, to fund program activities;

   (c) A permit program to allow the Department to continue to identify permittees, tank owners, and landowners on which tanks are located, on an ongoing basis;

   (d) Decommissioning rules to permit the oversight of underground tanks being abandoned in place or removed from the ground. This oversight is limited to reporting requirements for evidence of contamination, closure of tanks guided by the American Petroleum Institute Publication 1604, and a record keeping requirement of three years to document closure procedures.

   (e) Revocation and permit denial rules to allow the Department to refuse to issue a permit for certain violations or misrepresentation of information;

   (f) Penalty provisions for violations of statutes, rules, or orders.

DIRECTOR'S RECOMMENDATION

Based upon the Summation, it is recommended that the Commission adopt the proposed underground storage tank rules, OAR 340-150-010 through 340-150-150 and OAR 340-0120-067 as presented in Attachment I.

Fred Hansen
Director

ATTACHMENTS:

Attachment I:	Proposed Interim Rules
Attachment II:	Draft Statement of Need and Fiscal and Economic Impact
Attachment III:	Land Use Consistency Statement
Attachment IV:	Public Hearing Notice
Attachment V:	Hearing Report Summary and Responsiveness Summary
Attachment VI:	Original Proposed Interim Rules
Attachment VII:	ORS 466.705 through ORS 466.995
Attachment VIII:	UST Advisory Committee
Attachment IX:	Original Proposed Interim Rules, showing deletions and additions.
Attachment X:	Staff Report, Proposed UST Interim Rules Agenda Item G, October 9, 1987 EQC Meeting

Attachment I
Agenda Item K
1-22-88 EQC Meeting

Proposed Rules
Underground Storage Tank Program
ORS 466.705 through ORS 466.995

Definitions

340-150-010 (1) "Corrective Action" means remedial action taken to protect the present or future public health, safety, welfare or the environment from a release of a regulated substance. "Corrective Action" includes but is not limited to:

(a) The prevention, elimination, removal, abatement, control, minimization, investigation, assessment, evaluation or monitoring of a hazard or potential hazard or threat, including migration of a regulated substance; or

(b) Transportation, storage, treatment or disposal of a regulated substance or contaminated material from a site.

(2) "Decommission" means to remove from operation an underground storage tank, including temporary or permanent removal from operation, abandonment in place or removal from the ground.

(3) "Fee" means a fixed charge or service charge.

(4) "Investigation" means monitoring, surveying, testing or other information gathering.

(5) "Oil" means gasoline, crude oil, fuel oil, diesel oil, lubrication oil, sludge, oil refuse and any other petroleum related product or fraction thereof that is liquid at a temperature of 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute.

(6) "Owner" means the owner of an underground storage tank.

(7) "Permittee" means the owner or a person designated by the owner who is in control of or has responsibility for the daily operation or daily maintenance of an underground storage tank under a permit issued pursuant to these rules.

(8) "Person" means an individual, trust, firm, joint stock company, corporation, partnership, joint venture, consortium, association, state, municipality, commission, political subdivision of a state or any interstate body, any commercial entity and the Federal Government or any agency of the Federal Government.

(9) "Regulated substance" means:

(a) Any substance listed by the United States Environmental Protection Agency in 40 CFR Table 302.4 as amended as of the date October 1, 1987, but not including any substance regulated as a hazardous waste under 40 CFR Part 261 and OAR 340 Division 101, or

(b) Oil.

(10) "Release" means the discharge, deposit, injection, dumping, spilling, emitting, leaking or placing of a regulated substance from an underground storage tank into the air or into or on land or the waters of the state, other than as authorized by a permit issued under state or federal law.

(11) "Underground storage tank" means any one or combination of tanks and underground pipes connected to the tank, used to contain an accumulation of a regulated substance, and the volume of which, including the volume of the underground pipes connected to the tank, is 10 percent or more beneath the surface of the ground. Such term does not include any:

(a) Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes.

(b) Tank used for storing heating oil for consumptive use on the premises where stored.

(c) Septic tank.

(d) Pipeline facility including gathering lines regulated:

(A) Under the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671);

(B) Under the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001); or

(C) As an intrastate pipeline facility under state laws comparable to the provisions of law referred to in paragraph (A) or (B) of this subsection.

(e) Surface impoundment, pit, pond or lagoon.

(f) Storm water or waste water collection system.

(g) Flow-through process tank.

(h) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

(i) Storage tank situated in an underground area if the storage tank is situated upon or above the surface of a floor. As used in this subsection. "underground area" includes but is not limited to a basement, cellar, mine, drift, shaft or tunnel.

(j) Pipe connected to any tank described in subsections (a) to (i) of this section.

Underground Storage Tank Permit Required

340-150-020 (1) After February 1, 1989, no person shall install, bring into operation, operate or decommission an underground storage tank without first obtaining an underground storage tank permit from the department.

(2) Permits issued by the department will specify those activities and operations which are permitted as well as requirements, limitations and conditions which must be met.

(3) A new application must be filed with the department to obtain modification of a permit.

(4) After February 1, 1989, permits are issued to the person designated as the permittee for the activities and operations of record and shall be automatically terminated:

(a) Within 120 days after any change of ownership of property in which the tank is located, ownership of tank or permittee unless a new underground storage tank permit application is submitted in accordance with these rules;

(b) Within 120 days after a change in the nature of activities and operations from those of record in the last application unless a new underground storage tank permit application is submitted in accordance with these rules;

(c) Upon issuance of a new or modified permit for the same operation;

Underground Storage Tank Permit Application Required

340-150-030 (1) On or before May 1, 1988 the following persons shall apply for an underground storage tank permit from the department.

(a) An owner of an underground storage tank currently in operation;

(b) An owner of an underground storage tank taken out of operation between January 1, 1974, and May 1, 1988 and not permanently decommissioned in accordance with Section 340-150-130; and

(c) An owner of an underground storage tank that was taken out of operation before January 1, 1974, but that still contains a regulated substance.

(2) After May 1, 1988 the owner of an underground storage tank shall apply for an underground storage tank permit from the department prior to installation of the tank, placing an existing underground storage tank in operation, or modifying an existing permit.

Underground Storage Tank Permit Application

340-150-040 (1) Any person wishing to obtain a new, modified, or renewal permit from the department shall submit a written application on a form provided by the department. Applications must be submitted at least 30 days before a permit is needed. All application forms must be completed in full, and accompanied by the specified number of copies of all required exhibits.

(2) Applications which are obviously incomplete, unsigned, or which do not contain the required exhibits (clearly identified) will not be accepted by the department for filing and will be returned to the applicant for completion.

(3) Applications which appear complete will be accepted by the department for filing.

(4) Within 30 days after filing, the department will review the application to determine the completeness of the application:

(a) If the application is complete for processing, an underground storage tank permit will be issued.

(b) If the department determines that the application is not complete, it will promptly request the needed information from the applicant. The application will not be considered complete for processing until the requested information is received. The application will be considered to be withdrawn if the applicant fails to submit the requested information within 90 days of the

request.

(5) In the event the department is unable to complete action on an application within 30 days after the application is accepted by the department for filing, the applicant shall be deemed to have received a temporary or conditional permit, such permit to expire upon final action by the department to grant an underground storage tank permit. Such temporary or conditional permit does not authorize any construction, activity, operation, or discharge which will violate any of the laws, rules, or regulations of the State of Oregon or the Department of Environmental Quality.

(6) If, upon review of an application, the department determines that a permit is not required, the department shall notify the applicant in writing of this determination. Such notification shall constitute final action by the department on the application.

(7) Following determination that it is complete for processing, each application will be reviewed on its own merits. Recommendations will be developed in accordance with the provisions of applicable statutes, rules and regulations of the State of Oregon and the Department of Environmental Quality.

(8) If the applicant is dissatisfied with the conditions or limitations of any permit issued by the department, the applicant may request a hearing before the Commission or its authorized representative. Such a request for hearing shall be made in writing to the Director within 20 days of the date of mailing of the notification of issuance of the permit. Any hearing held shall be conducted pursuant to the regulations of the department.

Information Required on the Permit Application

340-150-050 (1) The underground storage tank permit application shall include:

(a) The name and mailing address of the owner of the underground storage tank.

(b) The name and mailing address of the owner of the real property in which the underground storage tank is located.

(c) The name and mailing address of the proposed permittee of the underground storage tank.

(d) The signatures of the owner of the underground storage tank, the owner of the real property and the proposed permittee.

(e) The facility name and location.

(f) The substance currently stored, to be stored or last stored.

(g) The operating status of the tank.

(h) The estimated age of the tank.

(i) Description of the tank, including tank design and construction materials.

(j) Description of piping, including piping design and construction materials.

(k) History of tank system repairs.

(l) Type of leak detection and overfill protection.

(m) Any other information that may be necessary to protect public health, safety, or the environment.

Authorized Signatures, Permit Application

340-150-060 (1) The following persons must sign an application for a permit submitted to the department.

(a) The owner of an underground storage tank storing a regulated substance;

(b) The owner of the real property in which an underground storage tank is located; and

(c) The proposed permittee, if a person other than the owner of the underground storage tank or the owner of the real property.

Underground Storage Tank Permit Application Fee

340-150-070 (1) A permit application fee of $25 shall accompany each underground storage tank application. For applications received after February 1, 1989, the permit application fee will also be considered the first compliance fee required by OAR 340-150-110.

(2) No permit application fee is required if application is solely for the purpose of recording a change in ownership of the underground storage tank, ownership of the real property, of the permittee, or a change in operation of the underground storage tank.

Denial of Underground Storage Tank Permit

340-150-080 (1) An underground storage tank permit application may be denied if the underground storage tank installation or operation is not in conformance with these underground storage tank rules or ORS 466.705 through ORS 466.995.

(2) An underground storage tank permit may be denied if the underground storage tank permit application is not complete or is determined to be inaccurate.

Revocation of Underground Storage Tank Permit

340-150-090 An underground storage tank permit may be revoked if the underground storage tank installation or operation is not in conformance with the underground storage tank permit, these underground tank rules or ORS 466.705 through ORS 466.995.

Permit Procedures for Denial and Revocation.

340-150-100 The permit procedures for denial and suspension or revocation (OAR 340-14-035 and OAR 340-14-045) shall apply to permits issued under this section.

Underground Storage Tank Permit Compliance Fee

340-150-110 (1) Beginning March 1, 1989, and annually thereafter, the permittee shall pay an underground storage tank permit compliance fee of $25 per tank per year.

(2) The underground storage tank permit compliance fee shall be paid for each calendar year (January 1 though December 30) or part of a calendar year that an underground storage tank is in operation.

(3) The compliance fee shall be made payable to the Department of Environmental Quality.

(4) Prior to July 1, 1989 the permit compliance fee shall be $25 per tank per year.

(5) Any compliance fee invoiced after July 1, 1989 shall not exceed $20 per tank per year.

Underground Storage Tank Interim Installation Standards

340-150-120 (1) Upon the effective date of these rules no person shall install an underground storage tank for the purpose of storing regulated substances unless;

(a) such tank installation will prevent releases due to corrosion or structural failure for the operational life of the tank;

(b) such tank installation is cathodically protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed in a manner to prevent the release or threatened release of any stored substance; and

(c) the material used in the construction or lining of the tank is compatible with the substance to be stored.

(2) For the purpose of determining compliance with these Interim Installation Standards, the department will use the guidelines published by the United State Environmental Protection Agency (EPA) entitled "Hazardous Waste; Interpretive Rule on the Interim Prohibition Against Installation of Unprotected Underground Storage Tanks", 40 CFR Part 280. (Copies are available from the EPA or the department)

Permanent Decommissioning of an Underground Storage Tank

340-150-130 (1) Upon the effective date of these rules any underground storage tank that is permanently decommissioned must comply with the requirements of this section.

(2) After the effective date of these rules, an underground storage tank that is taken out of operation for longer than 24 months must be permanently decommissioned.

(3) Prior to permanent decommissioning the tank owner or permittee must notify the department in writing.

(4) All tanks that are permanently decommissioned must be emptied and either removed from the ground or be filled with an inert solid material.

(a) The permanent decommissioning procedures described in API 1604 "Recommended Practice for Abandonment or Removal of Used Underground Service Station Tanks" may be used as guidelines for compliance with this section.

(5) Dispose of all liquids, solids and sludge removed from the tank by recycling or dispose in a manner approved by the department.

(6) All tanks removed from the ground must be disposed of in a manner approved by the department.

(7) If evidence of a release is discovered the tank owner or permittee must;

(a) Notify the department within 24 hours. (Phone: 1-800-452-0311 or 1-800-452-4011)

(b) Assess the source and the extent of the release.

(c) Meet with the department to set up a cleanup standard and a schedule for cleanup.

(d) Cleanup the release.

(8) All underground storage tank owners must maintain records which are capable of demonstrating compliance with the permanent decommissioning requirement under this section. These records must be maintained for at least three years after permanent decommissioning and made available, upon request, to the department during business hours.

Requirement to Notify the Underground Storage Tank Owner and Operator

340-150-140 (1) Between February 1, 1989 and February 1, 1990 any person who deposits a regulated substance into an underground storage tank shall notify the owner or operator of the tank in writing of the requirements for obtaining an underground storage tank permit.

(2) After February 1, 1989 any person who sells an underground storage tank shall notify the owner or operator of the tank in writing of the requirements for obtaining an underground storage tank permit.

Depositing Regulated Substances in Underground Storage Tanks

340-150-150 (1) After February 1, 1989 no person owning an underground storage tank shall deposit or cause to be deposited a regulated substance into that tank without first having applied for and received an operating permit issued by the department.

(2) After August 1, 1989 no person selling or distributing a regulated substance shall deposit that substance into an underground storage tank unless the tank is operating under a valid permit issued by the department.

Underground Storage Tank Schedule of Civil Penalties

340-12-067 In addition to any liability, duty, or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to underground storage tank systems and releases from underground tank systems by service of a written Notice of Assessment of Civil Penalty upon the respondent. The amount of such civil penalty shall be determined consistent with the following schedule:

(1) Not less than two thousand five hundred dollars ($2,500) nor more than ten thousand dollars ($10,000) for each day of the violation upon any person owning or having control over a regulated substance who fails to immediately cleanup releases as required by ORS 466.705 through ORS 466.995 and OAR 340 - Division 150.

(2) Not less than one thousand dollars ($1,000) nor more than ten thousand dollars ($10,000) for each day of the violation upon any person owning or having control over a regulated substance who fails to immediately report all releases of a regulated substance as required by ORS 466.705 through ORS 466.995 and OAR 340 - Division 150.

(3) Not less than one hundred dollars ($100) nor more than ten thousand dollars ($10,000) per day of the violation upon any person who:

(a) Violates an order of the Commission or the Department,

(b) Violates any underground storage tank rule or ORS 466.705 through ORS 466.995.

Attachment II
Agenda Item K
1-22-88 EQC Meeting

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF ADOPTING OAR Chapter 340, Division 150	)))	STATEMENT OF NEED FOR RULES

Statutory Authority

ORS 466.705 through ORS 466.995 authorizes rule adoption for the purpose of regulating underground storage tanks. Specifically, Section 466.745 authorizes the Commission to adopt rules governing the standards for the installation of underground storage tanks, reporting of releases, permit requirements, procedures for distributors of regulated substances and sellers of underground storage tanks, and decommissioning of underground tanks.

Section 466.740 requires that the installation of underground tanks comply with adopted rules. Sections 466.760 and 466.750 require that certain persons complete a permit application and install, operate or decommission a tank only under an authorized permit. Section 466.750 further limits the distribution of regulated substances to tanks operating under an authorized permit, and imposes certain requirements on distributors of regulated substances and sellers of underground tanks. Section 466.765 imposes certain responsibilities on the owner of the tank or the permittee. Section 466.775 authorizes the department to revoke or refuse to issue a permit under certain circumstances. Section 785 allows for a fee, not to exceed $25.00 per tank. Sections 466.895 and 466.995 subject violators of underground storage tank statutes, rules, or orders to both criminal and civil penalties.

The permit application under Section 466.760 does not become operative until 90 days after the Commission has adopted rules. The permit issued under Section 466.750 does not become operative until one year after the Commission adopts rules.

Need For the Rules

The proposed rules are needed to carry out the authority given to the Commission to adopt rules for regulation of underground storage tanks and to begin the rulemaking process for developing a self-supporting program.

Principal Documents Relied Upon

SB 115 passed by the 1987 Oregon Legislature (ORS 466.705 through ORS 466.995)

Subtitle I of the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act.

The Comprehensive Environmental Response, Compensation and Liability Act of 1980.

Superfund Amendments and Reauthorization Act of 1986.

40CFR Part 280, November 8, 1985.

Fiscal and Economic Impact

Fiscal Impact

The Department has developed a program plan to implement a statewide underground storage tank regulatory program. The Department has submitted a Grant Proposal to the USEPA requesting federal funding in the amount of $189,252. As part of this program, the federal regulations require a state match of 25%. If the grant application is approved by the USEPA, total program cost for FFY'88 will be $189,252.

In addition, the 1987 Oregon Legislature approved (SB115) a $25 per tank per year fee and imposed a $1.2 million budget limitation.

Small Business Impact

The department has currently registered 22,409 tanks from the notification program begun in Februrary 1986. The majority of businesses owning and operating underground tanks are classified as small businesses. The overall statewide impact of the permit fee is expected to be $1,120,450 for the biennium.

The average number of tanks located at a facility is approximately 3 tanks. Therefore, each facility location will pay approximately $75 per year for each set of three tanks.

The Department estimates that an average of 15 minutes will be required to complete the permit application. With an average estimated labor cost of $15.00 per hour, average expenses incurred per application will be $3.75. For a facility with three tanks, an average cost of $11.25 wil be incurred. The overall statewide impact will be $252,101.

These additional expenses of $86.25 per year for a typical three tank facility are a cost of doing business and will likely be passed on to their customers. For retail motor fuel businesses, the additional expenses may influence the price of the fuel, while other businesses may increase the cost of their service or product. Local, state and federal agencies will not be able to pass on these expenses but must find budgeted funds.

Some small businesses have indicated that the additional costs and additional regulations may be adequate reason to take their tanks out of service, thus limiting the availability of fuel within the Oregon. Although the Department is concerned about the potential impact of underground storage tank rules on the availability of motor fuel, there is little indication that these proposed interim rules will cause retail motor fuel businesses to take their tanks out of service. However, many other underground private tanks are being closed in anticipation of these rules and the proposed USEPA underground storage tank rules. The tank owners will be able to obtain fuel at retail fuel businesses.

Any person installing an underground tank is required to comply with the interim prohibition requirements imposed by Congress and regulated by the USEPA. Therefore, there will not be additional impact on Oregon businesses since the proposed rules does not exceed those standards already required by the USEPA.

Attachment III
Agenda Item K
1-22-88 EQC Meeting

Before the Environmental Quality Commission of the State of Oregon

In the Matter of Proposed
Rules OAR 340-150-10 through 340-150-150 and 340-12-067) Land Use Consistency

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

With regard to Goal 6, the proposed rule is consistent with the goal to maintain and improve the quality of the air, water, and land resources of the state. Permit requirements, interim technical standards regarding the installation of tanks, and decommissioning of tanks are consistent with the goal to maintain and improve air, land, and water resources. Limitations on the distribution of regulated substances to permitted tanks, and requirements to ensure that permit information is distributed by distributors of regulated substances and sellers of tanks are also consistent with Goal 6. 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 fashion as indicated for testimony in this notice.

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

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

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON . . .

PROPOSED RULES FOR THE UNDERGROUND STORAGE TANK PROGRAM

Hearing Authorized: October 9, 1987
Comments Due: December 10, 1987

WHO IS AFFECTED:

Persons who own or are in control of underground tanks used to store petroleum products including waste oil, and hazardous substances listed in the Comprehensive Environmental Response, Compensation, and Liability Act. Persons affected may be owners or operators or owners of land in which the tanks are located. Underground storage tanks are found at gasoline stations, marinas, automobile dealerships, nurseries, commercial fleets, manufacturing firms, dry cleaning establishments, and farming operations. Federal military and non-military facilities, state agencies, school districts, port districts, and local governments are also included within this regulatory program.

BACKGROUND:

Subtitle I, of the Hazardous and Solid Waste Amendments of 1984 to the Resource Conservation and Recovery Act, authorizes the implementation of a federal underground storage tank program. Congress intended that this program be run by state governments with minimum federal involvement. The 1985 Oregon Legislature determined that the Department of Environmental Quality carry out the program in Oregon. The 1987 Oregon Legislature expanded the Department's authority over underground storage tanks to include all the elements of the federal program and certain additional state requirements.

WHAT IS PROPOSED:

The purpose of these rules is to implement the first phase of the Oregon Underground Storage Tank Program. This phase includes:

- A permit program for underground tanks;
- Assessment of a $25.00 per tank per year fee to provide for a self-supporting program;
- Limitation on the distribution of regulated substances to only permitted tanks;
- Requirements for distributors of regulated substances and sellers of underground storage tanks to inform their customers of permit requirements;
- Installation standards;
- Requirements for permanent abandonment of underground storage tanks. and
- Penalty provisions.

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811 S.W. 6TH AVENUE
PORTLAND, OR 97204

For Further Information:

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

WHAT ARE THE HIGHLIGHTS:

Definitions for:

Underground Storage Tank

Any tank, including underground piping, which contains regulated substances whose combined volumes (tank + piping) is 10 percent or more beneath the ground, with certain exceptions.

Regulated Substances

Includes hazardous substances (e.g. solvents, resins, pesticides, chemical preservatives, diesel fuel, waste oil, etc.).

Permittee

Means the tank owner or a person designed by the tank owner who is in control of the daily operation or maintenance of the underground tank under a permit issued by the Department.

Permit Requirements

- On or before or after June 1, 1988, owners of tanks in operation and owners of tanks continuing to store regulated substances are required to apply for a permit.
- A $25.00 per tank per year fee is required to accompany the permit application.
- After March 1, 1989, no person may install, operate, abandon or remove an underground tank without a permit.

Removal Requirements

- Abandonment of tanks in place or removal of tanks from the ground requires notification to the Department in writing and corrective action.

HOW TO COMMENT:

A program information meeting, and a public hearing to receive oral and written comments are scheduled for:

***Tuesday,* December 1, 1987**
9:00 a.m.-10:00 a.m. —
Program Information Hearing
10:00 a.m. — Public Hearing
DEQ Portland Headquarters
811 S.W. Sixth Avenue, Room 4
Portland, Oregon

***Thursday,* December 3, 1987**
9:00 a.m.-10:00 a.m. —
Program Information Hearing
10:00 a.m. — Public Hearing
Cedar Lodge Motor Inn
518 North Riverside
Medford, Oregon

***Wednesday,* December 2, 1987**
9:00 a.m.-10:00 a.m. —
Program Information Hearing
10:00 a.m. — Public Hearing
Lane County Courthouse
125 E. Eighth St., B.C. Room
Eugene, Oregon

***Friday,* December 4, 1987**
9:00 a.m.-10:00 a.m. —
Program Information Hearing
10:00 a.m. — Public Hearing
Police Building
720 N.W. Wall
Bend, Oregon

***Friday,* December 4, 1987**
9:00 a.m.-10:00 a.m. — Program Information Hearing
10:00 a.m. — Public Hearing
Eastern Oregon State College
Hoke Building, Room 309
Eighth and "K" Streets
LaGrande, Oregon

Written comments should be submitted at the public hearing or sent by December 10, 1987, to: **DEQ**, Underground Storage Tank Program
811 S.W. Sixth Avenue, Portland, Oregon 97204

For more information, or to receive a copy of the proposed rules, contact:
Larry Frost, (503) 229-5769 or toll-free at 1-800-452-4011.

WHAT IS THE NEXT STEP:

After the public hearing, DEQ will evaluate the comments, prepare response to comments, and make a recommendation to the Environmental Quality Commission at a future meeting. The Commission may adopt as proposed, amend or choose not to take any action.

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NEIL GOLDSCHMIDT
GOVERNOR

Attachment V
Agenda Item K
1/22/88 EQC Meeting

Department of Environmental Quality

811 SW SIXTH AVENUE, PORTLAND, OREGON 97204-1334 PHONE (503) 229-5696

To: Environmental Quality Commission

From: Larry D. Frost

Subject: Hearing Report Summary
and
Responsiveness Summary

On October 9, 1987, the Environmental Quality Commission authorized five Public Hearings on Proposed Underground Storage Tank Rules. Public hearings were held at 10:00 A.M. on:

- o December 1, 1987 in Portland, Oregon
- o December 2, 1987 in Eugene, Oregon
- o December 3, 1987 in Medford, Oregon
- o December 4, 1987 in Bend, Oregon
- o December 4, 1987 in LaGrande, Oregon

A one hour informational meeting was held prior to each hearing to describe and answer questions on both the Federal and Oregon underground storage tank programs.

The following persons either testified verbally at one of the hearings or submitted written comments as shown below:

Name/Representing	Verbal	Written/Date
Jason Boe Oregon Petroleum Marketers Assoc.	*	December 1, 1987
Jim Brown McCall Oil & Chemical Corp.	*	December 1, 1987 December 10, 1987
Dan Barnhardt, Executive Director Oregon Association of Nurserymen	*	December 1, 1987
Keith Hensen Small Businessman	*	December 1, 1987
Jean Carlson Oregon Gasoline Dealers Association	*	December 1, 1987 December 9, 1987

Tom Donaca Associated Oregon Industries	*	December 1, 1987
Gregg M. Bartel-Bailey Office of Environmental Health & Safety University of Oregon	*	December 2, 1987
Larry Larson Elmira, OR	*	December 2, 1987
Bob Higgins Eugene, OR	*	December 2, 1987
Debra Kamp Eugene, OR	*	December 2, 1987
Jerry Warbis Environmental Services	*	December 2, 1987
Mike Steen PSI/Pittsburgh Testing Laboratory	*	December 2, 1987
Robert Sloat Shady Cove, OR	*	December 3, 1987
Gary Meek Lithia Motors	*	December 3, 1987 December 3, 1987
Don Wood, County Roadmaster Jefferson County	*	December 4, 1987 November 30, 1987
Charles B. McKay Summer Lake, OR	*	December 4, 1987
Gil Ernst Gilchrist, OR	*	December 4, 1987
Brian Johnson Prineville, OR	*	December 4, 1987
June Felkell Baker City Council Member	*	December 4, 1987
Don Keeling Chevron Station, Baker, OR	*	December 4, 1987
Ole Turnbow Red & White Flying Service		December 10, 1987
Ed Owens, Regional Safety Manager Lone Star Industries		December 8, 1987

William P. Jones Warren Rogers Associates, Inc.	December 4, 1987
Ted Molinari American Electronics Association	December 9, 1987
Victor J. Kollock Boise Cascade	December 9, 1987
Steve Merritt Western Oil and Gas Association	December 8, 1987
Arthur F. Reiff, City Manager City of Baker Oregon	December 8, 1987
R. J. Hess Portland General Electric Company	December 4, 1987
Linda K. Allen Oregon Conference of Local Health Officials	December 7, 1987
Norman Kralman Portland, OR	December 7, 1987
Jean C. Meddaugh Oregon Environmental Council	December 8, 1987
Raymond F. Johnson Sweet Home, OR	December 4, 1987
James F. Torrence U.S. Forest Service	December 7, 1987
W. H. Ames Ames, Inc.	December 4, 1987
Bryce Molesworth Columbia Cherry Company	December 5, 1987
E. D. Dirksen E. D. Dirksen & Sons, Inc.	December 3, 1987
John A. Wilcox C4-Air	December 1, 1987
Duane E. Robinson Rockwood Water District	December 2, 1987
Bret Stafford Salem, OR	December 1, 1987

Maurie Bassett — November 24, 1987
Bassett-Hyland Energy Company

Phil Winter — November 24, 1987
Honda Pendleton

Dan Goodin — November 25, 1987
Sturdi-Craft, Inc.

NOTE: THE OREGON ADMINISTRATIVE RULE (OAR) CITATION IN THE HEADING TO EACH COMMENT SECTION REFERS TO THE DRAFT RULES THAT WERE THE SUBJECT OF THE OCTOBER 9, 1987 EQC MEETING. FOR EASE OF READING THIS REPORT, A COPY OF THOSE DRAFT RULES IS ATTACHMENT VI TO THIS STAFF REPORT. OAR CITATIONS IN THE DEPARTMENT'S RESPONSE REFERS TO THE PROPOSED RULES RECOMMENDED FOR ADOPTION IN ATTACHMENT I.

General Comment - UST Program

COMMENT (Turnbow, Johnson, Goodin, Fellkel, Keeling): Neither the state or federal UST program is needed or wanted. No regulation is needed since the tank owners have a vested interest in preventing leaks. The UST program growth needs to be controlled.

COMMENT (Kralman, Stafford, Bassett): Agrees with the program. Whole heartily supports the program. The state rules should conform to the federal program, as closely as possible.

DEPARTMENT RESPONSE: The federal government has adopted interim standards and is expected to adopt final rules covering all these issues by June of this year. If the state took no action, the requirements of the Federal government would still apply.

General Comment - Tank Inspection

COMMENT (Keeling, Higgins): Tank installation and removal inspections are now done by the Fire Marshall. The Department of Agriculture inspects tanks regularly. The DEQ doesn't need to inspect.

DEPARTMENT RESPONSE: Inspection by the DEQ of installation, removal and installation of UST's is required by law and will be included in future rules.

General Comment - Program Management

COMMENT (Allen, Higgins, Felkell): The management of the program should be delegated to the local health authorities. The Department of Agriculture should manage the program since they regularly inspect most tanks. Will the state fund local program management?

DEPARTMENT RESPONSE: State law requires that the DEQ manage the

overall UST program. Delegation of portions of the program (e.g. inspection, permits, fee collection) will be addressed in future rules writing.

General Comment - Future Issues

COMMENT (Reiff, Ernst, Felkell, Ames, Steen):

Insurance: Concerned about the cost and availability of liability insurance with $1,000,000 limit. Concerned that the premiums might increase regularly like SAIF if the state provides the insurance. Who pays for the insurance of fuel distributors?

Education: Recommends mandatory education for tank installers and decommissioners.

Monitoring Wells: Concerned about the possibility of contamination in monitoring wells when they are installed.

DEPARTMENT RESPONSE: These issues will be considered during the development of future UST rules.

General Comment - Costs

COMMENT (Kamp, McKay, Ernst, Johnson): The program will increase business costs and cause small businesses to close. Rural areas and small towns will lose their only source of fuel. The state should provide financial help for small businesses.

DEPARTMENT RESPONSE: The rules proposed at this time require each tank owner to pay a $25 annual fee for the next two years. At that time the annual compliance fee will reduce to $20. The department does not believe that this fee will cause closure of businesses. However, future federal rules will impose expenses for insurance and tank management that could be burdensome to a small business.

OAR 340-150-010 - Tanks Excluded

COMMENT (Reiff, Warbis, Wilcox, Meek, Barnhardt, Sloat, Brown, Molinari): Include all tanks including heating oil tanks. Small tanks should not be regulated except for gasoline tanks. Identify plant nurseries as farms to allow the farm tank exclusion. Extend the 1100 gallon farm and residential exclusion to everyone. Include a section within the rules to identify the tanks that are excluded.

DEPARTMENT RESPONSE: Section (11) (a) through (j) has been added to OAR 340-150-010 to identify the excluded tanks, as required by ORS 466.705 and to be in conformance with federal law. Plant nurseries are considered farms. The law does not allow other tanks to be excluded.

OAR 340-150-010(2) - Taken Out of Service - Taken out of Operation

COMMENT (Hess): The language "taken out of operation" in this section and 340-150-035 and "taken out of service" in 340-150-150 are confusing and could mean abandoned, removed from the ground or just removed from operation. Alternative language was recommended.

DEPARTMENT RESPONSE: The wording has been changed to use the word "operation" in all sections. "In operation" means actively using the tank. "Out of operation" can be temporary or permanent.

OAR 340-150-010(7) - Permittee

COMMENT (Brown, Molinari, Carlson): Maintenance is not accurately defined. Suggested that maintenance activities should be defined as daily maintenance activities. The proposed definition of permittee would allow major oil companies to pressure station operators to become the permittee because they do maintenance.

DEPARTMENT RESPONSE: These comments are conflicting. It is clear that the word "daily" should be added before the word maintenance. OAR 340-150-010(7) has been modified by inserting "daily" before "maintenance".

The rules allow the tank owner to select anyone who meets the definition of permittee. The selected person can refuse. The department does not believe that the rules should control negotiations between the owner and the permittee.

OAR 340-150-010(10) - Release Notification

COMMENT (Kollock): Release and release notification should be better defined and cross referenced with existing regulations on spill notification. This section and 340-150-150 are not well written. A threshold limit should be identified (e.g. 25 gallons, a concentration (mg/kg)or area of impact).

DEPARTMENT RESPONSE: It was intended that OAR 340-150-010(10) and 340-150-130 contain general language in these interim rules. These rules only require that a release be reported to the Department and that the owner clean up the contamination. The final rules on notification and remedial action will be developed after the final federal UST rules are adopted.

OAR 340-150-010(11) - Exclude Sumps

COMMENT (Brown, Molinari): Exclude sumps from these regulations or identify that they will be considered at a future date.

DEPARTMENT RESPONSE: By strict definition, sumps are included in these rules. However, Oregon will continue to follow the direction of the USEPA by not requiring a permit application or

fee at this time.

OAR 340-150-020 - Permit Modification or Renewal

COMMENT (Hess): It is not clear whether modification or renewal of a permit will require a fee. A chart of fees would be helpful.

DEPARTMENT RESPONSE: OAR 340-150-070 (2) has been added to clarify who pays an application fee.

OAR 340-150-020(3) - Ten Year Permit

COMMENT (Brown, Molineri, Carlson, Hensen, Donaca): Concerned that the ten year limit does not parallel federal law; that the permit is automatically terminated when the tank owner, property owner or the permittee changes, when the nature of the activities change, when another permit is issued and when a new permit is requested by the permittee. Request that the 10 year limit be eliminated.

(Carlson): Limiting the permit to 10 years may restrict an owners ability to borrow money on this asset.

DEPARTMENT RESPONSE: The rule has been changed to make the permit perpetual unless the tank owner allows it to lapse or it is revoked by the Department in accordance with OAR 340-150-090.

OAR 340-150-020(4) - Official Applicant of Record

COMMENT (Brown, Molineri, Carlson, Merritt): Eliminate this term or define it. Persons other than the official applicant of record should be able to apply for a permit.

DEPARTMENT RESPONSE: This term has been eliminated from the rules. The owner or a person designated by the owner can apply for a permit.

OAR 340-150-020(a) - Automatic Termination

COMMENT (Hensen): What triggers automatic termination of the permit?

DEPARTMENT RESPONSE: OAR 340-150-040 has been rewritten to clarify the conditions that will cause automatic termination of a permit.

OAR 340-150-020(b) - Change in Activities

COMMENT (Carlson): "Change in activities" should be clearly defined.

DEPARTMENT RESPONSE: A "change in the nature of activities and operations from those of record on the last application" should be

easy for the owner or permittee to determine. OAR 340-150-020 has been changed to allow 120 days in which to apply for a new application after the change.

OAR 340-150-030(4) - $20 Permit Fee

COMMENT (Meddaugh): The $20 fee in this section appears to conflict with subsection (1).

DEPARTMENT RESPONSE: OAR 340-150-110 has been modified by inserting a new subsection (4), ahead of this subsection to clarify that the fee changes fron $25 to $20 on July 1, 1989.

OAR 340-150-035 - Permits

COMMENT (Hess): It is unclear whether a person needs a permit to install a tank and a separate permit to operate a tank.

(Hensen): Why do we only talk about the "owner" in this section?

DEPARTMENT RESPONSE: OAR 340-150-030(2), 340-150-070 and 340-150-130 have been modified to clarify the permit, permit application and the fee requirements.

The owner is the person responsible for the underground storage tank and the permit application. However, the owner can assign the permit responsibilities to another person, "the permittee".

OAR 340-150-035(1) - Application Forms

COMMENT (Carlson): Will the application forms be available on February 1, 1987? Application should not be required until the forms are available.

DEPARTMENT RESPONSE: The permit application forms will be mailed to each tank owner of record during February 1988.

OAR 340-150-040 - Signatures

COMMENT (Torrence, Hensen, Bartel-Bailey, Brown, Molineri, Carlson): The Forest Service and other public agencies may not be able to obtain the property owners signatures. What happens if one person refuses or is not able to sign. We would like to see some protection if the property owner refuses to sign. The signatories may not sign if they must certify the application is correct. Would any of the signatories be more liable for any pollution caused by the tank?

DEPARTMENT RESPONSE: It is anticipated that there will be few persons that will refuse or be unable to sign. Those cases will be handled on an exception basis. The rules will be modified if it is a major problem.

OAR 340-150-045 - Permit Processing Time

COMMENT (Brown, Molineri, Owens, Merritt, Hess, Hensen, Donaca, Carlson): The permit processing time is too long. Is the DEQ going to issue a temporary permit? Increase the assurance that a permit will be issued. There needs to be limits on the DEQ's discretions in reviewing and processing applications.

DEPARTMENT RESPONSE: OAR 340-150-040 has been revised extensively to shorten the permit process and increase the assurance that a permit will be issued. The applicant will obtain a permanent permit or be deemed to have a temporary permit within 30 days of filing a permit application.

OAR 340-150-045(1) - Exhibits

COMMENT (Carlson): What are the required exhibits?

DEPARTMENT RESPONSE: The exhibits referenced in OAR 340-150-040 are not specified but would be limited to the information required by OAR 340-150-050.

OAR 340-150-045(1) - Owner or Lessee

COMMENT (Carlson): Do we mean owner or lessee?

DEPARTMENT RESPONSE: This sentence has been removed from OAR 340-150-040.

OAR 340-150-045(7) - Permit Review Process

COMMENT (Brown, Molineri, Hensen): The review process and the resulting recommendations should be more specific. There is no limit to what can be recommended. Any recommendation is a rule and should go through the rulemaking process.

DEPARTMENT RESPONSE: The department believes that OAR 340-150-040(7) does not constitute rulemaking but rather allows all applicable statutes, rules and regulations to be used in reviewing the permit application, including these proposed rules.

OAR 340-150-050 - Information Required

COMMENT (Carlson, Kollock, Hess, Meddaugh, Brown, Molineri, Hensen): The permittee may not have this information, the owner may have it. Will a permit be denied if the information is not adequate? Why does the DEQ need this information? A permitte or owner may not know what repairs have been made. Clarify the amount and type of information that is required. What happens if the permit conditions change?

DEPARTMENT RESPONSE: Most of the information requested in this section was required during the federal notification process and

is still required by federal law when a new tank is installed. The department is requiring additional information to allow characterization of the tanks within Oregon. The description of the information is worded in general terms to allow the permit application form to be used as the federal notification.

The tank owner is only required to provide the information, if known.

If the permit conditions change the owner must apply for a modification to the permit within 120 days, OAR 340-150-020(4)(b).

OAR 340-150-050(1)(f) was modified to require information on "the substance to be stored" in the tank.

OAR 340-150-050(1)(m) - General Information

COMMENT (Hess, Hensen): This section is too broad and general. The DEQ should clarify what relates to the health, safety or the environment.

DEPARTMENT RESPONSE: Yes, this subsection is very general. ORS 466.705 establishes public policy to protect the public health, safety, welfare and the environment from the potential harmful effects of underground tanks used to store regulated substances and directs the EQC to establish a state-wide UST program. The department believes that this subsection is necessary to allow collection of information in support of this policy.

OAR 340-150-050 - Permit Form

COMMENT (Brown, Molineri): The development of a standardized permit application form constitutes rules making and thus should be a part of these rules.

DEPARTMENT RESPONSE: After consulting with the Attorney Generals Office, the Department does not believe that development of a form is rule making.

OAR 340-150-055 and 340-150-110 - Fees

COMMENT (Turnbow, Kollock, Reiff, Ames, Molesworth, Dirksen, Wilcox, Robinson, Wood, Bassett-Hyland, Winter, Goodin, Ernst, Keeling): Objects to the $25 fee. The $25 fee is too high. I already pay $2,211 in the LUST Trust Fund. What will the $575,000 collected each year be used for? The fee should only be assessed for tanks that are inspected. Proposes a one time fee since a yearly fee is too costly to maintain. The fee should be based upon the number of tanks and the size of the tanks. Agriculture will move the UST's above ground, creating an unsafe condition. The fee is unfair to governmental bodies since they have no customers absorb the fee.

DEPARTMENT RESPONSE: The $25 fee, together with a limited amount of federal funds ($600,000 per year total), will provide the operating funds for the UST program as approved by the 1987 Oregon legislature. These funds will provide technical assistance to the UST owners and tank installers, inspection of tanks and development of the UST program.

The department believes that a one time fee or a fee that was only assesed during inspection would a hardship on most businesses. A fee based upon the tank size was considered and set aside as more difficult to administer than the proposed fee method.

The department is concerned about the hazards caused when tank owners relocate fuel tanks to above ground for the purpose of avoiding regulation by this program. However, the department believes that the fees alone will not cause owners to move their tanks above ground.

The underground storage tank permit fee is uniform for each tank owner and covers the costs of reducing contamination of the environment by UST leaks.

OAR 340-150-060 - Denial
OAR 340-150-065 - Revocation

COMMENT (Meddaugh): The sections dealing with denial and revocation of permits are weakened without UST performance standards.

DEPARTMENT RESPONSE: Yes, these sections are weak without tank performance standards. The complete technical standards will be part of the rules that will be developed after the federal rules are adopted.

OAR 340-150-065 - Revocation

COMMENT (Carlson): Denying a permit application is tougher than revocation. How can a person appeal a revocation?

DEPARTMENT RESPONSE: The department can see no difference in its ability to deny or revoke a permit under OAR 340-150-080 and OAR 340-150-090.

The process to appeal the denial and revocation of a permit is covered in OAR 340-150-100.

OAR 340-150-075 - Depositing Regulated Substances
OAR 340-150-080 - Notice

COMMENT (Brown, Molineri, Donaca, Merritt): The requirement to notify tank owners of these rules should preceed by 3 to 6 month the action to prevent delivery of a regulated substance.

DEPARTMENT RESPONSE: The enactment date of OAR 340-150-150(2) has been changed to August 1, 1989 to allow 6 month for the distributers of regulated substances to notify their customers of these regulations.

OAR 340-150-075 - Depositing Regulated Substances

COMMENT (Meddaugh, Johnson, Brown, Molineri): How does one determine that a permit is valid? The fuel distributers should not have to check for a permit. The DEQ should adopt by rule a method of determining that a tank has a permit prior to implementation of this section.

DEPARTMENT RESPONSE: The department does not believe that it is necessary to adopt a rule that identifies the method that will identify a permitted tank at this time. The department will develop the tank identification method jointly with the Underground Storage Tank Advisory Committee prior to August 1, 1989, the enactment date of OAR 340-150-150(2).

OAR 340-150-075 - Penalties for Depositing Regulated Substances

COMMENT (Carlson, Larson): What is the penalty for depositing a regulated substance into an unpermitted tank? What happens if there is a permit backlog and a supplier deposits a regulated substance into a tank?

DEPARTMENT RESPONSE: Depositing a regulated substance after August 1, 1989,into an unpermitted tank, would violate these proposed rules. The Director of the department could assess a fine of $100 to $10,000 per day.

If a tank owner files a valid permit application they will receive either a permit or a temporary permit.

OAR 340-150-075 - Limiting Distribution of Regulated Substances

COMMENT (Ames, Wilcox, Winter, Merritt): Limiting distribution of products to those that have permits may not be too practical. Limiting distribution of products to permitted tanks is bureaucratic and punitive to small business. Disagree that delivery of product should be stopped to unpermitted tanks. Is it the responsibility suppliers to turn in their less scrupulous competitors?

DEPARTMENT RESPONSE: The Department is concerned that this process may be difficult to implement. Yes, limiting distribution may be hard on those that do not obtain a permit. This process is one of the enforcement methods allowed by ORS 466.705, to require a tank owner to apply for a permit.

OAR 340-150-080 - Notification

COMMENT (Ames, Wilcox, Bassett-Hylan, Hensen, Larson, Ernst): Not a bad idea. How will this rule be administered? Should sellers of tanks and distributers of substances be responsible for conformance to these rules by the tank owners? The distributers shouldn't have to inform their customers of these rules. The sellers shouldn't have to inform their customers of these rules. The DEQ should provide material for the notification.

DEPARTMENT RESPONSE: The sellers and distributers will be notified that they are required to notify their customers and that they are not responsible to make their customers comply with these rules. The DEQ will provide a sample notification document to the sellers and the distributers.

OAR 340-150-140(1) has been modified to limit the notification by the distributers of regulated substances to one year, February 1, 1989 to February 1, 1990. There is no time limit on tank sellers.

OAR 340-150-100 - Tank Installation Standards

COMMENT (Ames, Wilcox, Meddaugh): Tank installation firms should be licensed. Why duplicate the Uniform Fire and the Uniform Mechanical Codes? Performance standards for release reporting, leak detection, tank testing and underground storage tanks in general, as required by ORS 466.705, are not included.

DEPARTMENT RESPONSE: Rules requiring certification of those who install, test and inspect underground storage tanks is planned for future rule development. Since it is necessary to adopt rules that are no less stringent than the federal rules for Oregon to qualify for a state managed UST program, we may not be able to rely on existing codes completely. The complete rules containing tank technical standards will be adopted after the federal UST rules are adopted.

OAR 340-150-150 - Decommissioning

COMMENT (Owens, Ames, Wilcox, Felkell): This rule will delay removal of tanks. Decommissioning firms should be licensed. Why duplicate other standards? How do you dispose of old tanks?

DEPARTMENT RESPONSE: This section is a restatement of rules and regulations that are currently in effect within Oregon. It provides guidance, by rule, for the activities that are required to decommission a tank in safe and environmentally sound manner. The department does not believe this rule will delay removal of tanks.

As stated before, certification (licensing) rules will be developed in the future.

These rules allow Oregon rules to conform with the proposed federal UST rules.

Metal scrap dealer will take properly prepared tanks.

ORS 340-150-150(7) & (8) - Tank Decommissioning

COMMENT (Brown, Molineri, Hess): There is needless ambiquity about what is required to properly dispose of a tank. The rules should be listed chronologically. Disposing of a tank in a "manner approved by the department" needs clarification.

DEPARTMENT RESPONSE: OAR 340-150-130 has been reorganized and modified to place the requirements into chronological order and to clarify the intent of the entire section.

The rules governing disposal of regulated substances and tank are currently being developed and will follow these rules. Until then the department will provide guidance on each tank removal.

OAR 340-150-150 (9)

COMMENT (Merritt): Remove the words "and permittees" from this section. The permittee will not be in charge of the daily operation and maintenance of a decommissioned tank.

DEPARTMENT RESPONSE: OAR 340-150-130 has been modified, as suggested.

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Proposed Rules
Underground Storage Tank Program
Chapter 539, Oregon Law 1987

Definitions

340-150-010 (1) "Corrective Action" means remedial action taken to protect the present or future public health, safety, welfare or the environment from a release of a regulated substance. "Corrective Action" includes but is not limited to:

(a) The prevention, elimination, removal, abatement, control, minimization, investigation, assessment, evaluation or monitoring of a hazard or potential hazard or threat, including migration of a regulated substance; or

(b) Transportation, storage, treatment or disposal of a regulated substance or contaminated material from a site.

(2) "Decommission" means to remove from operation an underground storage tank, including temporary or permanent removal from operation, abandonment in place or removal from the ground.

(3) "Fee" means a fixed charge or service charge.

(4) "Investigation" means monitoring, surveying, testing or other information gathering.

(5) "Oil" means gasoline, crude oil, fuel oil, diesel oil, lubrication oil, sludge, oil refuse and any other petroleum related product or fraction thereof that is liquid at a temperature of 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute.

(6) "Owner" means the owner of an underground storage tank.

(7) "Permittee" means the owner or a person designated by the owner who is in control of or has responsibility for the daily operation or maintenance of an underground storage tank under a permit issued pursuant to these rules.

(8) "Person" means an individual, trust, firm, joint stock company, corporation, partnership, joint venture, consortium, association, state, municipality, commission, political subdivision of a state or any interstate body, any commercial entity and the Federal Government or any agency of the Federal Government.

(9) "Regulated substance" means:

(a) Any substance listed by the United States Environmental Protection Agency in 40 CFR Table 302.4 as ammended as of the

date October 1, 1987, but not including any substance regulated as a hazardous waste under 40 CFR Part 261 and OAR 340 Division 101, or

(b) Oil.

(10) "Release" means the discharge, deposit, injection, dumping, spilling, emitting, leaking or placing of a regulated substance from an underground storage tank into the air or into or on land or the waters of the state, other than as authorized by a permit issued under state or federal law.

(11) "Underground storage tank" means any one or combination of tanks and underground pipes connected to the tank, used to contain an accumulation of a regulated substance, and the volume of which, including the volume of the underground pipes connected to the tank, is 10 percent or more beneath the surface of the ground.

Underground Storage Tank Permit Required

340-150-020 (1) After February 1, 1989, no person shall install, bring into operation, operate or decommission an underground storage tank without first obtaining an underground storage tank permit from the department.

(2) Permits issued by the department will specify those activities and operations which are permitted as well as requirements, limitations and conditions which must be met.

(3) The duration of permits will be variable, but shall not exceed ten (10) years. The expiration date will be recorded on each permit issued. A new application must be filed with the department to obtain renewal or modification of a permit.

(4) After February 1, 1989, permits are issued to the official applicant of record for the activities and operations of record and shall be automatically terminated unless a new underground storage tank application is submitted in accordance with these rules:

(a) Within 60 days after any change of ownership of property in which the tank is located, ownership of tank or permittee.

(b) Upon change in the nature of activities and operations from those of record in the last application;

(c) Upon issuance of a new, renewal or modified permit for the same operation;

(d) Upon written request of the permittee.

Underground Storage Tank Permit Compliance Fee

340-150-030 (1) Beginning March 1, 1989, and annually thereafter, the permittee shall pay an underground storage tank permit compliance fee of $25 per tank per year.

(2) The underground storage tank permit compliance fee shall be paid for each calendar year (January 1 though December 30) or part of a calendar year that an underground storage tank is in operation.

(3) The compliance fee shall be made payable to the Department of Environmental Quality.

(4) Any compliance fee invoiced after July 1, 1989 shall not exceed $20 per tank per year.

Underground Storage Tank Permit Application Required

340-150-035 (1) On or before May 1, 1988 the following persons shall apply for an underground storage tank permit from the department.

(a) An owner of an underground storage tank currently in operation;

(b) An owner of an underground storage tank taken out of operation between January 1, 1974, and May 1, 1988; and

(c) An owner of an underground storage tank that was taken out of operation before January 1, 1974, but that still contains a regulated substance.

(2) After May 1, 1988 the owner of an underground storage tank shall apply for an underground storage tank permit from the department prior to installation of the tank, placing the tank in operation, or decommissioning the tank.

Authorized Signatures, Permit Application

340-150-040 (1) The following persons must sign an application for a permit submitted to the department.

(a) The owner of an underground storage tank storing a regulated substance;

(b) The owner of the real property in which an underground storage tank is located; and

(c) The proposed permittee, if a person other than the owner of the underground storage tank or the owner of the real property.

Underground Storage Tank Permit Application

340-150-045 (1) Any person wishing to obtain a new, modified, or renewal permit from the department shall submit a written application on a form provided by the department. Applications must be submitted at least 60 days before a permit is needed. All application forms must be completed in full, and accompanied by the specified number of copies of all required exhibits. The name of the applicant must be the legal name of the owner of the facilities or his agent or the lessee responsible for the operation and maintenance.

(2) Applications which are obviously incomplete, unsigned, or which do not contain the required exhibits (clearly identified) will not be accepted by the department for filing and will be returned to the applicant for completion.

(3) Applications which appear complete will be accepted by the department for filing.

(4) Within 30 days after filing, the department will review the application to determine adequacy of the information submitted:

(a) If the department determines that additional information is needed it will promptly request the needed information from the applicant. The application will not be considered complete for processing until the requested information is received. The application will be considered to be withdrawn if the applicant fails to submit the requested information within 90 days of the request;

(b) If, in the opinion of the Director, additional measures are necessary to gather facts regarding the application, the Director will notify the applicant of his intent to institute said measures and the timetable and procedures to be followed. The application will not be considered complete for processing until the necessary additional fact-finding measures are completed. When the information in the application is deemed adequate, the applicant will be notified that this application is complete for processing. Processing will be completed within 90 days after such notification.

(5) In the event the department is unable to complete action on an application within 90 days after notification that the application is complete for processing, the applicant shall be deemed to have received a temporary or conditional permit, such permit to expire upon final action by the department to grant or deny the original application. Such temporary or conditional permit does not authorize any construction, activity, operation, or discharge which will violate any of the laws, rules, or regulations of the State of Oregon or the Department of Environmental Quality.

(6) If, upon review of an application, the department determines that a permit is not required, the department shall notify the applicant in writing of this determination. Such

notification shall constitute final action by the department on the application.

(7) Following determination that it is complete for processing, each application will be reviewed on its own merits. Recommendations will be developed in accordance with the provisions of applicable statutes, rules and regulations of the State of Oregon and the Department of Environmental Quality.

(8) If the applicant is dissatisified with the conditions or limitations of any permit issued by the department, he may request a hearing before the Commission or its authorized representative. Such a request for hearing shall be made in writing to the Director within 20 days of the date of mailing of the notification of issuance of the permit. Any hearing held shall be conducted pursuant to the regulations of the department.

Information Required on the Permit Application

340-150-050 (1) The underground storage tank permit application shall include:

(a) The name and mailing address of the owner of the underground storage tank.

(b) The name and mailing address of the owner of the real property in which the underground storage tank is located.

(c) The name and mailing address of the proposed permittee of the underground storage tank.

(d) The signatures of the owner of the underground storage tank, the owner of the real property and the proposed permittee.

(e) The facility name and location.

(f) The substance currently or last stored.

(g) The operating status of the tank.

(h) The estimated age of the tank.

(i) Description of the tank, including tank design and construction materials.

(j) Description of piping, including piping design and construction materials.

(k) History of tank system repairs.

(l) Type of leak detection and overfill protection.

(m) Any other information that may be necessary to protect public health, safety, or the environment.

Underground Storage Tank Permit Application Fee

340-150-055 (1) The permit application fee of $25 shall accompany each underground storage tank application. For applications received after February 1, 1989, the permit application fee will also be considered the first compliance fee required by OAR340-150-030.

Denial of Underground Storage Tank Permit

340-150-060 (1) An underground storage tank permit application may be denied if the underground storage tank installation or operation is not in conformance with these underground storage tank rules or Chapter 539, Oregon Law 1987.

(2) An underground storage tank permit may be denied if the underground storage tank permit application is not complete or is determined to be inaccurate.

Revocation of Underground Storage Tank Permit

340-150-065 An underground storage tank permit may be revoked if the underground storage tank installation or operation is not in conformance with the underground tank rules or Chapter 539, Oregon Law, 1987.

Permit Procedures for Renewal, Denial, Modification and Revocation.

340-150-070 The permit procedures for renewal, denial, modification and suspension or revocation (OAR 340-14-030, 340-14-035, 340-14-040, 340-14-045) shall apply to permit issued under this section.

Depositing Regulated Substances in Underground Storage Tanks

340-150-075 (1) After February 1, 1989 no person owning an underground storage tank shall deposit or cause to be deposited a regulated substance into that tank without first having applied for and received an operating permit issued by the department.

(2) After February 1, 1989 no person selling or distributing a regulated substance shall deposit that substance into an underground storage tank unless the tank is operating under a valid permit issued by the department.

Requirement to Notify the Underground Storage Tank Owner and Operator

340-150-080 (1) After February 1, 1989 any person who sells or distributes regulated substances or sells an underground storage tank shall notify the purchaser of these products in writing of the requirements for obtaining an underground storage tank permit.

Underground Storage Tank Interim Installation Standards

340-150-100 (1) Upon the effective date of these rules no person shall install an underground storage tank for the purpose of storing regulated substances unless such tank installation;

(a) will prevent releases due to corrosion or structural failure for the operational life of the tank;

(b) is cathodically protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed in a manner to prevent the release or threatened release of any stored substance; and

(c) the material used in the construction or lining of the tank is compatible with the substance to be stored.

(2) For the purpose of determining compliance with these Interim Installation Standards, the department will use the guidelines published by the United State Environmental Protection Agence entitled "Hazardous Waste; Interpretive Rule on the Interim Prohibition Against Installation of Unprotected Underground Storage Tanks", 40 CFR Part 280. (Copies are available from the EPA or the department)

Permanent Decommissioning of an Underground Storage Tank

340-150-150 (1) Any underground storage tank that is permanently decommissioned must comply with the requirements of this section.

(2) When an underground storage tank is taken out of service for longer that 24 months, it must be permanently decommissioned.

(3) Prior to permanent decommissioning the tank owner or permittee must notify the department in writing.

(4) If evidence of a release is discovered the tank owner or permittee must;

(a) Notify the department within 24 hours. (Phone: 1-800-452-0311 or 1-800-452-4011)

(b) Assess the source and the extent of the release.

(c) Meet with the department to set up a cleanup standard and a schedule for cleanup.

(d) Cleanup the release.

(5) All tanks that are permanently decommissioned must be emptied and either removed from the ground or be filled with an inert solid material.

(6) Dispose of all liquids, solids and sludge removed from the tank by recycling or dispose in a manner approved by the department.

(7) Dispose of a tank removed from the ground in a manner approved by the department.

(8) The permanent decommissioning procedures described in API 1604 "Recommended Practice for Abandonment or Removal of Used Underground Service Station Tanks" may be used as guidelines for compliance with these rules.

(9) All underground storage tank owners and permittees must maintain records which are capable of demonstrating compliance with the permanent decommissioning requirement under this section. These records must be maintained for at least three years after permanent decommissioning and made available, upon request, to the department during business hours.

Underground Storage Tank Schedule of Civil Penalties

340-12-067 In addition to any liability, duty, or other penalty provided by law, the Director may assess a civil penalty for any violition pertaining to underground storage tank systems and releases from underground tank systems by service of a written Notice of Assessment of Civil Penalty upon the respondent. The amount of such civil penalty shall be determined consistent with the following schedule:

(1) Not less than two thousand five hundred dollars ($2,500) nor more than ten thousand dollars ($10,000) for each day of the violation upon any person owning or having control over a regulated substance who fails to immediately cleanup releases as required by Chapter 539, Oregon Law 1987 and OAR 340 - Division 150.

(2) Not less than one thousand dollars ($1,000) nor more than ten thousand dollars ($10,000) for each day of the violation upon any person owning or having control over a regulated substance who fails to immediately report all releases of a regulated substance as required by Chapter 539, Oregon Law 1987 and OAR 340 - Division 150.

(3) Not less than one hundred dollars ($100) nor more than ten thousand dollars ($10,000) per day of the violation upon any person who:

(a) Violates an order of the Commission or the Department,

(b) Violates any underground storage tank rule or Chapter 539, Oregon Law 1987.

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authorized local government official, permit the official at all reasonable times to have access to and copy, records relating to the type, quantity, storage locations and hazards of the oil or hazardous material.

(2) In order to carry out subsection (1) of this section a local government official may enter to inspect at reasonable times any establishment or other place where oil or hazardous material is present.

(3) As used in this section, "local government official" includes but is not limited to an officer, employe or representative of a county, city, fire department, fire district or police agency. [1985 c.733 §13; 1987 c.158 §91]

466.670 Oil and Hazardous Material Emergency Response and Remedial Action Fund. (1) The Oil and Hazardous Material Emergency Response and Remedial Action Fund is established separate and distinct from the General Fund in the State Treasury. As permitted by federal court decisions, federal statutory requirements and administrative decisions, after payment of associated legal expenses, moneys not to exceed $2.5 million received by the State of Oregon from the Petroleum Violation Escrow Fund of the United States Department of Energy that is not obligated by federal requirements to existing energy programs shall be paid into the State Treasury and credited to the fund.

(2) The State Treasurer shall invest and reinvest moneys in the Oil and Hazardous Material Emergency Response and Remedial Action Fund in the manner provided by law.

(3) The moneys in the Oil and Hazardous Material Emergency Response and Remedial Action Fund are appropriated continuously to the Department of Environmental Quality to be used in the manner described in ORS 466.675. [1985 c.733 §14]

466.675 Use of moneys in Oil and Hazardous Material Emergency Response and Remedial Action Fund. Moneys in the Oil and Hazardous Material Emergency Response and Remedial Action Fund may be used by the Department of Environmental Quality for the following purposes:

(1) Training local government employes involved in response to spills or releases of oil and hazardous material.

(2) Training of state agency employes involved in response to spills or releases of oil and hazardous material.

(3) Funding actions and activities authorized by ORS 466.645, 466.205, 468.800 and 468.805.

(4) Providing for the general administration of ORS 466.605 to 466.680 including the purchase of equipment and payment of personnel costs of the department or any other state agency related to the enforcement of ORS 466.605 to 466.680. [1985 c.733 §15; 1987 c.158 §92]

466.680 Responsibility for expenses of cleanup; record; damages; order; appeal. (1) If a person required to clean up oil or hazardous material under ORS 466.645 fails or refuses to do so, the person shall be responsible for the reasonable expenses incurred by the department in carrying out ORS 466.645.

(2) The department shall keep a record of all expenses incurred in carrying out any cleanup projects or activities authorized under ORS 466.645, including charges for services performed and the state's equipment and materials utilized.

(3) Any person who does not make a good faith effort to clean up oil or hazardous material when obligated to do so under ORS 466.645 shall be liable to the department for damages not to exceed three times the amount of all expenses incurred by the department.

(4) Based on the record compiled by the department under subsection (2) of this section, the commission shall make a finding and enter an order against the person described in subsection (1) or (3) of this section for the amount of damages, not to exceed treble damages, and the expenses incurred by the state in carrying out the action authorized by this section. The order may be appealed in the manner provided for appeal of a contested case order under ORS 183.310 to 183.550.

(5) If the amount of state incurred expenses and damages under this section are not paid by the responsible person to the department within 15 days after receipt of notice that such expenses are due and owing, or, if an appeal is filed within 15 days after the court renders its decision if the decision affirms the order, the Attorney General, at the request of the director, shall bring an action in the name of the State of Oregon in a court of competent jurisdiction to recover the amount specified in the notice of the director. [1985 c.733 §16]

466.685 [1985 c.733 §19; repealed by 1987 c.735 §27]

466.690 [1985 c.733 §20; repealed by 1987 c.735 §27]

UNDERGROUND STORAGE TANKS
(General Provisions)

466.705 Definitions for ORS 466.705 to 466.835 and 466.895. As used in ORS 466.705 to 466.835 and 466.895:

(1) "Corrective action" means remedial action taken to protect the present or future public health, safety, welfare or the environment from a release of a regulated substance. "Corrective action" includes but is not limited to:

(a) The prevention, elimination, removal, abatement, control, minimization, investigation, assessment, evaluation or monitoring of a hazard or potential hazard or threat, including migration of a regulated substance; or

(b) Transportation, storage, treatment or disposal of a regulated substance or contaminated material from a site.

(2) "Decommission" means to remove from operation an underground storage tank, including temporary or permanent removal from operation, abandonment in place or removal from the ground.

(3) "Fee" means a fixed charge or service charge.

(4) "Guarantor" means any person other than the permittee who by guaranty, insurance, letter of credit or other acceptable device, provides financial responsibility for an underground storage tank as required under ORS 466.815.

(5) "Investigation" means monitoring, surveying, testing or other information gathering.

(6) "Local unit of government" means a city, county, special service district, metropolitan service district created under ORS chapter 268 or a political subdivision of the state.

(7) "Oil" means gasoline, crude oil, fuel oil, diesel oil, lubricating oil, sludge, oil refuse and any other petroleum related product or fraction thereof that is liquid at a temperature of 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute.

(8) "Owner" means the owner of an underground storage tank.

(9) "Permittee" means the owner or a person designated by the owner who is in control of or has responsibility for the daily operation or maintenance of an underground storage tank under a permit issued pursuant to ORS 466.760.

(10) "Person" means an individual, trust, firm, joint stock company, corporation, partnership, joint venture, consortium, association, state, municipality, commission, political subdivision of a state or any interstate body, any commercial entity and the Federal Government or any agency of the Federal Government.

(11) "Regulated substance" means:

(a) Any substance listed by the United States Environmental Protection Agency in 40 CFR Table 302.4 pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended (P.L. 96-510 and P.L. 98-80), but not including any substance regulated as a hazardous waste under 40 CFR Part 261 and OAR 340 Division 101;

(b) Oil; or

(c) Any other substance designated by the commission under ORS 466.630.

(12) "Release" means the discharge, deposit, injection, dumping, spilling, emitting, leaking or placing of a regulated substance from an underground storage tank into the air or into or on land or the waters of the state, other than as authorized by a permit issued under state or federal law.

(13) "Underground storage tank" means any one or combination of tanks and underground pipes connected to the tank, used to contain an accumulation of a regulated substance, and the volume of which, including the volume of the underground pipes connected to the tank, is 10 percent or more beneath the surface of the ground.

(14) "Waters of the state" has the meaning given that term in ORS 468.700. [1987 c.539 §2 (enacted in lieu of 468.901)]

466.710 Application of ORS 466.705 to 466.835. ORS 466.705 to 466.835 and 466.895 shall not apply to a:

(1) Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes.

(2) Tank used for storing heating oil for consumptive use on the premises where stored.

(3) Septic tank.

(4) Pipeline facility including gathering lines regulated:

(a) Under the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671);

(b) Under the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001); or

(c) As an intrastate pipeline facility under state laws comparable to the provisions of law referred to in paragraph (a) or (b) of this subsection.

(5) Surface impoundment, pit, pond or lagoon.

(6) Storm water or waste water collection system.

(7) Flow-through process tank.

(8) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

(9) Storage tank situated in an underground area if the storage tank is situated upon or above the surface of a floor. As used in this subsection, "underground area" includes but is not limited to a basement, cellar, mine, drift, shaft or tunnel.

(10) Pipe connected to any tank described in subsections (1) to (8) of this section. [Formerly 468.911; 1987 c.539 §18]

466.715 Legislative findings. (1) The Legislative Assembly finds that:

(a) Regulated substances hazardous to the public health, safety, welfare and the environment are stored in underground tanks in this state; and

(b) Underground tanks used for the storage of regulated substances are potential sources of contamination of the environment and may pose dangers to the public health, safety, welfare and the environment.

(2) Therefore, the Legislative Assembly declares:

(a) It is the public policy of this state to protect the public health, safety, welfare and the environment from the potential harmful effects of underground tanks used to store regulated substances.

(b) It is the purpose of ORS 466.705 to 466.835 and 466.895 to enable the Environmental Quality Commission to adopt a state-wide program for the prevention and reporting of releases and for taking corrective action to protect the public and the environment from releases from underground storage tanks. [1987 c.539 §4 (enacted in lieu of 468.902)]

(Administration)

466.720 State-wide underground storage tank program; federal authorization. (1) The Environmental Quality Commission shall adopt a state-wide underground storage tank program. Except as otherwise provided in ORS 466.705 to 466.835 and 466.895, the state-wide program shall establish uniform procedures and standards to protect the public health, safety, welfare and the environment from the consequences of a release from an underground storage tank.

(2) The commission and the department are authorized to perform or cause to be performed any act necessary to gain interim and final authorization of a state program for the regulation of underground storage tanks under the provisions of Section 9004 of the Federal Resource Conservation and Recovery Act, P.L. 94-580 as amended and P.L. 98-616, Section 205 of the federal Solid Waste Disposal Act, P.L. 96-482 as amended and federal regulations and interpretive and guidance documents issued pursuant to P.L. 94-580 as amended, P.L. 98-616 and P.L. 96-482. The commission may adopt, amend or repeal any rule necessary to implement ORS 466.705 to 466.835 and 466 895. [Subsection (1) enacted as 1987 c.539 §6; subsection (2) formerly 468.913]

466.725 Limitation on local government regulation. (1) Except as provided in ORS 466.730, a local unit of government may not enact or enforce any ordinance, rule or regulation relating to the matters encompassed by the state program established under ORS 466.720.

(2) Any ordinance, rule or regulation enacted by a local unit of government of this state that encompasses the same matters as the state program shall be unenforceable, except for an ordinance, rule or regulation:

(a) That requires an owner or permittee to report a release to the local unit of government; or

(b) Adopted by a local unit of government operating an underground storage tank program pursuant to a contract entered into according to the provisions of ORS 466.730. [1987 c.539 §8 (enacted in lieu of 468.904)]

Note: Section 46, chapter 539, Oregon Laws 1987, provides:

Sec. 46. Section 8 of this Act [ORS 466.725] does not become operative until nine months after the Environmental Quality Commission adopts a state-wide underground storage tank program under section 6 of this Act [ORS 466.720] and has filed a copy of such rules with the Secretary of State as prescribed in ORS 183.310 to 183.550. [1987 c.539 §46]

466.730 Delegation of program administration to state agency or local government by agreement. (1) The commission may authorize the department to enter into a contract or agreement with an agency of this state or a local unit of government to administer all or part of the underground storage tank program.

(2) Any agency of this state or any local unit of government that seeks to administer an underground storage tank program under this section shall submit to the department a description of the program the agency or local unit of government proposes to administer in lieu of all or part of the state program. The program description shall include at least the following:

(a) A description in narrative form of the scope, structure, coverage and procedures of the proposed program.

(b) A description, including organization charts, of the organization and structure of the

contracting state agency or local unit of government that will have responsibility for administering the program, including:

(A) The number of employes, occupation and general duties of each employe who will carry out the activities of the contract.

(B) An itemized estimate of the cost of establishing and administering the program, including the cost of personnel listed in subparagraph (A) of this paragraph and administrative and technical support.

(C) An itemization of the source and amount of funding available to the contracting state agency or local unit of government to meet the costs listed in subparagraph (B) of this paragraph, including any restrictions or limitations upon this funding.

(D) A description of applicable procedures, including permit procedures.

(E) Copies of the permit form, application form and reporting form the state agency or local unit of government intends to use in the program.

(F) A complete description of the methods to be used to assure compliance and for enforcement of the program.

(G) A description of the procedures to be used to coordinate information with the department, including the frequency of reporting and report content.

(H) A description of the procedures the state agency or local unit of government will use to comply with trade secret laws under ORS 192.500 and 468.910.

(3) Any program approved by the department under this section shall at all times be conducted in accordance with the requirements of ORS 466.705 to 466.835 and 466.895.

(4) An agency or local unit of government shall exercise the functions relating to underground storage tanks authorized under a contract or agreement entered into under this section according to the authority vested in the commission and the department under ORS 466.705 to 466.835 and 466.895 insofar as such authority is applicable to the performance under the contract or agreement. The agency or local unit of government shall carry out these functions in the manner provided for the commission and the department to carry out the same functions. [1987 c.539 §9]

466.735 Cooperation with Building Codes Agency and State Fire Marshal. Nothing in ORS 466.705 to 466.835 and 466.895 is intended to interfere with, limit or abridge the authority of the Building Codes Agency or the State Fire Marshal, or any other state agency or local unit of government relating to combustion and explosion hazards, hazard communications or land use. The complementary relationship between the protection of the public safety from combustion and explosion hazards, and protection of the public health, safety, welfare and the environment from releases of regulated substances from underground storage tanks is recognized. Therefore, the department shall work cooperatively with the Building Codes Agency, the State Fire Marshal and local units of government in developing the rules and procedures necessary to carry out the provisions of ORS 466.705 to 466.835 and 466.895. [1987 c.539 §10]

466.740 Noncomplying installation prohibited. No person shall install an underground storage tank for the purpose of storing regulated substances unless the tank complies with the standards adopted under ORS 466.745 and any other rule adopted under ORS 466.705 to 466.835 and 466.895. [1987 c.539 §11]

Note: Section 47, chapter 539, Oregon Laws 1987, provides:

Sec. 47. Section 11 of this Act [ORS 466.740] does not become operative until the Environmental Quality Commission has adopted rules under section 13 of this Act [ORS 766.745] and has filed a copy of such rules with the Secretary of State, as prescribed in ORS 183.310 to 183.550. [1987 c.539 §47]

466.745 Commission rules; considerations. (1) The commission may establish by rule:

(a) Performance standards for leak detection systems, inventory control, tank testing or comparable systems or programs designed to detect or identify releases in a manner consistent with the protection of public health, safety, welfare or the environment;

(b) Requirements for maintaining records and submitting information to the department in conjunction with a leak detection or identification system or program used for each underground storage tank;

(c) Performance standards for underground storage tanks including but not limited to design, retrofitting, construction, installation, release detection and material compatibility;

(d) Requirements for the temporary or permanent decommissioning of an underground storage tank;

(e) Requirements for reporting a release from an underground storage tank;

(f) Requirements for a permit issued under ORS 466.760;

(g) Procedures that distributors of regulated substances and sellers of underground storage tanks must follow to satisfy the requirements of ORS 466.760;

(h) Acceptable methods by which an owner or permittee may demonstrate financial responsibility for responding to the liability imposed under ORS 466.815;

(i) Procedures for the disbursement of moneys collected under ORS 466.795;

(j) Requirements for reporting corrective action taken in response to a release;

(k) Requirements for taking corrective action in response to a release; and

(L) Any other rule necessary to carry out the provisions of ORS 466.705 to 466.835 and 466.895.

(2) The commission may adopt different requirements for different areas or regions of the state if the commission finds either of the following:

(a) More stringent rules or standards are necessary:

(A) To protect specific waters of the state, a sole source or sensitive aquifer or any other sensitive environmental amenity; or

(B) Because conditions peculiar to that area or region require different standards to protect public health, safety, welfare or the environment.

(b) Less stringent rules or standards are:

(A) Warranted by physical conditions or economic hardship;

(B) Consistent with the protection of the public health, safety, welfare or the environment; and

(C) Not less stringent than minimum federal requirements.

(3) The rules adopted by the commission under subsection (1) of this section may distinguish between types, classes and ages of underground storage tanks. In making such distinctions, the commission may consider the following factors:

(a) Location of the tanks;

(b) Soil and climate conditions;

(c) Uses of the tanks;

(d) History of maintenance;

(e) Age of the tanks;

(f) Current industry recommended practices;

(g) National consensus codes;

(h) Hydrogeology;

(i) Water table;

(j) Size of the tanks;

(k) Quantity of regulated substances periodically deposited in or dispensed from the tank;

(L) The technical ability of the owner or permittee; and

(m) The compatibility of the regulated substance and the materials of which the tank is fabricated.

(4) In adopting rules under subsection (1) of this section, the commission shall consider all relevant federal standards and regulations on underground storage tanks. If the commission adopts any standard or rule that is different than a federal standard or regulation on the same subject, the report submitted to the commission by the department at the time the commission adopts the standard or rule shall indicate clearly the deviation from the federal standard or regulation and the reasons for the deviation. [1987 c.539 §13 (enacted in lieu of 468.908)]

(Licenses; Permits)

466.750 License procedure for persons servicing underground tanks. (1) In order to safeguard the public health, safety and welfare, to protect the state's natural and biological systems, to protect the public from unlawful underground tank installation and retrofit procedures and to assure the highest degree of leak prevention from underground storage tanks, the commission may adopt a program to regulate persons providing underground storage tank installation and removal, retrofit, testing and inspection services.

(2) The program established under subsection (1) of this section may include a procedure to license persons who demonstrate, to the satisfaction of the department, the ability to service underground storage tanks. This demonstration of ability may consist of written or field examinations. The commission may establish different types of licenses for different types of demonstrations, including but not limited to:

(a) Installation, removal, retrofit and inspection of underground storage tanks;

(b) Tank integrity testing; and

(c) Installation of leak detection systems.

(3) The program adopted under subsection (1) of this section may allow the department after opportunity for hearing under the provisions of ORS 183.310 to 183.550, to revoke a license of any person offering underground tank services who commits fraud or deceit in obtaining a license or who demonstrates negligence or incompetence in performing underground tank services.

(4) The program adopted under subsection (1) of this section shall:

(a) Provide that no person may offer to perform or perform services for which a license is required under the program without such license.

(b) Establish a schedule of fees for licensing under the program. The fees shall be in an amount sufficient to cover the costs of the department in administering the program.

(5) The following persons shall apply for an underground storage tank permit from the department:

(a) An owner of an underground storage tank currently in operation;

(b) An owner of an underground storage tank taken out of operation between January 1, 1974, and the operative date of this section; and

(c) An owner of an underground storage tank that was taken out of operation before January 1, 1974, but that still contains a regulated substance. [1987 c.539 §§14, 15]

Note: Section 48, chapter 539, Oregon Laws 1987, provides:

Sec. 48. Section 15 of this Act [ORS 466.750 (5)] does not become operative until 90 days after the Environmental Quality Commission has adopted rules under section 13 of this Act [ORS 466.745] and has filed a copy of such rules with the Secretary of State, as prescribed in ORS 183.310 to 183.550. [1987 c.539 §48]

466.760 When permit required; who required to sign application. (1) No person shall install, bring into operation, operate or decommission an underground storage tank without first obtaining a permit from the department.

(2) No person shall deposit a regulated substance into an underground storage tank unless the tank is operating under a permit issued by the department.

(3) Any person who assumes ownership of an underground storage tank from a previous permittee must complete and return to the department an application for a new permit before the person begins operation of the underground storage tank under the new ownership.

(4) Any person who deposits a regulated substance into an underground storage tank or sells an underground storage tank shall notify the owner or operator of the tank of the permit requirements of this section.

(5) The following persons must sign an application for a permit submitted to the department under this section or ORS 466.750 (5):

(a) The owner of an underground storage tank storing a regulated substance;

(b) The owner of the real property in which an underground storage tank is located; and

(c) The proposed permittee, if a person other than the owner of the underground storage tank or the owner of the real property. [1987 c.539 §16]

Note: Section 49, chapter 539, Oregon Laws 1987, provides:

Sec. 49. Section 16 of this Act [ORS 466.760] does not become operative until one year after the Environmental Quality Commission has adopted rules under section 13 of this Act [ORS 466.745] and has filed a copy of such rules with the Secretary of State, as prescribed in ORS 183.310 to 183.550. [1987 c.539 §49]

Note: Section 17, chapter 539, Oregon Laws 1987, provides:

Sec. 17. If the department is unable to issue a final permit before the operative date of section 16 of this 1987 Act [ORS 466.760], the department may issue a temporary or conditional permit. A temporary or conditional permit shall expire when the department grants or denies the final permit. A temporary or conditional permit does not authorize any activity, operation or discharge that violates any law or rule of the State of Oregon or the Department of Environmental Quality. [1987 c.539 §17]

466.765 Duty of owner or permittee of underground storage tank. In addition to any other duty imposed by law and pursuant to rules adopted under ORS 466.705 to 466.835 and 466.895, the owner or the permittee of an underground storage tank shall:

(1) Prevent releases;

(2) Install, operate and maintain underground storage tanks and leak detection devices and develop and maintain records in connection therewith in accordance with standards adopted and permits issued under ORS 466.705 to 466.835 and 466.895;

(3) Furnish information to the department relating to underground storage tanks, including information about tank equipment and regulated substances stored in the tanks;

(4) Promptly report releases;

(5) Conduct monitoring and testing as required by rules adopted under ORS 466.745 and permits issued under ORS 466.760;

(6) Permit department employes or a duly authorized and identified representative of the department at all reasonable times to have access to and to copy all records relating to underground storage tanks;

(7) Pay all costs of investigating, preventing, reporting and stopping a release;

(8) Decommission tanks, as required by rules adopted under ORS 466.745 and permits issued under ORS 466.760;

(9) Pay all fees;

(10) Conduct any corrective action required under ORS 466.810; and

(11) Perform any other requirement adopted under ORS 466.540, 466.705 to 466.835, 466.895 and 478.308. [1987 c.539 §20 (enacted in lieu of 468.905)]

466.770 Corrective action required on contaminated site. (1) If any owner or permittee of a contaminated site fails without sufficient cause to conduct corrective action under ORS 466.765, the department may undertake any investigation or corrective action with respect to the contamination on the site.

(2) The department shall keep a record of all expenses incurred in carrying out any corrective action authorized under subsection (1) of this section, including charges for services performed and the state's equipment and materials utilized.

(3) Any owner or permittee of a contaminated site who fails without sufficient cause to conduct corrective action as required by an order of the department under ORS 466.810 shall be liable to the department for damages not to exceed three times the amount of all expenses incurred by the department in carrying out the necessary corrective action.

(4) Based on the record compiled by the department under subsection (2) of this section, the commission shall make a finding and enter an order against the person described in subsection (1) or (3) of this section for the amount of damages, not to exceed treble damages, and the expenses incurred by the state in carrying out the actions authorized by this section. The order may be appealed in the manner provided for appeal of a contested case order under ORS 183.310 to 183.550.

(5) If the amount of corrective action costs incurred by the department and damages under this section are not paid by the responsible person to the department within 15 days after receipt of notice that such expenses are due and owing, or, if an appeal is filed within 15 days after the court renders its decision if the decision affirms the order, the Attorney General, at the request of the director, shall bring an action in the name of the State of Oregon in a court of competent jurisdiction to recover the amount specified in the notice of the director.

(6) Subsection (5) of this section shall not apply if the department and the responsible person are negotiating or have entered into a settlement agreement, except that if the responsible person fails to pay the corrective action costs as provided in the negotiated settlement the director may request the Attorney General to take action as set forth in subsection (5) of this section.

(7) All moneys received by the department under this section shall be paid into the fund established in ORS 466.790.

(8) As used in this section:

(a) "Contamination" means any abandoning, spilling, releasing, leaking, disposing, discharging, depositing, emitting, pumping, pouring, emptying, injecting, escaping, leaching, placing or dumping of a regulated substance from an underground storage tank into the air or on any lands or waters of the state, so that such regulated substance may enter the environment, be emitted into the air or discharged into any waters. Such contamination authorized by and in compliance with a permit issued under ORS chapter 454, 459, 468, 469, ORS 466.005 to 466.385 or federal law shall not be considered as contamination under ORS 466.540, 466.705 to 466.835, 466.895 and 478.308.

(b) "Site" means any area or land. [1987 c.539 §24]

466.775 Grounds for refusal, modification, suspension or revocation of permit. (1) The department may refuse to issue, modify, suspend, revoke or refuse to renew a permit if the department finds:

(a) A material misrepresentation or false statement in the application for the permit;

(b) Failure to comply with the conditions of the permit; or

(c) Violation of any applicable provision of ORS 466.705 to 466.835 and 466.895, any applicable rule or standard adopted under ORS 466.705 to 466.835 and 466.895 or an order issued under ORS 466.705 to 466.835 and 466.895.

(2) The department may modify a permit issued under ORS 466.760 if the department finds, after notice and opportunity for hearing, that modification is necessary to protect the public health, safety, welfare or the environment.

(3) The department shall modify, suspend, revoke or refuse to issue or renew a permit according to the provisions of ORS 183.310 to 183.550 for a contested case proceeding. [1987 c.539 §21]

466.780 Variance upon petition. (1) Upon petition by the owner and the permittee of an underground storage tank, the commission may grant a variance from the requirements of any rule or standard adopted under ORS 466.745 if the commission finds:

(a) The alternative proposed by the petitioner provides protection to the public health, safety, welfare and the environment, equal to or greater than the rule or standard; and

(b) The alternative proposal is at least as stringent as any applicable federal requirements.

(2) The commission may grant a variance under subsection (1) of this section only if the commission finds that strict compliance with the rule or standard is inappropriate because:

(a) Conditions exist that are beyond the control of the petitioner; or

(b) Special physical conditions or other circumstances render strict compliance unreasonable, burdensome or impracticable.

(3) The commission may delegate the authority to grant a variance to the department.

(4) Within 15 days after the department denies a petition for a variance, the petitioner may file with the commission a request for review by the commission. The commission shall review the petition for variance and the reasons for the department's denial of the petition within 150 days after the commission receives a request for review. The commission may approve or deny the variance or allow a variance on terms different than the terms proposed by the petitioner. If the commission fails to act on a denied petition within the 150-day period the variance shall be considered approved by the commission. [1987 c.539 §22]

(Finance)

466.785 Fees. (1) Fees may be required of every permittee of an underground storage tank. Fees shall be in an amount determined by the commission to be adequate to carry on the duties of the department or the duties of a state agency or local unit of government that has contracted with the department under ORS 466.730. Such fees shall not exceed $25 per tank per year.

(2) Fees collected by the department under this section shall be deposited in the State Treasury to the credit of an account of the department. All fees paid to the department shall be continuously appropriated to the department to carry out the provisions of ORS 466.705 to 466.835 and 466.895. [1987 c.539 §23]

Note: The amendments to section 23, chapter 539, Oregon Laws 1987 [compiled as ORS 466.785], by section 50, chapter 539, Oregon Laws 1987, become effective July 1, 1989. See section 51, chapter 539, Oregon Laws 1987.

466.785. (1) Fees may be required of every permittee of an underground storage tank. Fees shall be in an amount determined by the commission to be adequate to carry on the duties of the department or the duties of a state agency or local unit of government that has contracted with the department under ORS 466.730. Such fees shall not exceed $20 per tank per year.

(2) Fees collected by the department under this section shall be deposited in the State Treasury to the credit of an account of the department. All fees paid to the department shall be continuously appropriated to the department to carry out the provisions of ORS 466.705 to 466.835 and 466.895.

466.790 Leaking Underground Storage Tank Cleanup Fund; sources; uses. (1) The Leaking Underground Storage Tank Cleanup Fund is established separate and distinct from the General Fund in the State Treasury.

(2) The following moneys, as they pertain to an underground storage tank, shall be deposited into the State Treasury and credited to the Leaking Underground Storage Tank Cleanup Fund:

(a) Moneys recovered or otherwise received from responsible parties for corrective action; and

(b) Any penalty, fine or damages recovered under ORS 466.770.

(3) The State Treasurer may invest and reinvest moneys in the Leaking Underground Storage Tank Cleanup Fund in the manner provided by law.

(4) The moneys in the Leaking Underground Storage Tank Cleanup Fund are appropriated continuously to the department to be used as provided in subsection (5) of this section.

(5) Moneys in the Leaking Underground Storage Tank Cleanup Fund may be used by the department for the following purposes:

(a) Payment of corrective action costs incurred by the department in responding to a release from underground storage tanks;

(b) Funding of all actions and activities authorized by ORS 466.770; and

(c) Payment of the state cost share for corrective action, as required by section 9003(h)(7)(B) of the federal Solid Waste Disposal Act, P.L. 96-482. [1987 c.539 §26]

466.795 Underground Storage Tank Insurance Fund. (1) The Underground Storage Tank Insurance Fund is established separate and distinct from the General Fund in the State Treasury to be used solely for the purpose of satisfying the financial responsibility requirements of ORS 466.815.

(2) Fees received by the department pursuant to subsection (6) of this section, shall be deposited into the State Treasury and credited to the Underground Storage Tank Insurance Fund.

(3) The State Treasurer may invest and reinvest moneys in the Underground Storage Tank Insurance Fund in the manner provided by law.

(4) The moneys in the Underground Storage Tank Insurance Fund are appropriated continuously to the department to be used as provided for in subsection (5) of this section.

(5) Moneys in the Underground Storage Tank Insurance Fund may be used by the department for the following purposes, as they pertain to underground storage tanks:

(a) Compensation to the department or any other person, for taking corrective actions; and

(b) Compensation to a third party for bodily injury and property damage caused by a release.

(6) The commission may establish an annual financial responsibility fee to be collected from an owner or permittee of an underground storage tank. The fee shall be in an amount determined by the commission to be adequate to meet the financial responsibility requirements established under ORS 466.815 and any applicable federal law.

(7) Before the effective date of any regulations relating to financial responsibility adopted by the United States Environmental Protection Act pursuant to P.L. 98-616 and P.L. 99-499, the department shall formulate a plan of action to be followed if it becomes necessary for the Underground Storage Tank Insurance Fund to become operative in order to satisfy the financial responsibility requirements of ORS 466.815. In formulating the plan of action, the department shall consult with the Director of the Department of Insurance and Finance, owners and permittees of underground storage tanks and any other interested party. The plan of action must be reviewed by the Legislative Assembly or the Emergency Board before implementation. [1987 c.539 §28]

466.800 Records as public records; exceptions. (1) Except as provided in subsection (2) of this section, any records, reports or information obtained from any persons under ORS 466.765 and 466.805 shall be made available for public inspection and copying during the regular office hours of the department at the expense of any person requesting copies.

(2) Unless classified by the director as confidential, any records, reports or information obtained under ORS 466.705 to 466.835 and 466.895 shall be available to the public. Upon a showing satisfactory to the director by any person that records, reports or information, or particular parts thereof, if made public, would divulge methods, processes or information entitled to protection as trade secrets under ORS 192.501 to 192.505, the director shall classify as confidential such record, report or information, or particular part thereof. However, such record, report or information may be disclosed to any other officer, medical or public safety employe or authorized representative of the state concerned with carrying out ORS 466.705 to 466.835 and 466.895 or when relevant in any proceeding under ORS 466.705 to 466.835 and 466.895.

(3) Any record, report or information obtained or used by the department or the commission in administering the state-wide underground storage tank program under ORS 466.705 to 466.835 and 466.895 shall be available to the United States Environmental Protection Agency upon request. If the record, report or information has been submitted to the state under a claim of confidentiality, the state shall make that claim of confidentiality to the Environmental Protection Agency for the requested record, report or information. The federal agency shall treat the record, report or information subject to the confidentiality claim as confidential in accordance with applicable federal law. [Formerly 468.910]

(Enforcement)

466.805 Site inspection; subpena or warrant. (1) In order to determine compliance with the provisions of ORS 466.705 to 466.835 and 466.895 and rules adopted under ORS 466.705 to 466.835 and 466.895 and to enforce the provisions of ORS 466.705 to 466.835 and 466.895, any employes of or an authorized and identified representative of the department may:

(a) Enter at reasonable times any establishment or site where an underground storage tank is located;

(b) Inspect and obtain samples of a regulated substance contained in an underground storage tank; and

(c) Conduct an investigation of an underground storage tank, associated equipment, contents or the soil, air or waters of the state surrounding an underground storage tank.

(2) If any person refuses to comply with subsection (1) of this section, the department or a duly authorized and identified representative of the department may obtain a warrant or subpena to allow such entry, inspection, sampling or copying. [1987 c.539 §30 (enacted in lieu of 468.907)]

466.810 Investigation on noncompliance; findings and orders; decommissioning tank; hearings; other remedies. (1) Whenever the department has reasonable

cause to believe that an underground storage tank or the operation of an underground storage tank violates ORS 466.705 to 466.835 and 466.895 or fails to comply with a rule, order or permit issued under ORS 466.705 to 466.835 and 466.895, the department may investigate the underground storage tank.

(2) After the department investigates an underground storage tank under subsection (1) of this section, the department may, without notice or hearing, make such findings and issue such orders as it considers necessary to protect the public health, safety, welfare or the environment.

(3) The findings and orders made by the department under subsection (2) of this section may:

(a) Require changes in the operation, practices or operating procedures found to be in violation of ORS 466.705 to 466.835 and 466.895 or the rules adopted under ORS 466.705 to 466.835 and 466.895;

(b) Require the owner or operator to comply with the provisions of a permit;

(c) Require compliance with a schedule established in the order; and

(d) Require any other actions considered necessary by the department.

(4) After the department issues an order under subsection (2) of this section, the department may decommission the underground storage tank or contract with another person to decommission the underground storage tank.

(5) The department shall serve a certified copy of any order issued by it under subsection (2) of this section to the permittee or the permittee's duly authorized representative at the address furnished to the department in the permit application or other address as the department knows to be used by the permittee. The order shall take effect 20 days after the date of its issuance, unless the permittee requests a hearing on the order before the commission. The request for a hearing shall be submitted in writing within 20 days after the department issues the order.

(6) All hearings before the commission or its hearing officer shall be conducted according to applicable provisions of ORS 183.310 to 183.550 for contested cases.

(7) Whenever it appears to the department that any person is engaged or about to engage in any act or practice that constitutes a violation of ORS 466.705 to 466.835 and 466.895 or the rules and orders adopted under ORS 466.705 to 466.835 and 466.895 or of the terms of any permit issued under ORS 466.705 to 466.835 and 466.895, the department, without prior administrative hearing, may institute actions or proceedings for legal or equitable remedies to enforce compliance therewith or to restrain further violations thereof. [1987 c.539 §32]

466.815 Financial responsibility of owner or permittee. (1) The commission may by rule require an owner or permittee to demonstrate and maintain financial responsibility for:

(a) Taking corrective action;

(b) Compensating a third party for bodily injury and property damage caused by a release; and

(c) Compensating the department, or any other person, for expenses incurred by the department or any other person in taking corrective action.

(2) The financial responsibility requirements established by subsection (1) of this section may be satisfied by insurance, guarantee by third party, surety bond, letter of credit or qualification as a self-insurer or any combination of these methods. In adopting rules under subsection (1) of this section, the commission may specify policy or other contractual terms, conditions or defenses necessary or unacceptable to establish evidence of financial responsibility.

(3) If an owner or permittee is in bankruptcy, reorganization or arrangement pursuant to the federal bankruptcy law, or if jurisdiction in any state or federal court cannot be obtained over either an owner or a permittee likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this section may be asserted directly against the guarantor. In the case of action under paragraph (b) of subsection (1) of this section, the guarantor is entitled to invoke all rights and defenses that would have been available to the owner or permittee if the action had been brought against the owner or permittee by the claimant and all rights and defenses that would have been available to the guarantor if the action had been brought against the guarantor by the owner or permittee.

(4) The total liability of a guarantor shall be limited to the aggregate amount the guarantor provided as evidence of financial responsibility to the owner or permittee under subsection (2) of this section. This subsection does not limit any other state or federal statutory, contractual or common law liability of the guarantor for bad faith in negotiating or in failing to negotiate the settlement of any claim. This subsection does not diminish the liability of any person under section

107 or 111 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, or other applicable law.

(5) Corrective action and compensation programs financed by a fee paid by owners and permittees and administered by the department may be used to satisfy all or part of the financial responsibility requirements of this section.

(6) No rule requiring an owner or permittee to demonstrate and maintain financial responsibility shall be adopted by the commission before review by the appropriate legislative committee as determined by the President of the Senate and the Speaker of the House of Representatives. [1987 c.539 §27]

466.820 Reimbursement to department; procedure for collection; treble damages. (1) The owner and the permittee of an underground storage tank found to be in violation of any provision of ORS 466.705 to 466.835 and 466.895, shall reimburse the department for all costs reasonably incurred by the department, excluding administrative costs, in the investigation of a leak from an underground storage tank. Department costs may include investigation, design engineering, inspection and legal costs necessary to correct the leak.

(2) Payment of costs to the department under subsection (1) of this section shall be made to the department within 15 days after the end of the appeal period or, if an appeal is filed, within 15 days after the court or the commission renders its decision, if the decision affirms the order.

(3) If such costs are not paid by the owner or the permittee of the underground storage tank to the department within the time provided in subsection (2) of this section, the Attorney General, upon the request of the director, shall bring action in the name of the State of Oregon in the Circuit Court of Marion County or the circuit court of any other county in which the violation may have taken place to recover the amount specified in the order of the department.

(4) In addition to any other penalty provided by law, if any person is found in violation of any provision of ORS 466.540, 466.705 to 466.835, 466.895 and 478.308, the commission or the court may award damages in the amount equal to three times the amount of all expenses incurred by the department in investigating the violation.

(5) Moneys reimbursed shall be deposited to the State Treasury to the credit of an account of the department and are continuously appropriated to the department for the purposes of administering ORS 466.540, 466.705 to 466.835, 466.895 and 478.308. [1987 c.539 §34 (enacted in lieu of 468.914)]

466.825 Strict liability of owner or permittee. The owner and permittee of an underground storage tank found to be the source of a release shall be strictly liable to any owner or permittee of a nonleaking underground storage tank in the vicinity, for all costs reasonably incurred by such nonleaking underground storage tank owner or permittee in determining which tank was the source of the release. [1987 c.539 §35]

466.830 Halting tank operation upon clear and immediate danger. (1) Whenever, in the judgment of the department from the results of monitoring or observation of an identified release, there is reasonable cause to believe that a clear and immediate danger to the public health, welfare, safety or the environment exists from the continued operation of an underground storage tank, the department may, without hearing or prior notice, order the operation of the underground storage tank or site halted by service of an order on the owner or permittee of the underground storage tank or site.

(2) Within 24 hours after the order is served under subsection (1) of this section, the department shall appear in the appropriate circuit court to petition for the equitable relief required to protect the public health, safety, welfare or the environment. [1987 c.539 §36]

466.835 Compliance and correction costs as lien; enforcement. (1) All compliance and corrective action costs, penalties and damages for which a person is liable to the state under ORS 466.705 to 466.835 and 466.895 shall constitute a lien upon any real and personal property owned by the person.

(2) The department shall file a claim of lien on real property to be charged with a lien under subsection (1) of this section with the recording officer of each county in which the real property is located and shall file a claim of lien on personal property to be charged with a lien under subsection (1) of this section with the Secretary of State. The lien shall attach and become enforceable on the date of the filing. The lien claim shall contain:

(a) A statement of the demand;

(b) The name of the person against whose property the lien attaches;

(c) A description of the property charged with the lien sufficient for identification; and

(d) A statement of the failure of the person to conduct compliance and corrective actions as required.

(3) A lien created by this section may be foreclosed by a suit on real and personal property in the circuit court in the manner provided by law for the foreclosure of liens.

(4) Nothing in this section shall affect the right of the state to bring an action against any person to recover all costs and damages for which a person is liable under the provisions of ORS 466.705 to 466.835 and 466.895. [1987 c.539 §37]

OREGON HANFORD WASTE BOARD

Note: Sections 1 to 16, chapter 514 Oregon Laws 1987, provide:

Sec. 1. (1) The Legislative Assembly finds and declares that Oregon is not assured that the United States Department of Energy will:

(a) Consider the unique features of Oregon and the needs of the people of Oregon when assessing Hanford, Washington, as a potentially suitable location for the long-term disposal of high-level radioactive waste; or

(b) Insure adequate opportunity for public participation in the assessment process.

(2) Therefore, the Legislative Assembly declares that it is in the best interests of the State of Oregon to establish an Oregon Hanford Waste Board to serve as a focus for the State of Oregon in the development of a state policy to be presented to the Federal Government, to insure a maximum of public participation in the assessment process. [1987 c.514 §1]

Sec. 2. Nothing in sections 1 to 16 of this Act shall be interpreted by the Federal Government or the United States Department of Energy as an expression by the people of Oregon to accept Hanford, Washington, as the site for the long-term disposal of high-level radioactive waste. [1987 c.514 §2]

Sec. 3. As used in sections 1 to 16 of this Act:

(1) "Board" means the Oregon Hanford Waste Board.

(2) "High-level radioactive waste" means fuel or fission products from a commercial nuclear reactor after irradiation that is packaged and prepared for disposal.

(3) "United States Department of Energy" means the federal Department of Energy established under 42 U.S.C.A. 7131 or any successor agency assigned responsibility for the long-term disposal of high-level radioactive waste. [1987 c.514 §3]

Sec. 4. There is created an Oregon Hanford Waste Board which shall consist of the following members:

(1) The Director of the Oregon Department of Energy or designee;

(2) The Water Resources Director or designee;

(3) The Director of the Department of Environmental Quality or designee;

(4) The Assistant Director for Health or designee;

(5) The State Geologist or designee;

(6) A representative of the Public Utility Commission who has expertise in motor carriers;

(7) A representative of the Governor;

(8) One member representing the Confederated Tribes of the Umatilla Indian Reservation;

(9) One member of the public, appointed by the Governor subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565, who shall serve as chairperson;

(10) Two members of the public advisory committee created under section 9 of this Act, selected by the public advisory committee; and

(11) Three members of the Senate, appointed by the President of the Senate, and three members of the House of Representatives, appointed by the Speaker of the House of Representatives who shall serve as advisory members without vote. [1987 c.514 §4]

Sec. 5. (1) Each member of the Oregon Hanford Waste Board shall serve at the pleasure of the appointing authority. For purposes of this subsection, for those members of the board selected by the public advisory committee, the appointing authority shall be the public advisory committee.

(2) Each public member of the board shall receive compensation and expenses as provided in ORS 292.495. Each legislative member shall receive compensation and expenses as provided in ORS 171.072.

(3) The board shall be under the supervision of the chairperson. [1987 c.514 §5]

Sec. 6. The Oregon Hanford Waste Board:

(1) Shall serve as the focal point for all policy discussions within the state government concerning the disposal of high-level radioactive waste in the northwest region.

(2) Shall recommend a state policy to the Governor and to the Legislative Assembly.

(3) After consultation with the Governor, may make policy recommendations on other issues related to the United States Hanford Reservation at Richland, Washington, including but not limited to defense wastes, disposal and treatment of chemical waste and plutonium production. [1987 c.514 §6]

Sec. 7. In carrying out its purpose as set forth in section 6 of this Act, the Oregon Hanford Waste Board shall:

(1) Serve as the initial agency in this state to be contacted by the United States Department of Energy or any other federal agency on any matter related to the long-term disposal of high-level radioactive waste.

(2) Serve as the initial agency in this state to receive any report, study, document, information or notification of proposed plans from the Federal Government on any matter related to the long-term disposal of high-level radioactive waste. Notification of proposed plans includes notification of proposals to conduct field work, onsite evaluation or onsite testing.

(3) Disseminate or arrange with the United States Department of Energy or other federal agency to disseminate the information received under subsection (2) of this section to appropriate state agencies, local governments, regional planning commissions, American Indian tribal governing bodies, the general public and interested citizen groups who have requested in writing to receive this information.

(4) Recommend to the Governor and Legislative Assembly appropriate responses to contacts under subsection (1) of

this section and information received under subsection (2) of this section if a response is appropriate. The board shall consult with the appropriate state agency, local government, regional planning commission, American Indian tribal governing body, the general public and interested citizen groups in preparing this response.

(5) Promote and coordinate educational programs which provide information on the nature of high-level radioactive waste, the long-term disposal of this waste, the activities of the board, the activities of the United States Department of Energy and any other federal agency related to the long-term disposal of high-level radioactive waste and the opportunities of the public to participate in procedures and decisions related to this waste.

(6) Review any application to the United States Department of Energy or other federal agency by a state agency, local government or regional planning commission for funds for any program related to the long-term disposal of high-level radioactive waste. If the board finds that the application is not consistent with the state's policy related to such waste or that the application is not in the best interest of the state, the board shall forward its findings to the Governor and the appropriate legislative committee. If the board finds that the application of a state agency is not consistent with the state's policy related to long-term disposal of high-level radioactive waste or that the application of a state agency is not in the best interest of the state, the findings forwarded to the Governor and legislative committee shall include a recommendation that the Governor act to stipulate conditions for the acceptance of the funds which are necessary to safeguard the interests of the state.

(7) Monitor activity in Congress and the Federal Government related to the long-term disposal of high-level radioactive waste.

(8) If appropriate, advise the Governor and the Legislative Assembly to request the Attorney General to intervene in federal proceedings to protect the state's interests and present the state's point of view on matters related to the long-term disposal of high-level radioactive waste. [1987 c.514 §7]

Sec. 8. The chairperson of the Oregon Hanford Waste Board shall:

(1) Supervise the day-to-day functions of the board;

(2) Hire, assign, reassign and coordinate the administrative personnel of the board, prescribe their duties and fix their compensation, subject to the State Personnel Relations Law; and

(3) Request technical assistance from any other state agency. [1987 c.514 §8]

Sec. 9. (1) There is created a public advisory committee which shall consist of not less than 15 members to advise the Oregon Hanford Waste Board on the development and administration of the policies and practices of the board. Members shall be appointed by the Governor and shall serve a term of two years.

(2) Advisory committee members shall be selected from all areas of the state and shall include a broad range of citizens, representatives of local governments and representatives of other interests as the Governor determines will best further the purposes of this Act.

(3) Members of the advisory committee shall receive no compensation for their services. Members of the advisory committee other than members employed in full-time public service shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties. Such reimbursements shall be subject to the provisions of ORS 292.210 to 292.288. Members of the advisory committee who are employed in full-time public service may be reimbursed for their actual and necessary expenses incurred in the performance of their duties by their employing agency.

(4) The advisory committee shall meet at least once every three months. [1987 c.514 §9]

Sec. 10. (1) If the United States Department of Energy selects Hanford, Washington, as the site for the construction of a repository for the long-term disposal of high-level radioactive waste, the Oregon Hanford Waste Board shall review the selected site and the site plan prepared by the United States Department of Energy. In conducting its review the board shall:

(a) Include a full scientific review of the adequacy of the selected site and of the site plan;

(b) Use recognized experts;

(c) Conduct one or more public hearings on the site plan;

(d) Make available to the public arguments and evidence for and against the site plan; and

(e) Solicit comments from appropriate state agencies, local governments, regional planning commissions, American Indian tribal governing bodies, the general public and interested citizen groups on the adequacy of the Hanford site and the site plan.

(2) After completing the review under subsection (1) of this section, the board shall submit a recommendation to the Speaker of the House of Representatives, the President of the Senate and the Governor on whether the state should accept the Hanford site. [1987 c.514 §10]

Sec. 11. (1) In addition to any other duty prescribed by law and subject to the policy direction of the board, a lead agency designated by the Governor shall negotiate written agreements and modifications to those agreements, with the United States Department of Energy or any other federal agency or state on any matter related to the long-term disposal of high-level radioactive waste.

(2) Any agreement or modification to an agreement negotiated by the agency designated by the Governor under subsection (1) of this section shall be consistent with the policy expressed by the Governor and the Legislative Assembly as developed by the Oregon Hanford Waste Board.

(3) The Oregon Hanford Waste Board shall make recommendations to the agency designated by the Governor under subsection (1) of this section concerning the terms of agreements or modifications to agreements negotiated under subsection (1) of this section. [1987 c.514 §11]

Sec. 12. The Oregon Hanford Waste Board shall implement agreements, modifications and technical revisions approved by the agency designated by the Governor under section 11 of this Act. In implementing these agreements, modifications and revisions, the board may solicit the views of any appropriate state agency, local government, regional planning commission, American Indian tribal governing body, the general public and interested citizen groups. [1987 c.514 §12]

Sec. 13. The Oregon Hanford Waste Board may accept moneys from the United States Department of Energy, other federal agencies, the State of Washington and from gifts and grants received from any other person. Such moneys are continuously appropriated to the board for the purpose of carrying out the provisions of this Act. The board shall establish by rule a method for disbursing such funds as necessary to carry out the provisions of sections 1 to 16 of this Act, including but not limited to awarding contracts for studies pertaining to the long-term disposal of radioactive waste. Any disbursement of funds by the board or the lead agency shall be consistent with the policy established by the board under section 6 of this Act. [1987 c.514 §13]

Sec. 14. In addition to the public advisory committee established under section 9 of this Act, the Oregon Hanford Waste Board may establish any advisory and technical committee it considers necessary. Members of any advisory or technical committee established under this section may receive reimbursement for travel expenses incurred in the performance of their duties in accordance with ORS 292.495. [1987 c.514 §14]

Sec. 15. All departments, agencies and officers of this state and its political subdivisions shall cooperate with the Oregon Hanford Waste Board in carrying out any of its activities under sections 1 to 16 of this Act and, at the request of the chairperson, provide technical assistance to the board. [1987 c.514 §15]

Sec. 16. In accordance with the applicable provisions of ORS 183.310 to 183.550, the Oregon Hanford Waste Board shall adopt rules and standards to carry out the requirements of sections 1 to 16 of this Act. [1987 c.514 §16]

FEDERAL SITE SELECTION

Note: Sections 1 and 2, chapter 13, Oregon Laws 1987, provide:

Sec. 1. The Legislative Assembly and the people of the State of Oregon find that:

(1) In order to solve the problem of high-level radioactive waste disposal, Congress established a process for selecting two sites for the safe, permanent and regionally equitable disposal of such waste.

(2) The process of selecting three sites as final candidates, including the Hanford reservation in the State of Washington, for a first high-level nuclear waste repository by the United States Department of Energy violated the intent and the mandate of Congress.

(3) The United States Department of Energy has prematurely deferred consideration of numerous potential sites and disposal media that its own research indicates are more appropriate, safer and less expensive.

(4) Placement of a repository at Hanford without methodical and independently verified scientific evaluation threatens the health and safety of the people and the environment of this state.

(5) The selection process is flawed and not credible because it did not include independent experts in the selection of the sites and in the review of the selected sites, as recommended by the National Academy of Sciences.

(6) By postponing indefinitely all site specific work for an eastern repository, the United States Department of Energy has not complied with the intent of Congress expressed in the Nuclear Waste Policy Act, Public Law 97-425, and the fundamental compromise which enabled its enactment. [1987 c.13 §1]

Sec. 2. In order to achieve complete compliance with federal law and protect the health, safety and welfare of the people of the State of Oregon, the Legislative Assembly, other state-wide officials and state agencies shall use all legal means necessary to:

(1) Suspend the preliminary site selection process for a high-level nuclear waste repository, including the process of site characterization, until there is compliance with the intent of the Nuclear Waste Policy Act;

(2) Reverse the Secretary of Energy's decision to postpone indefinitely all site specific work on locating and developing an eastern repository for high-level nuclear waste;

(3) Insist that the United States Department of Energy's site selection process, when resumed, considers all acceptable geologic media and results in safe, scientifically justified and regionally and geographically equitable high-level nuclear waste disposal;

(4) Demand that federal budget actions fully and completely follow the intent of the Nuclear Waste Policy Act;

(5) Continue to pursue alliances with other states and interested parties, particularly with Pacific Northwest Governors, legislatures and other parties, affected by the site selection process and transportation of high-level nuclear waste; and

(6) Assure that Oregon, because of its close geographic and geologic proximity to the proposed Hanford site, be accorded the same status under federal law as a state in which a high-level nuclear repository is proposed to be located. [1987 c.13 §2]

CIVIL PENALTIES

466.880 Civil penalties generally. (1) In addition to any other penalty provided by law, any person who violates ORS 466.005 to 466.385 and 466.890, a license condition or any commission rule or order pertaining to the generation, treatment, storage, disposal or transportation by air or water of hazardous waste, as defined by ORS 466.005, shall incur a civil penalty not to exceed $10,000 for each day of the violation.

(2) The civil penalty authorized by subsection (1) of this section shall be established, imposed, collected and appealed in the same manner as civil penalties are established, imposed and collected under ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and ORS chapter 468.

(3) In addition to any other penalty provided by law, any person who violates a provision of ORS 466.605 to 466.680, or any rule or order

entered or adopted under ORS 466.605 to 466.680, may incur a civil penalty not to exceed $10,000. Each day of violation shall be considered a separate offense.

(4) The civil penalty authorized by subsection (3) of this section shall be established, imposed, collected and appealed in the same manner as civil penalties are established, imposed, collected and appealed under ORS 468.090 to 468.130, except that a penalty collected under this section shall be deposited to the fund established in ORS 466.670. [Formerly 459.995; (3) and (4) enacted by 1985 c.733 §17; 1987 c.266 §1]

466.890 Civil penalties for damage to wildlife resulting from contamination of food or water supply. (1) Any person who has care, custody or control of a hazardous waste or a substance which would be a hazardous waste except for the fact that it is not discarded, useless or unwanted shall incur a civil penalty according to the schedule set forth in subsection (2) of this section for the destruction, due to contamination of food or water supply by such waste or substance, of any of the wildlife referred to in subsection (2) of this section that are the property of the state.

(2) The penalties referred to in subsection (1) of this section shall be as follows:

(a) Each game mammal other than mountain sheep, mountain goat, elk or silver gray squirrel, $400.

(b) Each mountain sheep or mountain goat, $3,500.

(c) Each elk, $750.

(d) Each silver gray squirrel, $10.

(e) Each game bird other than wild turkey, $10.

(f) Each wild turkey, $50.

(g) Each game fish other than salmon or steelhead trout, $5.

(h) Each salmon or steelhead trout, $125.

(i) Each fur-bearing mammal other than bobcat or fisher, $50.

(j) Each bobcat or fisher, $350.

(k) Each specimen of any wildlife species whose survival is specified by the wildlife laws or the laws of the United States as threatened or endangered, $500.

(L) Each specimen of any wildlife species otherwise protected by the wildlife laws or the laws of the United States, but not otherwise referred to in this subsection, $25.

(3) The civil penalty imposed under this section shall be in addition to other penalties prescribed by law. [1985 c.685 §2]

466.895 Civil penalties for violations of underground storage tank regulations. (1) Any person who violates any provision of ORS 466.705 to 466.835 and 466.895, a rule adopted under ORS 466.705 to 466.835 and 466.895 or the terms or conditions of any order or permit issued by the department under ORS 466.705 to 466.835 and 466.895 shall be subject to a civil penalty not to exceed $10,000 per violation per day of violation.

(2) Each violation may be a separate and distinct offense and in the case of a continuing violation, each day's continuance thereof may be deemed a separate and distinct offense.

(3) The department may levy a civil penalty up to $100 for each day a fee due and owing under ORS 466.785 and 466.795 is unpaid. A penalty collected under this subsection shall be placed in the State Treasury to the credit of an account of the department.

(4) The civil penalties authorized under this section shall be established, imposed, collected and appealed in the same manner as civil penalties are established, imposed, collected and appealed under ORS 468.090 to 468.125 and 468.135 except that a penalty collected under this section shall be deposited to the fund established in ORS 466.790. [1987 c.539 §39]

466.900 Civil penalties for violation of removal or remedial actions. (1) In addition to any other penalty provided by law, any person who violates a provision of ORS 466.540 to 466.590, or any rule or order entered or adopted under ORS 466.540 to 466.590, shall incur a civil penalty not to exceed $10,000 a day for each day that such violation occurs or that failure to comply continues.

(2) The civil penalty authorized by subsection (1) of this section shall be established, imposed, collected and appealed in the same manner as civil penalties are established, imposed, collected and appealed under ORS 468.090 to 468.125, except that a penalty collected under this section shall be deposited in the Hazardous Substance Remedial Action Fund established under ORS 466.590, if the penalty pertains to a release at any facility. [1987 c.735 §23]

CRIMINAL PENALTIES

466.995 Criminal penalties. (1) Penalties provided in this section are in addition to and not in lieu of any other remedy specified in ORS

459.005 to 459.105, 459.205 to 459.245, 459.255 to 459.285, 466.005 to 466.385 or 466.890.

(2) Violation of ORS 466.005 to 466.385 or 466.890 or of any rule or order entered or adopted under those sections is punishable, upon conviction, by a fine of not more than $10,000 or by imprisonment in the county jail for not more than one year, or by both. Each day of violation shall be deemed a separate offense.

(3) Violation of a provision of ORS 466.605 to 466.680 or of any rule or order entered or adopted under ORS 466.605 to 466.680 is punishable, upon conviction, by a fine of not more than $10,000 or by imprisonment in the county jail for not more than one year or both. Each day of violation shall be considered a separate offense.

(4) Any person who knowingly or intentionally violates any provision of ORS 466.705 to 466.835 and 466.895 or the rules adopted under ORS 466.705 to 466.835 and 466.895 shall be subject to a criminal penalty not to exceed $10,000 or imprisonment for not more than one year or both. Each day of violation shall be deemed a separate offense.

(5)(a) Any person who knowingly or wilfully violates any provision of ORS 466.540 to 466.590 or any rule or order adopted or issued under ORS 466.540 to 466.590 shall, upon conviction, be subject to a criminal penalty not to exceed $10,000 or imprisonment for not more than one year, or both.

(b) Each day of violation shall be deemed a separate offense. [Formerly 459.992; (3) enacted by 1985 c.733 §18; 1987 c.158 §93; subsection (4) enacted as 1987 c.539 §38; subsection (5) enacted as 1987 c.735 §24]

Attachment VIII
Agenda Item K
1-22-88 EQC Meeting

UST ADVISORY COMMITTEE

The following individuals have been selected to serve on the underground storage tank advisory committee:

Chair:
Richard Bach, Attorney
Stoel Rives, Boley, Fraser, and Wyse
Room 2300
900 S.W. Fifth St.
Portland, Oregon 97204
Phone: 224-3380

Jack Landau, Attorney
Lindsay, Hart, Neil, & Weigler
Suite 1800 KOIN Tower
222 S.W. Columbia
Portland, Oregon 97201
Phone: 226-1191

Sara Laumann
OSPIRG
027 S.W. Arthur
Portland, Oregon 97201
Phone: 222-9641

Jim McDaniel
Hewlett-Packard
1000 N.E. Circle Blvd.
Corvallis, Oregon 97128
Phone: 757-2000 ext. 2916

Rick Johnson
Oregon Graduate Center
19600 N.W. VonNeumann
Beaverton, Oregon 97006
Phone: 690-1193

Ted Lopuszynski
County Commissioner
Yamhill County Courthouse
Fifth & Evans
McMinnville, Oregon 97128
Phone: 472-9371 ext. 222

Kelley Cook
CH2MHill
P.O. Box 428
Corvallis, Oregon 97339
Phone: 752-4271

Tom Reber, City Manager
City of Sandy
P.O. Box 116
Sandy, Oregon 97055
Phone: 668-5533

Deborah Gallagher
League of Women Voters
1464 Wespark Ct.
Stayton, Oregon 97383
Phone: 769-5204(h), 378-4128(w)

John McCulley
Small Business Advocates
1270 Chemeketa St. N.E.
Salem, Oregon 97301
Phone: 370-7019

Jack Weathersbee
10802 S.E. Mill Court
Portland, Oregon 97216
Phone: 253-0174

David Samkowski
Manager, Environmental Control
Boeing Inc.
P.O. Box 3707
M/S 1E-71
Seattle, Washington 98124
Phone: (206) 241-3720

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Jack Sabin
Manager, Environmental Control
Port of Portland
P.O. Box 3529
Portland, Oregon 97208
Phone: 231-5000 Ext. 710

Laurie Power
85544 Jasper Park Road
Pleasant Hill, Oregon 97455
Phone: 726-1872, wk: 484-2411

Tom Donaca
Associated Oregon Industries
P.O. Box 1006
Tualatin, Oregon 97062
Phone: 620-4407

Gordon Smith
730 S.W. 1st
Portland, Oregon 97204
Phone: 228-7231

Gregg Miller
Northwest Pump & Equipment Co.
2045 S.E. Ankeny St.
Portland, Oregon 97214
Phone: 236-4195

Bob Kimmel
B.K. Consulting Service Inc.
2044 E. Burnside
Portland, Oregon 97214
Phone: 234-7845

Terry Beardsley
Northern Petroleum
& Equipment Co.
15800 S.E. Piazza
Suit 102
Clackamas, Oregon 97015
Phone: 657-5283

Stu Greenburger
City of Portland
Bureau of Water
1120 S.W. Fifth
Portland, Oregon 97204
Phone: 796-7545

Jim Vomocil
Oregon State University
Department of Soil Science
Corvallis, Oregon 97331
Phone: 754-2441

Keith Henson
Mobil
1825 Campus Way
Lake Oswego, Oregon 97034
Phone: 682-3166, 636-5061

Randy Sweet
Sweet, Edwards & Associates
P.O. Box 328
Kelso, Washington 98626
Phone: (206) 423-3580

Terry Smith
Eugene Dept. of Public Works
858 Pearl St.
Eugene, Oregon 97401
Phone: 687-5289

Art Fuller, Deputy
Fire Prevention & Investigation
Office of the State Fire Marshal
3000 Market St. Plaza
Suite 534
Salem, Oregon 97310
Phone: 378-4917

Joyce Hart
Oregon Wheat Growers League
Route 1, Box 16
Moro, Oregon 97039
Phone: 565-3292

Matt Greenslade
Portland Fire Bureau
55 S.W. Ash
Portland, Oregon 97204
Phone: 248-4363

Scott Ashcom
Oregon Farm Bureau Federation
P.O. Box 2209
Salem, Oregon 97308
Phone: 581-1486

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Marsha Biondo
Oil Heat Institute
P.O. Box 42227
Portland, Oregon 97242
Phone: 231-4850

Tom Full
Texaco USA
3800 N.W. St. Helens Rd.
Portland, Oregon 97210
Phone: 226-3575

John Burns
Petroleum Suppliers
111 S.W. Fifth Ave.
Suite 3500
Portland, Oregon 97204-3699
Phone: 224-5858

Connie Taylor
Riedel Environmental Services
P.O. Box 5007
Portland, Oregon 97208-5007
Phone: 286-4656

Michel Rosen
Sierra Club
Oregon Graduate Center
19600 N.W. Von Neumann
Beaverton, Oregon 97006
Phone: 690-1193

Paul Braval, President
PEMCO
P.O. Box 11569
Portland, Oregon 97211
Phone: 288-7541

Robert Ferguson
Rhone-Poulenc Inc. Agrochemical
P.O. Box 10224
Portland, Oregon 97210
Phone: 222-3571

David Harris
Harris Enterprises Inc.
1717 S.W. Madison
Portland, Oregon 97205
Phone: 222-4201

Neil Baker
Elliott, Powell, Baden, & Baker
1521 S.W. Salmon St.
Portland, Oregon 97205
Phone: 227-1771

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Attachment IX
Agenda Item K
1-22-88 EQC Meeting

Proposed Rules
Underground Storage Tank Program
ORS 466.705 through ORS 466.995
(Showing Deletions and Additions)

Definitions

340-150-010 (1) "Corrective Action" means remedial action taken to protect the present or future public health, safety, welfare or the environment from a release of a regulated substance. "Corrective Action" includes but is not limited to:

(a) The prevention, elimination, removal, abatement, control, minimization, investigation, assessment, evaluation or monitoring of a hazard or potential hazard or threat, including migration of a regulated substance; or

(b) Transportation, storage, treatment or disposal of a regulated substance or contaminated material from a site.

(2) "Decommission" means to remove from operation an underground storage tank, including temporary or permanent removal from operation, abandonment in place or removal from the ground.

(3) "Fee" means a fixed charge or service charge.

(4) "Investigation" means monitoring, surveying, testing or other information gathering.

(5) "Oil" means gasoline, crude oil, fuel oil, diesel oil, lubrication oil, sludge, oil refuse and any other petroleum related product or fraction thereof that is liquid at a temperature of 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute.

(6) "Owner" means the owner of an underground storage tank.

(7) "Permittee" means the owner or a person designated by the owner who is in control of or has responsibility for the daily operation or <u>daily</u> maintenance of an underground storage tank under a permit issued pursuant to these rules.

(8) "Person" means an individual, trust, firm, joint stock company, corporation, partnership, joint venture, consortium, association, state, municipality, commission, political subdivision of a state or any interstate body, any commercial entity and the Federal Government or any agency of the Federal Government.

(9) "Regulated substance" means:

(a) Any substance listed by the United States Environmental Protection Agency in 40 CFR Table 302.4 as amended as of the date October 1, 1987, but not including any substance regulated as a hazardous waste under 40 CFR Part 261 and OAR 340 Division 101, or

(b) Oil.

(10) "Release" means the discharge, deposit, injection, dumping, spilling, emitting, leaking or placing of a regulated substance from an underground storage tank into the air or into or on land or the waters of the state, other than as authorized by a permit issued under state or federal law.

(11) "Underground storage tank" means any one or combination of tanks and underground pipes connected to the tank, used to contain an accumulation of a regulated substance, and the volume of which, including the volume of the underground pipes connected to the tank, is 10 percent or more beneath the surface of the ground. Such term does not include any:

(a) Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes.

(b) Tank used for storing heating oil for consumptive use on the premises where stored.

(c) Septic tank.

(d) Pipeline facility including gathering lines regulated:

(A) Under the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671);

(B) Under the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001); or

(C) As an intrastate pipeline facility under state laws comparable to the provisions of law referred to in paragraph (A) or (B) of this subsection.

(e) Surface impoundment, pit, pond or lagoon.

(f) Storm water or waste water collection system.

(g) Flow-through process tank.

(h) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

(i) Storage tank situated in an underground area if the storage tank is situated upon or above the surface of a floor. As used in this subsection. "underground area" includes but is not limited to a basement, cellar, mine, drift, shaft or tunnel.

(j) Pipe connected to any tank described in subsections (a) to (i) of this section.

Underground Storage Tank Permit Required

340-150-020 (1) After February 1, 1989, no person shall install, bring into operation, operate or decommission an underground storage tank without first obtaining an underground storage tank permit from the department.

(2) Permits issued by the department will specify those activities and operations which are permitted as well as requirements, limitations and conditions which must be met.

(3) *The/duration/of/permits/may/be/variable,/but/shall/not exceed/ten/(10)/years./The/expiration/date/will/be/recorded/on each/permit/issued/*. A new application must be filed with the department to obtain *renewal/or* modification of a permit.

(4) After February 1, 1989, permits are issued to the person designated as the permittee for the activities and operations of record and shall be automatically terminated: *Upon/a/new underground/storage/tank/application/is/submitted/in/accordance with/the/rules*.

(a) Within 120 ØØ days after any change of ownership of property in which the tank is located, ownership of tank or permittee unless a new underground storage tank permit application is submitted in accordance with these rules;

(b) Upon Within 120 days after a change in the nature of activities and operations from those of record in the last application unless a new underground storage tank permit application is submitted in accordance with these rules;

(c) Upon issuance of a new, renewal or modified permit for the same operation;

(d) Upon written request of the owner or operator.

Underground Storage Tank Permit Application Required

340-150-020030 (1) On or before May 1, 1988 the following persons shall apply for an underground storage tank permit from the department.

(a) An owner of an underground storage tank currently in operation;

(b) An owner of an underground storage tank taken out of operation between January 1, 1974, and May 1, 1988 and not permanently decommissioned in accordance with Section 340-150-130; and

(c) An owner of an underground storage tank that was taken out of operation before January 1, 1974, but that still contains a regulated substance.

(2) After May 1, 1988 the owner of an underground storage tank shall apply for an underground storage tank permit from the department prior to installation of the tank, placing an existing underground storage the tank in operation, or decommissioning/the tank modifying an existing permit.

Underground Storage Tank Permit Application

340-150-040040 (1) Any person wishing to obtain a new, modified, or renewal permit from the department shall submit a written application on a form provided by the department. Applications must be submitted at least 30 00 days before a permit is needed. All application forms must be completed in full, and accompanied by the specified number of copies of all required exhibits. The/name/of/the/applicant/must/be/the/legal/name/of/the owner/of/the/facility/or/his/agent/or/the/legal/successor/responsible/for the/operation/and/maintenance/.

(2) Applications which are obviously incomplete, unsigned, or which do not contain the required exhibits (clearly identified) will not be accepted by the department for filing and will be returned to the applicant for completion.

(3) Applications which appear complete will be accepted by the department for filing.

(4) Within 30 days after filing, the department will review the application to determine the completeness of the application: of/the/information/submitted.

(a) If the application is complete for processing, an underground storage tank permit will be issued.

(b) (a) If the department determines that the application is

not complete, additional information is needed it will promptly request the needed information from the applicant. The application will not be considered complete for processing until the requested information is received. The application will be considered to be withdrawn if the applicant fails to submit the requested information within 90 days of the request.

(b) If the Director will notify the applicant and request additional necessary information.

(5) In the event the department is unable to complete action on an application within 30 90 days after notification that the application is accepted by the department for filing, complete for processing, the applicant shall be deemed to have received a temporary or conditional permit, such permit to expire upon final action by the department to grant or deny the original application an underground storage tank permit. Such temporary or conditional permit does not authorize any construction, activity, operation, or discharge which will violate any of the laws, rules, or regulations of the State of Oregon or the Department of Environmental Quality.

(6) If, upon review of an application, the department determines that a permit is not required, the department shall notify the applicant in writing of this determination. Such notification shall constitute final action by the department on the application.

(7) Following determination that it is complete for processing, each application will be reviewed on its own merits. Recommendations will be developed in accordance with the provisions of applicable statutes, rules and regulations of the State of Oregon and the Department of Environmental Quality.

(8) If the applicant is dissatisfied with the conditions or limitations of any permit issued by the department, the applicant he may request a hearing before the Commission or its authorized representative. Such a request for hearing shall be made in writing to the Director within 20 days of the date of mailing of the notification of issuance of the permit. Any hearing held shall be conducted pursuant to the regulations of the department.

Information Required on the Permit Application

340-150-050 (1) The underground storage tank permit application shall include:

(a) The name and mailing address of the owner of the underground storage tank.

(b) The name and mailing address of the owner of the real property in which the underground storage tank is located.

(c) The name and mailing address of the proposed permittee of the underground storage tank.
(d) The signatures of the owner of the underground storage tank, the owner of the real property and the proposed permittee.
(e) The facility name and location.
(f) The substance currently stored, to be stored or last stored.
(g) The operating status of the tank.
(h) The estimated age of the tank.
(i) Description of the tank, including tank design and construction materials.
(j) Description of piping, including piping design and construction materials.
(k) History of tank system repairs.
(l) Type of leak detection and overfill protection.
(m) Any other information that may be necessary to protect public health, safety, or the environment.

Authorized Signatures, Permit Application

340-150-ØÆØ060 (1) The following persons must sign an application for a permit submitted to the department.
(a) The owner of an underground storage tank storing a regulated substance;
(b) The owner of the real property in which an underground storage tank is located; and
(c) The proposed permittee, if a person other than the owner of the underground storage tank or the owner of the real property.

Underground Storage Tank Permit Application Fee

340-150-ØÐÐ070 (1) A permit application fee of $25 shall accompany each underground storage tank application. For applications received after February 1, 1989, the permit application fee will also be considered the first compliance fee required by OAR 340-150-110.
(2) No permit application fee is required if application is solely for the purpose of recording a change in ownership of the underground storage tank, ownership of the real property, of the permittee, or a change in operation of the underground storage tank.

Denial of Underground Storage Tank Permit

340-150-ØØØ080 (1) An underground storage tank permit application may be denied if the underground storage tank installation or operation is not in conformance with these underground storage tank rules or ORS 466.705 through ORS 466.995.
(2) An underground storage tank permit may be denied if the underground storage tank permit application is not complete or is determined to be inaccurate.

Revocation of Underground Storage Tank Permit

340-150-ØØ5090 An underground storage tank permit may be revoked if the underground storage tank installation or operation is not in conformance with the underground storage tank permit, these underground tank rules or ORS 466.705 through ORS 466.995.

Permit Procedures for Renewal, Denial, Modification and Revocation.

340-150-Ø7Ø100 The permit procedures for renewal, denial, modification and suspension or revocation (OAR 34Ø-14-Ø3Ø, 340-14-035, 34Ø-14-Ø4Ø, and OAR 340-14-045) shall apply to permits issued under this section.

Underground Storage Tank Permit Compliance Fee

340-150-Ø3Ø110 (1) Beginning March 1, 1989, and annually thereafter, the permittee shall pay an underground storage tank permit compliance fee of $25 per tank per year.

(2) The underground storage tank permit compliance fee shall be paid for each calendar year (January 1 though December 30) or part of a calendar year that an underground storage tank is in operation.

(3) The compliance fee shall be made payable to the Department of Environmental Quality.

(4) Prior to July 1, 1989 the permit compliance fee shall be $25 per tank per year.

(5) (4) Any compliance fee invoiced after July 1, 1989 shall not exceed $20 per tank per year.

Underground Storage Tank Interim Installation Standards

340-150-1ØØ120 (1) Upon the effective date of these rules no person shall install an underground storage tank for the purpose of storing regulated substances unless such tank/tank/installation;

(a) such tank installation will prevent releases due to corrosion or structural failure for the operational life of the tank;

(b) such tank installation is cathodically protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed in a manner to prevent the release or threatened release of any stored substance; and

(c) the material used in the construction or lining of the tank is compatible with the substance to be stored.

(2) For the purpose of determining compliance with these Interim Installation Standards, the department will use the guidelines published by the United State Environmental Protection

Agency (EPA) entitled "Hazardous Waste; Interpretive Rule on the Interim Prohibition Against Installation of Unprotected Underground Storage Tanks", 40 CFR Part 280. (Copies are available from the EPA or the department)

Permanent Decommissioning of an Underground Storage Tank

340-150-~~150~~130 (1) Upon the effective date of these rules any underground storage tank that is permanently decommissioned must comply with the requirements of this section.

(2) **After the effective date of these rules,** ~~When~~ an underground storage tank that is taken out of operation ~~service for longer~~ than 24 months must be permanently decommissioned.

(3) Prior to permanent decommissioning the tank owner or permittee must notify the department in writing.

~~(4) If evidence of a release is discovered the tank owner or permittee must:~~

~~(a) Notify the department within 24 hours. (Phone: 1-800-452-0311 or 1-800-452-4011)~~

~~(b) Assess the source and the extent of the release.~~

~~(c) Meet with the department to set up a cleanup standard and a schedule for cleanup.~~

~~(d) Cleanup the release.~~

~~(5)~~ (4) All tanks that are permanently decommissioned must be emptied and either removed from the ground or be filled with an inert solid material.

(a) The permanent decommissioning procedures described in API 1604 "Recommended Practice for Abandonment or Removal of Used Underground Service Station Tanks" may be used as guidelines for compliance with this section.

~~(6)~~ (5) Dispose of all liquids, solids and sludge removed from the tank by recycling or dispose in a manner approved by the department.

~~(8) The permanent decommissioning procedures described in API 1604 "Recommended Practice for Abandonment or Removal of Used Underground Service Station Tanks" may be used as guidelines for compliance with this section.~~

~~(7)~~ (6) ~~Dispose of a~~ All tanks removed from the ground must be disposed of in a manner approved by the department.

(8) If evidence of a release is discovered the tank owner or permittee must;

(a) Notify the department within 24 hours. (Phone: 1-800-452-0311 or 1-800-452-4011)

(b) Assess the source and the extent of the release.

(c) Meet with the department to set up a cleanup standard and a schedule for cleanup.

(d) Cleanup the release.

(9) All underground storage tank owners must maintain records which are capable of demonstrating compliance with the permanent decommissioning requirement under this section. These records must be maintained for at least three years after permanent decommissioning and made available, upon request, to the department during business hours.

Requirement to Notify the Underground Storage Tank Owner and Operator

340-150-0080140 (1) Between After February 1, 1989 and February 1, 1990 any person who deposits a regulated substance into an underground storage tank sells or delivers or transports a regulated substance shall notify the owner or operator of the tank or the owner's or operator's agent in writing of the requirements for obtaining an underground storage tank permit.

(2) After February 1, 1989 any person who sells an underground storage tank shall notify the owner or operator of the tank in writing of the requirements for obtaining an underground storage tank permit.

Depositing Regulated Substances in Underground Storage Tanks

340-150-0070150 (1) After August February 1, 1989 no person owning an underground storage tank shall deposit or cause to be deposited a regulated substance into that tank without first having applied for and received an operating permit issued by the department.

(2) After August February 1, 1989 no person selling or distributing a regulated substance shall deposit that substance into an underground storage tank unless the tank is operating under a valid permit issued by the department.

Underground Storage Tank Schedule of Civil Penalties

340-12-067 In addition to any liability, duty, or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to underground storage tank systems and releases from underground tank systems by service of a written Notice of Assessment of Civil Penalty upon the respondent. The amount of such civil penalty shall be determined consistent with the following schedule:

(1) Not less than two thousand five hundred dollars ($2,500) nor more than ten thousand dollars ($10,000) for each day of the violation upon any person owning or having control over a regulated substance who fails to immediately cleanup releases as required by ORS 466.705 through ORS 466.995 and OAR 340 - Division 150.

(2) Not less than one thousand dollars ($1,000) nor more than ten thousand dollars ($10,000) for each day of the violation upon any person owning or having control over a regulated substance who fails to immediately report all releases of a regulated substance as required by ORS 466.705 through ORS 466.995 and OAR 340 - Division 150.

(3) Not less than one hundred dollars ($100) nor more than ten thousand dollars ($10,000) per day of the violation upon any person who:

(a) Violates an order of the Commission or the Department,

(b) Violates any underground storage tank rule or ORS 466.705 through ORS 466.995.

NEIL GOLDSCHMIDT
GOVERNOR

Department of Environmental Quality

811 SW SIXTH AVENUE, PORTLAND, OREGON 97204-1334 PHONE (503) 229-5696

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item G, October 9, 1987

Request for Authorization to Conduct a Public Hearing on Proposed Rules for the Oregon Underground Storage Tank Program, OAR 340-150-010 to OAR 340-150-15

Background

The Problem

For reasons of safety, aesthetics or lack of available space, most petroleum products and some hazardous chemicals are stored in underground tanks. Leaks may be undetected for years. The problems associated with leaking underground tanks and associated piping include contamination of groundwater supplies, damage to underground structures (such as telephone and electric lines); fire and explosion hazards, and damage to crops and wildlife.

During the 1950's and 1960's, industrial and commercial construction led to the installation of thousands of underground tanks. At that time, environmental hazards were not associated with underground tanks. The most common tank construction material was unprotected steel. With recent reports indicating a 17 year average tank life, many of these tanks have reached or exceeded their life span, and now or will soon be leaking.

Incidences of leaking underground tanks, and the environmental and public health damages caused across the nation by them have been well documented. Here in Oregon, similar but less dramatic problems have occurred. During the past five years, the department has been involved with groundwater contamination problems and combustion hazards associated with leaking underground storage tanks in all parts of the state involving gasoline, diesel fuels, and spent solvents with the most common situation being the loss of gasoline from service stations.

During 1985 and 1986 the department investigated 72 reported underground storage tank leaks. Of the those reported leaks, 93 percent involved release of petroleum products. In some cases, fumes from gasoline accumulated in residences and businesses forcing evacuation.

During February 1986, the department, as part of the requirements under Subtitle I of the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act (RCRA), conducted a state-wide survey of underground storage tanks used to store regulated substances. Under the 1984 federal law, all owners and operators of underground storage tanks are required to submit notification of the existence of such tanks to a designated state agency, such as the Oregon DEQ.

To initiate the survey, the department, during 1985, identified businesses in Oregon likely to own underground tanks through SIC codes, Department of Agriculture licensing information, trade association memberships, and department mailing lists. During February 1986, the department mailed notification forms and program information packets to over 50,000 businesses in Oregon. The form mailed by the department consisted of a tank ownership registration and a no-tank self mailer to identify businesses on the mailing list which do not own or operate underground tanks.

Of the 50,000 businesses contacted, the department has received 8,303 completed forms representing 22,409 tanks at 8,303 tank facility locations. Approximately, 20,000 no-tank forms were returned to the department indicating no-tanks or exempt tanks. Approximately, 22,000 forms were not returned. The department estimates a twenty (20) percent underreporting.

Results of the state-wide survey have identified 22,409 underground tanks. Seventy-nine percent of the registered tanks are constructed of unprotected steel with an average age of 13.5 years, and are now or will within four years reach the age when history shows leaks are likely to occur.

Federal Law

Subtitle I, of the Hazardous and Solid Waste Amendments of 1984 to the Resource Conservation and Recovery Act, authorizes the implementation of a national underground storage tank regulatory program.

The scope of the federal program is broad and applies to tanks and associated underground piping with 10 percent or more of their volume underground that are used to store petroleum products or other liquid materials defined as hazardous under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). The federal law further exempts certain tanks such as heating oil tanks, tanks used to store motor fuel at farms and residences providing the tank does not exceed 1,100 gallons capacity, certain tanks covered by other regulations, flow-through process tanks, and tanks located underground which allow for easy inspection. Under this federal law, the EPA is required to develop and promulgate:

1. Performance standards for new tank installations:
2. Performance standards for operating existing tanks;
3. Leak detection and overfill protection standards for new and existing systems;
4. Corrective action requirements; and
5. Inspection and enforcement;
6. Financial responsibility requirements, and
7. Interim rules banning the installation of underground tanks which do not meet certain minimum requirements.

The federal law further requires that EPA initiate a tank notification program and coordinate federal and state efforts. The new law encourages the development of state-operated programs and requires EPA to oversee state implementation. Congress intended that this program be run by State governments with minimum federal involvement and has further required EPA to develop requirements and procedures for state programs to operate in lieu of the federal program.

In the absence of a state program, however, EPA shall implement the program. Following adoption of the Federal State Program Authorization Rules, states may apply to EPA for authorization to operate an underground storage tank program. To receive authorization, state programs must include all the regulatory elements of the federal program.

State Law

The 1985 Oregon Legislature determined that the Department of Environmental Quality should carry out the program in Oregon. Under the authority of the 1985 legislation, the department began and is continuing to process notification forms. The first task was to gather information regarding the universe of underground tanks. Exempt from requirements, and therefore, not included in the survey are heating oil tanks, certain farm and residential tanks, and other tanks already regulated in other programs (e.g. hazardous waste tanks).

The 1985 State law (ORS 468.901 - 468.917) exempted underground tanks located at farms used to store motor fuel with a capacity of 10,000 gallons or more. Federal law, however, exempted motor fuel tanks located at farms of 1,100 gallons or less from regulation.

The 1987 Oregon Legislature passed Chapter 539, Oregon Law 1987 which expanded the authority of the department over underground storage tanks and amended State law (ORS 468.901 - 468.917) to conform to federal law. As an example, the farm tank exemption for motor fuel tanks was amended from 10,000 gallons to 1,100 gallons or less capacity.

Chapter 539, Oregon Law 1987 provides for the following:

1. Authorizes adoption by the Commission of technical standards for new installations and existing operations of underground storage tanks;

2. Establishes financial responsibility requirements for corrective action and third party damages on owners and permittees of underground tanks. The statute allows the Commission to create a state-administered insurance fund to meet federal financial responsibility requirements;

3. Preempts existing and future local underground storage tank programs which cover the same environmental regulations as the Department's state-wide program. The statute provides for local administration of the state program by contract with the department;

4. Creates a licensing program for underground storage tank installers and retrofitters, leak detection testers, and inspectors;

5. Requires adoption by the Environmental Quality Commission of permits and fees. Fees may include the following:

A. Permit fee to not exceed $25.00 per tank per year to support program administration;

B. If a state insurance fund is created by the Commission, an insurance fee or premium payable by owners or permittees to meet financial responsibility requirements;

C. Licensing fee payable by installers and retrofitters, leak detection testers, and inspectors to support the licensing program.

State Insurance Fund

The 1984 Hazardous and Solid Waste Amendments to RCRA required that all tank owners or operators be required to show evidence of financial responsibility for corrective actions and third party damages resulting from leaking underground storage tanks. The minimum financial responsibility required is 1 million dollars per occurrence, as established in the 1986 Superfund Amendments and Reauthorization Act (SARA). SARA provides however, an opportunity for EPA to defer regulation on classes of tanks if evidence is shown that insurance is unavailable to that class of tanks.

Financial responsibility requirements have been proposed in the April 17, 1987 EPA proposed rules for underground tanks. These rules conform to the provisions in federal law. If these rules become effective June 1988 (expected effective date for technical rules), then all owners and operators of regulated tanks in Oregon will be required to maintain financial responsibility.

Currently, private insurance covering liability for corrective action and third party damages incurred from leaking underground tanks, is unavailable to the majority of tank owners. While many large companies are either self-insured or able to afford the insurance available, most small businesses owning underground tanks will be unable to meet the federal requirements.

Establishing a State Insurance Fund for underground tanks is allowed for under Chapter 539, Oregon Law 1987, if financially feasible. Federal financial responsibility requirements can be deferred for up to 180 days by the EPA, if the State of Oregon is active in pursuing the establishment of an insurance fund.

responsibility requirements. The 1987 Oregon Legislature mandated that the department develop an action plan to satisfy federal financial responsibility requirements, and that prior to the adoption of state financial responsibility rules, the action plan be reviewed by the Legislative Assembly or the Emergency Board.

Rulemaking Schedule

On April 17, 1987, the Federal Government published Proposed Rules for the Underground Storage Tank Program. Early drafts of these proposed rules together with recommendations from the Underground Storage Tank Advisory Committee (Attachment VI), guided the development of these interim underground storage tank rules.

In addition to the federal financial responsibility, corrective action and installation requirements for new tanks, the EPA proposed rules create three additional minimum technical requirements for new installations and existing underground tanks: (1) must be protected from corrosion; (2) must be equipped with overfill and spill prevention; and (3) must have leak detection methods.

The goal of the proposed regulations for existing tanks is to improve underground tanks in the ground so that they meet the requirements for new installations. At the end of ten (10) years, all underground tanks will need to show the three minimum requirements, as described above.

The final Federal Underground Storage Tank Program Rules are scheduled to be adopted in April 1988 and to be effective in June 1988. At that time, the department will propose adoption of additional rules which encompass the federal rules. Ultimately, the department intends to seek federal approval for the Oregon Underground Storage Tank Program during 1989.

Proposed Rules

Although Chapter 539, Oregon Law 1987 provides for full regulation over underground tanks, until EPA adopts its final rules, the department is proposing interim rules which provide for regulation of six areas of immediate concern to the department:

(1) Establishment of a permit and fee program;
(2) Requirements for revocation and denial of a permit;

(3) Requirements for distributors of regulated substances and sellers of underground storage tanks;
(4) Interim performance standards governing the installation of underground tanks;
(5) Standards for decommissioning of underground storage tanks, and
(6) Penalty provisions.

DISCUSSION

Tanks are continuing to be installed, removed from the ground and abandoned in place. National studies conducted by the American Petroleum Institute and the EPA show that poor installation of underground tanks and corrosion of underground tanks are the two major causes of leaks. Since the enactment of the 1984 Hazardous and Solid Waste Amendments, the installation of underground storage tanks has been regulated by the Environmental Protection Agency under Interim Rules. Final Federal rules have been proposed and are scheduled for adoption in June 1988. In addition, statutes and rules of the Office of the State Fire Marshal regulate the installation of certain underground tanks used to store flammable or combustible substances. Potentially, these two sets of rules could conflict. However, the proposed Federal rules appear to compliment rather than conflict with the rules guiding the Fire Marshall. The Federal rules add additional requirements to improve environmental safety. The department will be working with our underground storage tank advisory committee and fire officials throughout the state to avoid conflicts in the rules and rule enforcement.

Removal of the tank from the ground or abandonment in place can either create public health and environmental hazards or reveal existing contamination. The department has no current authority to enforce the federal rules on underground storage tank installation. Additionally, there are no environmental rules regarding the removal of underground tanks.

The department is proposing Interim Underground Storage Tank rules to support the policy statement of Chapter 539, Oregon Law 1987; "public policy is to protect the public health, safety, welfare and the environment from the harmful effects of underground tanks used to store regulated substances".

Presently, the installation of underground tanks are governed by the Federal interim rules. These rules do not cover operation or decommissioning of underground tanks. However, the proposed

Federal rules contain retroactive requirements for tanks that are decommissioned prior to their adoption. These retroactive requirements would be a burden an owner who decommissions an underground tank prior to the their adoption. The department is proposing rules that require the owner to apply for a permit prior to the installation, bringing into operation, or decommissioning of a tank. This process will allow the department to provide guidance to the tank owner, thus minimize future conflicts with the Federal rules. In accordance with SB 115, the requirement to apply for a permit will become operative 90 days following the adoption of rules. Chapter 539, Oregon Law 1987 limits the effective date of the Underground Storage Tank Compliance Permit until one year after the adoption of rules. Rules are proposed that authorizes the Department to refuse to issue, modify, suspend, revoke, or renew a permit. These proposed rules allow the Department to revoke or deny a permit if it finds a false statement or misrepresentation in the permit application or finds violation of the conditions of the permit, rules, or statutes.

The 1987 Oregon Legislature mandated that the Underground Storage Tank Program be supported by fees. A proposed rule requires that a fee of $25 per tank be submitted to the department with the permit application and that an annual compliance fee of $25 per tank be paid for each year of operation. The proposed rules provide that these fees will reduce to $20 for any application received after July 1, 1989.

The proposed permit rules follow the Federal Interim Underground Storage Tank Regulations by requiring the owner of an underground storage tank currently in operation, the owner of a tank taken out of operation between January 1, 1974 and May 1, 1988 and the owner of a tank taken out of operation prior to January 1, 1974 that contains a regulated substance to apply for an underground storage tank permit. Additionally, the proposed rules require that the tank owner, the land owner in which a tank is located, and the proposed permittee sign the permit application. The owner or permittee is required to furnish information to the department relating to underground storage tanks on the permit application furnished by the department.

The requirement for an Underground Storage Tank Permit provides the opportunity for the department to control the use of the tank by limiting the delivery of a regulated substance into an underground storage tank without a current permit, and require that distributors of regulated substances and sellers of underground tanks inform their customers of permit requirements. The department is proposing rules that limit the distribution of regulated substances to only those tanks operating under a permit issued by the department. An additional proposed rule will require

that distributors and sellers of regulated substances and sellers of underground storage tanks inform their customers in writing of the permit requirements. Chapter 539, Oregon Law 1987 does not allow these rules to become operative until one year following the adoption of rules, therefore, both proposed rules will not become operative for one year.

The current Federal rules concerning the installation of underground storage tanks cannot be enforced by the department. The department is limited to providing guidance on the Federal rules. Adoption of tank installation rules would allow the department to provide firm direction to the people that are installing underground tanks in Oregon. The department is proposing rules that adopt the interim standards specified in Subtitle I, Section 9003(g) of the Resource Conservation and Recovery Act (RCRA), and use as guidance an EPA publication entitled The Interim Prohibition: Guidance for Design and Installation of Underground Storage Tanks.

As explained in a previous section, the proposed Federal rules on decommissioning underground storage tanks will be retroactive for certain tanks and will require an owner to complete an environmental site assessment if these proposed rules are not now followed. The department is proposing rules that will provide guidance for owners or permittees who decommission tanks prior to the adoption of the Federal rules. In addition, the proposed rules add requirements on disposing of the tank, disposing of the tank contents, reporting a release and cleaning up a release from an underground tank. Chapter 539, Oregon Law 1987 specifies that the environmental regulations adopted by the Commission governing underground storage tanks should not interfere with or abridge the authority of the State Fire Marshal with regard to regulation of combustible or explosion hazards. It is our opinion that these proposed limited rules on decommissioning do not conflict with the rules currently in effect within local fire jurisdictions. Future amendments to these rules on decommissioning will be developed jointly with local agencies so as to avoid conflicts, yet meet or exceed the final Federal underground storage tank rules.

Rules are proposed for civil penalties for any person who violates adopted underground storage tank rules, statutes or conditions of an order or permit.

The proposed rules discussed above are the subject of the proposed public hearings to be held in early December.

ALTERNATIVES AND EVALUATION

If the department does not proceed with rulemaking regulating underground storage tanks to include all federal provisions, then the federal EPA will administer the program in Oregon. However, both the Oregon Legislature and the the Underground Storage Tank Advisory Committee have considered the alternatives and have directed the department to run the underground storage tank program within Oregon.

The proposed rules are the minimum required to initiate the requirements of Chapter 539, Oregon Law 1987 and to provide funding for the State Underground Storage Tank Program. Delaying the adoption of State rules, until enactment of the Federal rules, was considered and rejected. Although state technical rules will not be proposed until mid-year 1988 following adoption of the federal rules, the department does need to move ahead with interim rules to implement its fee program. Without revenues from fees, program development will be limited to funds received from the EPA under the Federal UST Grant FFY'88. This will allow the department to develop rules but limit the scope of other activities such as certification of tank installers, testers and inspectors, developing a state financial responsibility mechanism, and performing compliance and cleanup activities; cited in (Chapter 539, Oregon Law 1987) and delay implementation of the program.

Implementation of technical standards, enforcement actions, corrective actions and certain other programs (e.g. financial responsibility) are requirements for EPA approval of the state program. If the department does not implement each of these areas as specified by Subtitle I of the 1984 Hazardous and Solid Waste amendments to RCRA, then operation of the state program in lieu of the federal program will be delayed.

The permit program is essential in the updating of the current information on the UST database (e.g. installation of new tanks, change in ownership of existing tanks, removal and abandonment of existing tanks). In addition, the UST Advisory Committee believed it essential to identify and inform the land owner in which the tanks were located, the tank owners, and the permittee of responsibilities and liabilities associated with underground storage tanks. Without this requirement, landowners and many tank owners may remain unaware of their responsibilities under the new underground storage tank program.

Additional provisions of the permit program require that owners of tanks not in operation but which still store regulated substances be required to complete a permit application. The department is

aware that many abandoned tanks have not been registered and are potential sources of environmental pollution. Delays in adopting the permit rule will delay the department's ability to keep current of tank information and its ability to inform all responsible parties of potential liabilities.

Technical standards for the installation of underground tanks are currently regulated by the EPA. The department is proposing to adopt these exact requirements. The EPA, however, is limited in its oversight of tank installations to registration of new tanks or investigations following complaints of improperly installed tanks. Precover inspections are not conducted by the EPA. If the interim technical standards are not adopted, then the department has no direct authority to inspect or enforce installation standards for compliance with the interim requirements.

The universe of underground storage tanks is extremely large. The proposed rule requires limiting distribution of regulated substances to tanks with valid permits. If the rule prohibiting distributors from depositing substances into tanks without permits is not adopted, then the department will be unable to adequately enforce its permit program. The regulation of distribution of substances to permitted tanks does not take effect until March 1, 1989 allowing ample time for tank owners and operators to become aware of permit requirements.

Since the passage of Subtitle I of the 1984 Hazardous and Solid Waste amendments to RCRA, the department has been aware of the many underground storage tanks being removed from the ground or abandoned in place. At the time of decommissioning, environmental damage can occur or be identified. The department is proposing minimal decommissioning requirements consistent with the proposed federal rules. If the rule is not adopted, then the department will not be informed as to which tanks have been removed, identification of releases, and corrective actions taken. Decommissioning information will enable the department to adequately assess future resource requirements. Furthermore, the EPA has proposed retroactive site assessment requirements for tanks decommissioned improperly and substantial record keeping. The proposed Federal rules require that, unless the tank is decommissioned using American Petroleum Institute Document 1604 as guidance, a complete environmental site assessment will be required. API 1604 is not an environmental guideline. Rather it specifies procedures that will reduce the structural, fire and explosion risks. The department is proposing decommissioning rules so that tank owners and operators may be able to avoid costly retroactive requirements.

The department has drafted the proposed rule based on recommendations from its Underground Storage Tank Advisory Committee. This committee is comprised of 38 individuals representing regulated industry, environmental groups, environmental attorneys, educators, engineers and scientists, the insurance industry, and the public.

The proposed rule defines the terms used herein, establishes who shall apply for a permit, revocation and denial requirements, permit fee, information to be contained in the permit application, installation standards, decommissioning requirements, and civil penalties.

SUMMARY

1. Subtitle I of the Resource Conservation and Recovery Act (RCRA) authorizes the implementation of a Federal underground storage tank program and encourages the development of state operated programs.

2. Since May of 1985, the EPA has regulated the installation of underground storage tanks and used as a guidance document, The Interim Prohibition: Guidance for Design and Installation of Underground Storage Tanks.

   The Office of the State Fire Marshal has regulated certain underground storage tank installations.

3. The 1985 Oregon Legislature passed HB 2142 (ORS 468.901 - 468.917) granting authority to the department to develop a state-wide and uniform underground storage tank program.

4. The 1987 Oregon Legislature passed SB 115 which expands the department's authority over underground storage tanks to include all federal provisions and certain additional state requirements.

5. Based on the authority of SB 115, the department proposes that certain interim underground storage tank rules be adopted enabling the department to begin development of an underground tank program which will ultimately meet all the provisions required for state program approval.

The subject of the interim rules includes the following:

(a) Adoption of interim rules comparable to the current federal rules regarding the installation of underground storage tanks;

(b) A fee program of $25.00 per tank per year allowing the department to fund program activities;

(c) A permit program to allow the department to continue to identify permittees, tank owners, and landowners in which tanks are located on an ongoing basis;

(d) Decommissioning rules to permit the oversight of underground tanks being abandoned in place or removed from the ground. This oversight is limited to reporting requirements for evidence of contamination, closure of tanks guided by the American Petroleum Institute Publication 1604, and a record keeping requirement of three years to document closure procedures.

(e) Revocation and permit denial rules to allow the department to refuse to issue a permit for certain violations or misrepresentation of information;

(f) Penalty provisions for violations of statutes, rules, or orders.

DIRECTOR'S RECOMMENDATION

Based upon the Summation, it is recommended that the Commission authorize public hearings to take testimony on the proposed underground storage tank rules.

Fred Hansen
Director

ATTACHMENTS:

Attachment I:	Proposed Rules
Attachment II:	Draft Statement of Need and Fiscal and Economic Impact
Attachment III:	Land Use Consistency Statement
Attachment IV:	Public Hearing Notice
Attachment V:	SB 115
Attachment VI:	UST Advisory Committee

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item L, January 22, 1988, EQC Meeting

Proposed Adoption of Rules to Establish Chapter 340, Division 130, Procedures Governing the Issuance of Environmental Hazard Notices.

Background:

During the 1985 session, the Oregon Legislature enacted a law which was later codified as ORS 466.360 to 466.385. This legislation, called "Notice of Environmental Hazards," authorizes the Environmental Quality Commission to list sites for which environmental hazard notices must be given and use restrictions must be imposed. ORS 466.360 to 466.385 is attached (see Attachment II.).

Sites containing waste or contamination exist throughout the state. Many of these sites are former solid waste disposal sites. These are generally known to the Department and are not considered a threat to the public health or the environment in their present state. However, some of these sites could be a problem if they were altered or disturbed.

Other sites containing waste or contamination exist which are generally not well known but may be a threat to the public health or the environment. These sites will be investigated and if needed, they will be cleaned up under the Department's hazardous waste and remedial action programs. Following cleanup, the sites will not be considered a threat to the public health or environment unless they are altered or disturbed.

By passing the "Notice of Environmental Hazards" statute, the legislature determined that present and future owners should not use or modify these sites without taking into consideration the environmental hazards posed by the remaining waste or contamination. The legislature recognized that permits authorizing waste disposal upon real property protect the health,

safety and welfare of Oregon citizens only if "post-permit" use restrictions are imposed. It noted that use restrictions may also be needed on disposal sites created prior to regulation. Finally, the legislature found that proper precautions and maintenance cannot be taken at these sites unless their locations and the use restrictions are known to local governments and those who own and occupy the properties.

The legislature created the environmental hazard notice as a tool to regulate a site which, if altered, is potentially hazardous to the health, safety and welfare of Oregon citizens. The law creates a process by which the Environmental Quality Commission may identify a site where an environmental hazard notice is appropriate. In addition, use restrictions are to accompany or be a part of the environmental hazard notice. The property owner is given an opportunity to remove the waste or contamination and to appeal the use restrictions.

The environmental hazard notice is filed with the appropriate city or county to be included in the local comprehensive plan and on zoning maps. Then, the use restrictions are imposed through a zoning ordinance. The legislation allows a procedure to modify or remove the environmental hazard notice or specific use restrictions, if they are no longer necessary.

The "Notice of Environmental Hazards" law specifically authorizes the Commission, at its discretion, to place environmental hazard notices on solid waste disposal sites, hazardous waste disposal sites and radioactive waste disposal sites. The legislation is generally intended to apply to these sites after they are closed and not under the regular scrutiny of the Department.

For example, many solid waste landfills have closed and are not now regulated by the Department. Some of these landfills could be potentially hazardous to public health or the environment if they are altered. The legislature passed the 1985 law to ensure that local government, neighbors and future purchasers of property know about these sites, and to allow use restrictions to be placed on these sites.

During the 1987 legislative session, the Department asked that its proposed remedial action legislation (SB 122) include a provision to amend ORS 466.365(1)(a). It was felt that an environmental hazard notice might be appropriate for a site where remedial action has occurred, even if the site did not meet the definition of a solid waste, hazardous waste or radioactive waste disposal site. The legislature approved the Department's proposed language which added "facility" as defined in SB 122 to ORS 466.365(1)(a).

ORS 466.365(1) authorizes the Commission to adopt rules to implement the "Notice of Environmental Hazards" statute. Rules are needed to address the issuance of an environmental hazard notice, the form and content of use restrictions, modificationus and rescission of notices and use restrictions, and the filing of notices with local governments.

The Department is proposing that the Commission adopt implementing rules first, then apply the rules to various sites which the Department believes are appropriate for environmental hazard notices. The statute allows the choosing of sites that receive environmental hazard notices at the time procedural rules are adopted. However, the Department prefers to have procedural rules to work with when identifying which sites may be appropriate for environmental hazard notices.

The statute allows, but does not require, the use of environmental hazard notices. In turn, the proposed rules allow, but do not require, the Department to recommend sites to receive environmental hazard notices to the Commission. The environmental hazard notice process is new and the Department desires to approach it with some caution. As with any new program, it is probable that experience will necessitate adjustments in these implementing rules. The Department desires to keep the process as simple as possible during its implementation, and to utilize notices only where they are most needed.

A general description of the environmental hazard notice process begins with the Department choosing to identify a site for consideration. Citizens could recommend a site to the Department. The Department would then consider if a notice is appropriate, using factors listed in the rules. If the Department believes a notice is appropriate, the site owner would be notified and given the opportunity to clean up the waste or contamination.

If the site owner fails to act, the Department would propose that an environmental hazard notice be issued, and offer the public an opportunity to comment on the proposal. Following the comment period the Department would consider the comments and then forward the proposed notice to the Commission for consideration.

The Commission would consider if an environmental hazard notice is appropriate, utilizing factors in the proposed rules. The decision to issue or not issue a notice would be appealable by the aggrieved person back to the Commission in a contested case proceeding. Once the issuance is final, the environmental hazard notice would be filed with the city or county with land use jurisdiction over the site.

Attachment VIII is a flow chart which summarizes the steps that would be required by the proposed rules. The process to issue an environmental hazard notice for a site will take at least six months, which includes a three month period for an owner to clean up a site.

Environmental hazard notices may be used by the Department's solid waste program, hazardous waste program and remedial action/state superfund program. Before passage of the 1985 "Notice of Environmental Hazards" statute, the Department estimated that perhaps 30 to 50 environmental hazard notices would be proposed following rule adoption. The Department had anticipated that most of the notices would be for closed solid waste

disposal sites, while a few would be for known sites where hazardous substances had been disposed.

It has been three years since those projections were made. Since that time, the Department's hazardous waste program has evolved considerably and the Department now has a remedial action/state superfund program. Federal hazardous waste rules require that the owner and operator of each hazardous waste management unit certified as closed must provide specific information to the local land use authorities and record a notation on the deed to the facility property. The Commission has adopted these federal rules by reference.

No hazardous waste disposal units in the state have gone completely through the closure process, thus no owners or operators have had to meet the deed notation or local land use requirements already in state rules. Until hazardous waste sites complete the closure process, the Department cannot be specific about which, if any, hazardous waste disposal sites may need an environmental hazard notice in addition to the requirements of existing rules.

Oregon Law 1987 Chapter 735 (SB 122) shaped the Department's remedial action/state superfund program. The law requires the Department to conduct a statewide program to identify sites where waste or contamination exist. This site discovery program adds a new dimension to the environmental hazard notice process. After sites are "discovered," they will be assessed and as appropriate, they will be investigated and subsequently cleaned up. For example, many of the closed solid waste disposal sites may be assessed and investigated through the Department's remedial action program.

The environmental hazard notice process is designed to follow Department regulation at particular sites. Both the hazardous waste and remedial action programs are new. The Department does not anticipate recommending that the Commission issue environmental hazard notices until work at sites have been completed under these programs. Thus, only a few sites may be recommended for an environmental hazard notice over the next twelve months.

To assist the Department in drafting rules, the Director appointed a nine person advisory committee. Chaired by attorney Steve Schell, the committee met six times to discuss the policy questions created by ORS 466.360 to 466.385. The committee provided the Department's staff with excellent guidance during the rule drafting process, and reviewed three drafts of the proposed rules. A list of the advisory committee members is attached (see Attachment VII). Staff also received assistance from the Department of Land Conservation and Development (DLCD) and the Health Division in development of the proposed rules.

The "Notice of Environmental Hazards" statute requires the Department and DLCD to develop model language for comprehensive plans and land use regulations for use by cities and counties. Draft model language has been developed and sent to the cities and counties for comment. The statute

also mandates that the Department and the Oregon Department of Energy sign an interagency agreement to address the procedures for issuing environmental hazard notices for radioactive waste disposal sites. The two departments have been working on the agreement.

At its October 9, 1987 meeting, the Commission authorized the Department to conduct a public hearing and solicit public comment on the proposed rules to implement ORS 466.360 to 466.385. A public hearing was held in Portland on December 7, 1987 and the written comment period stretched from November 1 to December 15, 1987. Eight people attended the public hearing, but no one testified. Four people submitted written comments. Generally, the commentors recommended wording changes to clarify the proposed rules. A summary of these written comments with the comments included, and a "Response to Comments" memorandum are attached (see Attachments IV, and V).

ORS 466.365(1) authorizes the Commission to adopt rules to implement the "Notice of Environmental Hazards" statute. Rules are needed to address the issuance of an environmental hazard notice, the form and content of use restrictions, modifications and rescission of notices and use restrictions, and the filing of notices with local governments. A Statement of Need for Rulemaking and Statement of Land Use Consistency is attached (see Attachment VI). The Department requests the adoption of proposed rules to establish Chapter 340, Division 130, Procedures Governing the Issuance of Environmental Notices. Proposed Chapter 340, Division 130 is attached (see Attachment I).

Alternatives and Evaluation

This report summarizes the important elements of what is being proposed and the alternatives considered by the Department and the advisory committee. The principal effects of what is being proposed are discussed, where appropriate. Finally, important wording changes, incorporated in response to the written comments, are mentioned.

1. Rule 340-130-010(1) would, with exceptions, allow an environmental hazard notice to be used only after the Department completes work at a site under other regulatory authorities. Many sites containing waste or contamination are currently regulated by the Department. About one hundred thirty solid waste landfills are under permit. The Department is also or will soon be requiring investigations or cleanups at several sites through the new remedial action program. Several other sites may need hazardous waste disposal permits if hazardous waste cannot be removed.

   The Department has adequate tools to protect the public health, safety and the environment at sites with permits, or undergoing investigations or cleanups required by the Department. The sites will remain on disposal permits or on orders requiring remedial action, closure or

corrective action until the sites are adequately controlled or cleaned up. However, waste or contamination may remain at these sites, and they could become a hazard to the public health or the environment if altered or disturbed at a later date.

Under the proposed rules, the environmental hazard notice process would generally apply when other Department regulatory authorities end. Rule 340-130-010(1) presumes that the Department's existing authorities have ensured that the sites are adequately controlled or cleaned up before the Department considers a notice for the site. The environmental hazard notice is the tool that provides long-term protection to the public health and the environment at sites where waste or contamination remain.

During the early stages of rule development, the advisory committee discussed using the environmental hazard notice as a means to identify sites which could contain hazardous substances. Oregon Laws 1987 Chapter 735 (SB122), which creates a state remedial action program, includes a site discovery and investigation program. That program is best used for these "unknown" sites. The environmental hazard notice is best used for sites where the waste or contamination is known and has already been addressed under the Department's existing authorities.

In their written comments, two people called for the expansion of proposed rule 340-130-010(1)(b). The Department had proposed not issuing environmental hazard notices on sites presently regulated by solid waste disposal permits, hazardous waste management permits or orders requiring remedial action, closure or corrective action. The comments called for expanding the language to cover other permits issued by the Department, such as permits governing wastewater discharges. The Department agrees with the comments and has modified proposed rule 340-130-010(1)(b) to include all permits or orders issued by the Department or Commission.

Finally, reference to Oregon Laws 1987 Chapter 735 (SB 122) has been deleted from proposed rule 340-130-010(1)(c). This proposed rule generally mirrors the language in the "Notice of Environmental Hazards" statute, ORS 466.365(2). The language references ORS 466.205 and ORS 468.795, statutes governing the immediate cleanup of oil and hazardous materials spills. The Department had proposed adding Oregon Laws 1987, Chapter 735 to the statutory language of ORS 466.356(2) for consistency reasons.

The Department now believes that proposed addition is inappropriate. Whereas ORS 466.205 and 468.795 govern immediate cleanups of spilled materials, Oregon Laws 1987 Chapter 735 governs the longer term remedial action on sites which were not immediately cleaned up under the applicable Department statutes. Moreover, if the addition of

Oregon Laws 1987 Chapter 735 to ORS 466.365(2) was indeed appropriate, it must be done through statutory amendment, not rulemaking.

2. Rule 340-130-015 would list factors to be considered when the Commission is considering the issuance of an environmental hazard notice. This rule would be used to determine which sites qualify for receiving environmental hazard notices and which sites do not. Staff and the advisory committee addressed whether notices were appropriate on all sites. The Department introduced the legislation in 1985 with the desire to use a notice for only those sites that needed lasting regulation. The legislature supported that desire and the legislation contemplates use of the notice in that manner.

   As an example, two solid waste landfill sites could be reviewed, using the factors of rule 340-130-015. Let us assume that one landfill was operated for several years in Deschutes County the other landfill was operated for several years in Washington County. Both have been closed for several years.

   The Deschutes County site receives about ten inches of rain per year; no surface water is near the site; groundwater is very deep; and the landfill received a relatively moderate volume of waste when it was open. The Washington County site receives about 40 inches of rain per year; surface water is adjacent to the site and leachate from the landfill has contaminated the surface water in the past; groundwater is very shallow; and the landfill received relatively large volumes of waste when it was open. When the factors of 340-130-015 are considered, it is likely that they would support the issuance of an environmental hazard notice for the Washington County site, but would not support one for the Deschutes County site.

   Another example which helps visualize consideration of the factors is any site listed on the National Priority List (NPL) for superfund cleanup. During the investigation and cleanup, the site is controlled by an order requiring the remedial action. The order may include a requirement for a cap or liner to be placed over the site. Following cleanup, when the factors of 340-130-015 are considered, it is likely that they would support issuance of an environmental hazard notice for the site.

   The factors contained in 340-130-015 are similar to those already existing in OAR 340 Division 108, the Department's spill cleanup rules. When determining whether to issue an environmental hazard notice for a site, the Commission and Department would consider the factors of 340-130-015. The Commission would include findings in the environmental hazard notice for each factor used to justify issuance of the notice for a particular site.

3. The use restrictions that would accompany an environmental hazard notice are contained in 340-130-020. Staff and the advisory committee

studied two options for use restrictions. The list of use restrictions of 340-130-020(3) is relatively simple, short and general. The other option was to include a more lengthy detailed list of use restrictions.

More detailed use restrictions may be easier to administer by local governments, which must enforce the use restrictions through local land use processes. Also, a more inclusive list of use restrictions can be modified or deleted accordingly.

4. Rule 340-130-025 would define the process used by the Department and Commission to issue an environmental hazard notice. The advisory committee and staff discussed whether the Commission or the Department should issue the notice. An informal opinion from the State Attorney General's office concluded that either option is feasible. The memo from the Assistant Attorney General is attached (see Attachment IX).

   The advisory committee recommended that the Department issue the environmental hazard notice for several reasons. The issuance of the notice and the associated use restrictions would be appealable under a contested case proceeding to the Commission under the proposed rules. The proposed rules are procedural rules and they set the framework for issuance of notices. The Department's case-by-case determinations would conform to the procedural rules. Finally, the Commission perhaps should not focus on the specifics of a site, unless, of course, through a contested case appeal.

   The Department believes the advisory committee recommendation is workable, but recommends that the Commission issue the environmental hazard notice. The notice process is outside of the Department's usual sphere of responsibilities, and is more closely associated with land use than other Department actions. The action to place use restrictions on properties is not taken lightly by the Department. The Commission's decision making process affords the most openness and perception of fairness.

5. Rule 340-130-025 would allow the site owner and any person who in the Commission's judgment would be adversely affected to appeal in a contested case proceeding the Commission's decision to issue or not issue an environmental hazard notice. ORS 466.370 mandates that an appeal be open to the site owner. The Department supports expanding the appeal to adversely affected persons to allow site occupants, persons with water rights or a recorded interest in the site, and adjacent property owners maximum involvement in the process.

6. Rule 340-130-030 would establish procedures for rescinding or modifying environmental hazard notices, including use restrictions, after the notice is issued. ORS 466.365 allows the Department to modify or delete use restrictions if particular findings are made. Rule 340-130-030(6) would add spill cleanup as another activity

justifying the modification or rescission of one or more use restrictions.

7. Rule 340-130-035 would implement ORS 466.385, which refers to local governments. The rule would require a city or county to amend its comprehensive plan and land use regulations to address the environmental hazard notice requirements once it receives a notice. If a city or county receives an environmental hazard notice before the first periodic review of its comprehensive plan, the city or county could wait until that periodic review to adopt the amendments. This could be as much as seven years. Both the committee and the Department would prefer to have the local government act when it receives an environmental hazard notice. However, the statute does not provide that flexibility.

   Another issue is whether a city or county must amend its plan and regulations if it does not receive an environmental hazard notice by its first periodic review. The Attorney General's office provided informal guidance on this question, explaining that the statute provides some flexibility (see Attachment IX).

   There are 36 counties and 241 incorporated cities in Oregon. Most of the cities will likely never receive an environmental hazard notice. The advisory committee recommends that local governments not be forced to amend their comprehensive plans and land use regulations until they receive an environmental hazard notice. The Department supports this interpretation of ORS 466.385 as the most practical option for cities and counties.

Summation:

1. In 1985, the legislature enacted the "Notice of Environmental Hazards" law, which was later codified as ORS 466.360 to 466.385. This statute gives the Commission authority to issue environmental hazard notices and use restrictions for sites containing waste or contamination. The statute also gives the Commission the authority to adopt rules necessary for its implementation.

2. The 1985 legislation specifically authorized the Commission, at its discretion, to place environmental hazard notices on solid waste disposal sites, hazardous waste disposal sites and radioactive waste disposal sites. ORS 466.365 was amended at the 1987 legislature to include any additional sites where hazardous substances have been released.

3. The Department proposes that the Commission adopt a new rule division for procedures governing the issuance of environmental hazard notices. At its October 9, 1987, meeting, the Commission authorized the Department to conduct a public hearing and solicit public comment on the proposed rules. A public hearing was held in Portland on December

7, 1987 and the written comment period stretched from November 1 to December 15, 1987. Eight people attended the public hearing, but no one testified. Four people submitted written comments, generally recommending wording changes to clarify the proposed rules.

4. The proposed rules address the issuance of environmental notices, the form and content of use restrictions, modification and rescission of notices and use restrictions, and the filing of notices with local governments. The purposes of ORS 466.360 to 466.385 cannot be met without implementing rules.

5. The Department does not propose that the Commission issue any environmental hazard notices at this time. The proposed rules create the framework where notices can be issued in the future.

6. The proposed rules do not require the Commission to issue environmental hazard notices for all sites. Moreover, the proposed rules do not require the Department to recommend sites to the Commission.

7. With exceptions, an environmental hazard notice is to be used only after the Department completes work at a site under its existing regulatory authorities. A notice is a long-term tool for sites which contain waste or contamination but which are generally not a threat to health or the environment unless disturbed.

8. The Commission shall consider one or more factors when determining whether an environmental hazard notice should be issued. The Commission shall include findings at the time of issuance of a notice for each factor used to justify the issuance of the notice.

9. Use restrictions shall accompany each environmental hazard notice issued by the Commission. The proposed rules list the use restrictions to accompany each notice. The Commission can add to, modify or delete one or more use restrictions when it issues a notice. The Department may modify or delete use restrictions after a notice is issued under specific circumstances and if findings are made.

10. The site owner and any person who in the Commission's judgment would be adversely affected may appeal a decision by the Commission to issue or not issue an environmental hazard notice. Appeals shall occur according to the contested case procedures of ORS Chapter 183 and OAR Chapter 340 Division 11.

11. After receiving an environmental hazard notice, local governments must adopt comprehensive land use plan language and land use regulations to implement the "Notice of Environmental Hazards" law and these proposed rules. If a local government does not receive a notice, no action is required.

Director's Recommendation

Based upon the Summation, it is recommended that the Commission adopt proposed rules to establish Chapter 340, Division 130, Procedures Governing the Issuance of Environmental Hazard Notices.

Lydia Taylor
Fred Hansen for

Robert Danko:f
ZF2407
229-6266
December 29, 1987

Attachments
I. Proposed Chapter 340 Division 130.
II. ORS 466.360 to 466.385.
III. Hearing Officer's Report.
IV. Summary of Written Comments.
V. Response to Comments Summary.
VI. Rulemaking Statements.
VII. The Environmental Hazard Notice Advisory Committee.
VIII. Environmental Hazard Notice Flow Chart.
IX. Memo from the Assistant Attorney General.

Attachment I
Agenda Item L
January 22, 1988

PROPOSED

Division 130

ENVIRONMENTAL HAZARDS NOTICE

Authority: ORS 466, including 466.360 to 385; ORS 468, including 468.020; and ORS 183.

Purpose and Policies

340-130-001(1) These rules implement ORS 466.360 to 466.385 (Notice of Environmental Hazards).

(2) Recognizing that sites with waste or contamination exist in the state that, if altered, are potentially hazardous to the health, safety and welfare of Oregon's citizens, the Commission declares that:

(a) Locations of potentially hazardous sites should be made known to local governments, property owners and occupants, and neighbors and future purchasers of property;

(b) Use restrictions implemented through city and county comprehensive plans and land use regulations may be necessary on potentially hazardous sites to protect the public health, safety, and the environment;

(c) Changes in uses on potentially hazardous sites should be reviewed; and

(d) An environmental hazard notice is a long-term tool to ensure a potentially hazardous site is not altered without first considering the impacts of the activity on the public health, safety and the environment.

(3) An environmental hazard notice is not required for every site. An environmental hazard notice shall be issued by the Commission to protect the public health, safety and the environment. The factors of OAR 340-130-015 shall be considered by the Commission when it determines whether to issue an environmental hazard notice for a particular site.

Definitions

340-130-005 For the purposes of this Division, the following definitions apply:

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

(2) "Council" means the Energy Facility Siting Council.

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

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

(5) "Dispose" or "Disposal" has the meaning contained in ORS 466.005(4).

(6) "Environmental hazard notice" means a document prepared by the Department and issued to a city and/or a county by the Commission containing:

(a) The legal description of the lot or parcel, or lots or parcels, where the potential hazardous site is located;

(b) A specific description of the site, if different than the legal description of subsection (a) of this section, for which the notice applies;

(c) A general map of the area where the site is located;

(d) A description of the types of waste and levels of contamination identified or known to be present at the site;

(e) The use restrictions that apply to the site; and

(f) Findings which support the decision to issue an environmental hazard notice for the site.

(7) "Hazardous substance" has the meaning contained in ORS 466.540(9).

(8) "Hazardous waste" has the meaning contained in OAR 340-100-010(o).

(9) "Hazardous waste disposal site" means the geographical site in which or upon which hazardous waste is disposed.

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

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

(12) "Potentially hazardous site" means a site where an alteration could create a condition which is hazardous to the public health, safety or welfare.

(13) "Radioactive waste" has the meaning contained in ORS 469.300(17).

(14) "Recorded interest" means any interest of a person in a site as recorded in the deed or mortgage records or the miscellaneous documents of the county.

(15) "Release" has the meaning contained in ORS 466.540(14).

(16) "Site" means a land disposal site, a hazardous waste disposal site, a disposal site containing radioactive waste, or an area where a hazardous substance has been released.

(17) "Solid waste" has the meaning contained in OAR 340-61-010(41).

Exclusions

340-130-010(1) Subject to section (2) of this rule, an environmental hazard notice shall not be issued for a site:

(a) Where investigation or cleanup activities are occurring or where the Department has determined will occur; or

(b) Which presently is regulated by a disposal, discharge, or management permit or an order requiring remedial action, closure or corrective action issued by the Department or Commission; or

(c) Where spills and releases have been or are being cleaned up pursuant to ORS 466.205, 466.645, 468.795, or the cleanup standards provided in OAR 340-108-030.

(2) An exception to section (1) of this rule may be made by the Commission if it finds that an environmental hazard notice is necessary to protect the public health, safety or the environment. This finding shall be included with the findings which support the decision to issue an environmental hazard notice for a site.

Factors for Issuing a Notice

340-130-015(1) One or more of the following factors shall be considered by the Commission when determining whether to issue an environmental hazard notice for a particular site:

(a) The likelihood that the site could threaten public health, safety or the environment if altered;
(b) Population at risk;
(c) Routes of exposure;
(d) The amount, concentration and hazardous, toxic and radioactive properties of the waste or contamination present at the site;
(e) The environmental impact of the waste or contamination (including, but not limited to, the impact on air and water quality, flora, and fauna) if the site is altered;
(f) Surface water and groundwater hydrological factors (including, but not limited to, soil permeability, depth to saturated zone, hydrologic gradients, proximity to drinking water aquifers, floodplains and wetlands proximity);
(g) Current and potential surface water and groundwater impacts and use;
(h) Climate;
(i) The requirements which were or are part of the closure and post-closure program for the site (including, but not limited to, final cover and cap, liners, leachate or gas collection, control or treatment systems, surface water control systems, any other components of containment, control or monitoring systems);
(j) The need to be consistent with any deed or recording which already provides notice or is required to provide notice of environmental hazards at a site.
(k) Level of regulatory control during the active life of the site;
(l) History of impacts to the public health, safety or the environment resulting from the waste or contamination at the site.

Use Restrictions to Accompany a Notice

340-130-020(1) The Commission shall include use restrictions when it issues an environmental hazard notice. Use restrictions are included with a notice to ensure that uses at a potentially hazardous site do not cause the site to be altered in a manner that threatens the public health, safety or the environment.
(2) Subject to section (3) of this rule, the list of use restrictions contained in section (4) of this rule shall accompany an environmental hazard notice issued by the Commission.
(3) When the Commission issues an environmental hazard notice, it may:
(a) Delete or modify one or more use restrictions of Section (4) of this rule if it finds that the public health, safety, and the environment are sufficiently protected, and
(b) Add or modify one or more use restrictions of section (4) of this rule if it finds that the public health, safety or the environment is not sufficiently protected.
(4) Use Restrictions:
(a) No cover relocation or penetration through the cover;
(b) No modifications of surface drainage;

(c) No installation of surface water impoundments;
(d) No removal of waste or contaminated materials;
(e) No disturbance of gas or leachate collection, control or treatment systems or monitoring wells;
(f) No construction of enclosed structures;
(g) No disturbance of or penetration through an engineered liner or cap;
(h) No borings, pilings or well construction through the cover or an engineered liner or cap.

Procedures for Issuing a Notice

340-130-025(1) In addition to sites identified by the Department, any person may request, in writing, that the Department ask the Commission to issue an environmental hazard notice for a particular site. The request must include information which supports the request. Following receipt of a request, the Department shall review it and act upon the request. Within 30 days of receiving the request, the Department shall notify the person making the request when the Department plans to consider the request.
(2) Any request from the Oregon Department of Energy to issue an environmental hazard notice for a site, and any subsequent Department and Commission action in response to the request, shall conform to an interagency agreement consistent with these rules and approved by the Department of Energy and the Department.
(3) At least 90 days before the Commission considers issuance of an environmental hazard notice for a site, the Department shall notify the site owner of the lot or parcel, or lots or parcels, where the site is located of the proposed action. This notification shall include preliminary proposed findings which would be used to support a decision to issue an environmental hazard notice for the site.
(4) Within 30 days following the notification of section (3) of this rule, an owner desiring to clean up a site or more clearly define the waste or contamination at a site may submit a proposed plan to the Department. The Department may extend the 30 day period for submission of the plan if the Department is satisfied that the owner needs more time to complete the plan. The Commission shall not issue an environmental hazard notice for a site during implementation of a plan approved by the Department for cleanup or more accurate definition of the waste or contamination, if the plan is being followed.
(5) The Department shall issue a public notice as to its intent to request that the Commission issue an environmental hazard notice, allowing at least 30 days for written comment. The public notice shall be sent to at least the following persons:
(a) The owner of the lot or parcel, or lots or parcels, where the site is located;
(b) Property owners within 250 feet of the site;
(c) Any water right holders on the site;
(d) Any person with a recorded interest in the site;

(e) The affected city and/or county;
(f) Other interested persons who have requested in writing that the Department notify them.
(6) The Department shall hold a public hearing before the Commission considers issuance of the environmental hazard notice if:
(a) Ten or more persons or a group having a membership of 10 or more persons request a public hearing in writing within 20 days of issuance of the public notice; or
(b) In the Department's judgment, significant issues are raised during the public comment period.
(7) The Commission shall include findings in an environmental hazard notice for each factor of OAR 340-130-015 used to justify issuance of an environmental hazard notice for a particular site.
(8) The Department shall notify those persons submitting comments in response to the public notice of section (5) of this rule, and those persons listed in section 5(a) to 5(e) of this rule, of the Commission's decision to issue an environmental hazard notice. The Department shall notify the owner of the site by certified mail. The notification shall:
(a) Include a copy of the environmental hazard notice;
(b) Explain that the notice will be sent to the appropriate city and/or county with land use jurisdiction over the lot or parcel;
(c) Advise the persons of the procedure for requesting a hearing under section (9) of this rule.
(9) The site owner, and any person who in the Commission's judgment has an interest that would be adversely affected when the Commission issues or declines to issue an environmental hazard notice may request a hearing before the Commission. The request shall be in writing and must be submitted to the Department within 20 days following mailing of the notification under section (8) of this rule. The hearing shall be conducted according to the provisions for a contested case hearing under ORS Chapter 183 and OAR Chapter 340 Division 11.
(10) The Department shall file the environmental hazard notice with the appropriate city and/or county and mail a copy of the notice to those persons receiving notice of section (8) of this rule:
(a) If no hearing is requested within 20 days after notification under section (8) of this rule; or
(b) Upon resolution of the hearing or hearings request under section (9) of this rule; if the final decision is to issue the notice.

Procedures for Rescinding or Modifying a Notice

340-130-030(1) Except as provided by sections (2) through (5) of this rule, any modification or rescission of an environmental hazard notice

shall follow the requirements for issuance of an environmental hazard notice in OAR 340-130-025.

(2) The owner of a site for which an environmental hazard notice has been issued and who is proposing an alteration or change of use on the site may request that the Department delete or modify one or more use restrictions contained in the environmental hazard notice. The request shall be in writing and include any information which aids the Department in acting upon the request.

(3) The Department shall issue a public notice as to its intent to modify or delete one or more use restrictions contained in an environmental hazard notice, allowing at least 30 days for written comment. The public notice shall be sent to at least the following persons:

(a) The owner of the lot or parcel, or lots or parcels, where the site is located;

(b) Property owners within 250 feet of the site;

(c) Any water right holders on the site;

(d) Any person with a recorded interest in the site;

(e) The affected city and/or county;

(f) Other interested persons who have requested in writing that the Department notify them.

(4) The Department shall hold a public hearing before modifying or rescinding one or more use restrictions if:

(a) Ten or more persons or a group having a membership of 10 or more persons request a public hearing in writing within 20 days of issuance of the public notice; or

(b) In the Department's judgment, significant issues are raised during the public comment period.

(5) The Department may delete or modify one or more use restrictions contained in an environmental hazard notice for a site if it finds that a proposed alteration or change or use:

(a) Will not increase the potential hazard to human health and the environment; or

(b) Is necessary to reduce a threat to human health or the environment; or

(c) Is necessary to complete a cleanup approved by the Department.

(6) The Department may require plans, studies and mitigation measures to be completed and approved before deleting or modifying one or more use restrictions contained in an environmental hazard notice.

(7) The Department shall notify, in writing, the appropriate city and/or county, those persons listed in section (3)(a) to 3(e) of this rule and those persons submitting comments in response to the public notice of section (3) of this rule of any action it takes to delete or modify use restrictions. The Department shall notify the owner of the site by certified mail.

(8) The site owner, and any person who in the Commission's judgment has an interest that would be adversely affected by the Department's action to delete or modify one or more use restrictions may request a hearing before the Commission. The request shall be in writing and must be

submitted to the Department within 20 days following mailing of the notification under section (7) of this rule. The hearing shall be conducted according to the provisions for a contested case hearing under ORS Chapter 183 and OAR Chapter 340 Division 11.

Procedures for Cities and Counties

340-130-035(1) Following the adoption of OAR Chapter 340 Division 130 by the Commission, the Department shall notify all cities and counties of their potential responsibilities to carry out the provisions of ORS 466.360 to 466.385 and this rule. The notification shall include:

(a) A copy and a brief summary explaining the requirements of ORS 466.360 to 466.385 and OAR Chapter 340 Division 130;

(b) Model language for amending comprehensive plans and land use regulations to incorporate procedures to implement environmental hazard notices; and

(c) Information describing how to obtain technical assistance from the Department of Land Conservation and Development and the Department of Environmental Quality to assist cities and counties in complying with this rule.

(2) All cities and counties receiving an environmental hazard notice issued by the Commission shall amend their comprehensive plans and land use regulations, including zoning maps, in accordance with the requirements of ORS 466.385, section (3) of this rule and the requirements and use restrictions specified in the environmental hazard notice. This amendment shall occur:

(a) By the first periodic review under ORS 197.640 following adoption of these rules, if the city or county receives an environmental hazard notice prior to this first periodic review; or

(b) Within 120 days of receiving an environmental hazard notice, if the city or county receives the environmental hazard notice after its first periodic review following adoption of these rules.

(3) A city or county shall not approve a proposed use of a site, parcel or lot for which the city or county has received an environmental hazard notice until the Department has been notified and provided the city or county with comments on the proposed use. The Department shall be notified not less than 21 days before the final date established by the city or county for submission of information. If no comment is received before final action is taken by the city or county, the Department shall be deemed to have no comment on the application.

(4) The Department may appeal to the state Land Use Board of Appeals any final land use decision by a city or county which conflicts with ORS 466.385, sections (2) and (3) of this rule or any requirement or use restriction specified in on environmental hazard notice issued to a city or county.

(2) The department may, upon direction from the commission and after payment of just compensation, acquire and own an existing facility for use in the disposal of PCB. In order to secure such a facility, the commission may modify or waive any of the requirements of ORS chapter 459 and ORS 466.005 to 466.385, 466.880 (1) and (2), 466.890 and 466.995 (1) and (2), but not ORS 469.375 or 469.525, if the commission finds the waiver or modification:

(a) Is necessary to make operation of the facility economically feasible; and

(b) Will not endanger the public health and safety or the environment. [1985 c.670 §30; 1987 c.540 §50]

466.340 Restrictions on treatment or disposal of PCB at facility. (1) The department may limit, prohibit or otherwise restrict the treatment or disposal of PCB at a disposal facility if appropriate to protect public health and safety or the environment.

(2) The department shall monitor the origin and volume of PCB received at a disposal facility acquired and regulated under ORS 466.335, and may curtail or reduce the volume of the PCB that may be accepted for disposal as necessary to:

(a) Protect public health and safety or the environment; or

(b) Assure that the operation of the facility is economically feasible.

(3) The department shall not accept any PCB at a disposal facility owned by the state from a state that is not a party to the Northwest Interstate Compact on Low-Level Radioactive Waste Management as set forth in ORS 469.930. [1985 c.670 §31]

466.345 PCB facility permit fee. (1) The PCB disposal facility permit shall require a fee based either on the volume of PCB accepted at the facility or a percentage of the fee collected, or both. The fees shall be calculated in amounts estimated to produce over the facility use period a sum sufficient to:

(a) Secure performance of permit requirements;

(b) Close the facility;

(c) Provide for any monitoring or security of the facility after closure; and

(d) Provide for any remedial action by the state necessary after closure to protect the public health and safety and the environment.

(2) The amount so paid shall be held in a separate account and when the amount paid in by the permittee together with the earnings thereon equals the amount of the financial assurance required under ORS 466.320, the permittee shall be allowed to withdraw the financial assurance.

(3) If the facility is closed before the fees reach an amount equal to the financial assurance, appropriate adjustment shall be made and the reduced portion of the financial assurance may be withdrawn. [1985 c.670 §32; 1987 c.284 §4; 1987 c.540 §51]

466.350 Post-closure permit; fee. (1) At the time a PCB disposal facility is closed, the person permitted under ORS 466.025 to 466.065, 466.250, 466.255 (2) and (3) and 466.260 to 466.350 to operate the facility must obtain a post-closure permit from the department.

(2) A post-closure permit issued under this section must be maintained until the end of the post-closure period established by the commission by rule.

(3) In order to obtain a post-closure permit the permittee must provide post-closure care which shall include at least the following:

(a) Monitoring and security of the PCB disposal facility; and

(b) Any remedial action necessary to protect the public health and safety and environment.

(4) The commission may by rule establish a post-closure permit application fee. [1985 c.670 §33; 1987 c.540 §52]

NOTICE OF ENVIRONMENTAL HAZARDS

466.360 Policy. (1) The Legislative Assembly finds that:

(a) Disposal sites exist on certain lots or parcels of real property within Oregon that may restrict future land development or constitute a potential hazard to the health, safety and welfare of Oregon's citizens, particularly if present or future owners use or modify the parcels without taking into consideration the use restrictions or environmental hazards posed by the former disposal activity.

(b) Permits, licenses and approvals that have been or may be granted by the Environmental Quality Commission, the Department of Environmental Quality or the Energy Facility Siting Council authorizing disposal of waste upon real property protect the health, safety and welfare of Oregon citizens only if adequate notice of post-closure use restrictions is given to future purchasers of the real property.

(c) Disposal sites created prior to regulation may be potentially hazardous if use restrictions are not imposed.

(d) Proper precautions and maintenance cannot be taken and continued unless the location of the disposal site, the nature and extent of its potential hazard and use restrictions are known to cities and counties and those who own and occupy the property.

(2) It is hereby declared to be the public policy of this state to give notice to local governments of potential hazardous disposal sites and to impose use restrictions on those sites. [1985 c.273 §2]

466.365 Commission authority to establish sites for which notice is required; rulemaking; report to Legislative Assembly. (1) The commission may establish by rule adopted under ORS 183.310 to 183.550:

(a) A list of sites for which environmental hazard notices must be given and use restrictions must be imposed. The list shall be consistent with the policy set forth in ORS 466.360 and may include any of the following sites that contain potential hazards to the health, safety and welfare of Oregon's citizens:

(A) A land disposal site as defined by ORS 459.005;

(B) A hazardous waste disposal site as defined by ORS 466.005;

(C) A disposal site containing radioactive waste as defined by ORS 469.300 (17); and

(D) A facility.

(b) The form and content of use restrictions to be imposed on the sites, which shall require at least that post-closure use of the site not disturb the integrity of the final cover, liners or any other components of any containment system or the function of the facility's monitoring systems, unless the department finds that the disturbance:

(A) Will not increase the potential hazard to human health or the environment; or

(B) Is necessary to reduce a threat to human health or the environment.

(c) The form and content of the environmental hazard notices to be filed with cities and counties.

(d) The circumstances allowing and procedures for removal or amendment of environmental hazard notices and use restrictions provided by the department.

(e) Any other provisions the commission considers necessary for the department to accomplish the purpose of ORS 466.360 to 466.385.

(2) Spills and releases cleaned up pursuant to ORS 466.205 and 468.795 shall not be listed as sites to be regulated under subsection (1) of this section.

(3) Before hearings on and adoption of rules under subsection (1) of this section, the department shall notify each person who owns a disposal site or an owner or operator of a facility of the rulemaking proceedings.

(4) The department shall report to each Legislative Assembly on any site or facility for which environmental hazard notices and use restrictions have been amended or removed as provided by rule adopted under paragraph (d) of subsection (1) of this section.

(5) The commission shall not list a site, spill or release under subsection (1) of this section, if the commission finds that within 90 days of receipt of notice under subsection (3) of this section, the owner cleaned up the site, spill or release so it is no longer a potential hazard to the health, safety and welfare of Oregon's citizens.

(6) As used in this section, "facility" has the meaning given in ORS 466.540. [1985 c.273 §3; 1987 c.735 §25]

466.370 Notice to owner; hearing; filing of notice if no objection. (1) The department shall notify by certified mail any person who owns a lot or parcel upon which a disposal site listed under ORS 466.365 exists. The notice shall:

(a) Describe the disposal site and potentially hazardous environmental conditions;

(b) Describe the use restrictions that will be imposed;

(c) Explain that an environmental hazard notice will be sent to the appropriate city or county under ORS 466.375; and

(d) Advise the person of the procedure for requesting a hearing under subsection (2) of this section.

(2) If any person receiving notice under subsection (1) of this section objects to the use restrictions, the person may request a hearing before the commission. The request shall be in writing and must be submitted to the department within 20 days after the person receives the notice under subsection (1) of this section. The hearing shall be conducted according to the provisions for a contested case hearing in ORS 183.413 to 183.497.

(3) If no hearing is requested within 20 days after receipt of the notice, the department shall file the environmental hazard notice with the appropriate city or county. [1985 c.273 §4]

466.375 Filing of notice; content of notice. The department shall file an environmental hazard notice with the city or county in which a site listed under ORS 466.365 (1) is located. The notice shall contain the following information:

(1) A description of the lot or parcel upon which the disposal site is located;

(2) The restrictions that apply to post-closure use of the property; and

(3) Information regarding the potential environment hazards posed by the disposal site to assist the city or county in complying with ORS 466.385. [1985 c.273 §5]

466.380 Interagency agreement for notices for radioactive waste disposal sites. The Department of Environmental Quality and the Department of Energy shall enter into an interagency agreement providing for the implementation of the provisions of ORS 466.360 to 466.385 relating to radioactive waste disposal sites. [1985 c.273 §6]

466.385 Amendment of comprehensive plan and land use regulations; model language; appeal of land use decision related to site requiring notice. (1) By the first periodic review under ORS 197.640 after development of model language under subsection (2) of this section, the governing body of a city or county shall amend its comprehensive plan and land use regulations as provided in ORS 197.610 to 197.640 to establish and implement policies regarding potentially hazardous environmental conditions on sites listed under ORS 466.365. The land use regulations shall provide that:

(a) The city or county shall not approve any proposed use of a disposal site for which the city or county has received notice under ORS 466.370 until the Department of Environmental Quality has been notified and provided the city or county with comments on the proposed use; and

(b) Within 120 days of receipt of an environmental hazard notice from the Department of Environmental Quality, the city or county shall amend its zoning maps to identify the disposal site.

(2) The Department of Environmental Quality and the Department of Land Conservation and Development shall:

(a) Develop model language for comprehensive plans and land use regulations for use by cities and counties in complying with this section; and

(b) Provide technical assistance to cities and counties in complying with ORS 466.360 to 466.385.

(3) The Department of Environmental Quality may appeal to the Land Use Board of Appeals any final land use decision made by a city or county regarding any proposed use of a disposal site that has been identified under its comprehensive plan and land use regulations pursuant to this section. [1985 c.273 §7]

PACIFIC STATES AGREEMENT ON RADIOACTIVE MATERIALS TRANSPORTATION MANAGEMENT

466.450 Pacific State Agreement on Radioactive Materials Transportation Management. The Pacific States Agreement on Radioactive Materials Transportation Management is enacted into law and entered into by the State of Oregon and entered into with all other jurisdictions lawfully joining the agreement in a form as provided for as follows:

ARTICLE I

Policy and Purpose

The party states recognize that protection of the health and safety of citizens and the environment, and the most economical transportation of radioactive materials, can be accomplished through cooperation and coordination among neighboring states. It is the purpose of this agreement to establish a committee comprised of representatives from each party state to further cooperation between the states on emergency response and to coordinate activities by the states to eliminate unnecessary duplication of rules and regulations regarding the transportation and handling of radioactive material.

The party states intend that this agreement facilitate both interstate commerce and protection of public health and the environment. To accomplish this goal, the party states direct the committee to develop model regulatory standards for party states to act upon and direct the committee to coordinate decisions by party states relating to the routing and inspection of shipments of radioactive material.

ARTICLE II

Definitions

As used in this agreement:

(1) "Carrier" includes common, private, and contract carriers.

(2) "Hazardous material" means a substance or material which has been determined by the United States Department of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated.

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

Attachment III
Agenda Item L
January 22, 1988, EQC Meeting

TO: Environmental Quality Commission

FROM: Richard Reiter, Hearings Officer

SUBJECT: Agenda Item No. L, January 22, 1988, EQC Meeting

Hearings Officer's Report on Proposed Rules to Establish Chapter 340, Division 130, Procedures Governing the Issuance of Environmental Hazard Notices.

Pursuant to public notice, a public hearing was held at 1:30 p.m. on December 8, 1987, in Portland, to take testimony on the proposed rules. Eight people attended the hearing but none chose to testify.

ZF2407.1

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

Attachment IV
Agenda Item L
January 22, 1988, EQC Meeting

To: Environmental Quality Commission

From: Bob Danko

Subject: Summary of Written testimony on Proposed Rules to Establish Chapter 340, Division 130, Procedures Governing the Issuance of Environmental Hazard Notices.

The Department received written testimony from four people during the written comment period which ended December 15, 1987. Copies of the written testimony are attached. A summary of the written testimony is as follows:

Brent Curtis, Planning Manager for Washington County, expressed concern about the amount of time available for a local jurisdiction to amend its comprehensive plan and land use regulations in response to an environmental hazard notice issued by the EQC. He stated that 120 days is not enough for Washington County. He also requested a determination on which agency, DEQ or the local jurisdiction, is responsible for the legal defense if a property owner should challenge the imposition of an environmental hazard notice.

Jean Meddaugh, Associate Director of Oregon Environmental Council, generally supported the proposed rules. She suggested paraphrasing, rather than referencing by number, other rules and statutes in these proposed rules. She also recommended expanding the exclusion of proposed rule 340-130-010(1)(b) to include all Department permits.

R. J. Hess, the Environmental Services Department manager at Portland General Electric Company, expressed these comments:

1. Proposed rule 340-130-001(2) should clearly reference both disposal sites and hazardous waste.
2. Referencing of other statutes and rules throughout the proposed rules creates unnecessary confusion for the regulated community.
3. The exclusions of proposed rules 340-130-010(1)(b) should be expanded to cover water quality permits issued by the Department.
4. Monitoring equipment required by an environmental hazard notice should be eligible for pollution control tax credits.
5. PGE recognizes that very judicious interpretation and careful application of these rules are essential.

James Ross, Director of the State Department of Land Conservation and Development (DLCD), recommended nine minor wording changes and the addition of two sections. One of these additions calls on the Department to participate with DLCD in review of comprehensive plan and land use regulation amendments in accordance with the periodic review procedures. The other recommended addition states that the DEQ may appeal to the State Land use Board of Appeals any final land use decision by a city or county which conflicts with the environmental hazard notice statute or rules.

ZF2407.5

Attachment
Agenda Item
January 22, 1988 EQC Meeting

OREGON ENVIRONMENTAL COUNCIL

2637 S.W. Water Avenue • Portland, Oregon 97201 • (503) 222-1963

Hazardous & Solid Waste Division
Dept. of Environmental Quality

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COMMENTS SUBMITTED BY
THE OREGON ENVIRONMENTAL COUNCIL
ON
PROPOSED RULES TO ESTABLISH CHAPTER 340
PROCEDURES GOVERNING THE ISSUANCE OF ENVIRONMENTAL
HAZARD NOTICES

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Having served on the Advisory Committee which helped to draft the proposed rules, I am satisfied that they provide another important tool for the use of the Environmental Quality Commission in its efforts to protect public health and the environment. I am especially pleased with the many checks and balances provided by these rules to prevent misapplication of the Environmental Hazard Notice procedures on the one hand, while also providing adequate opportunity for public participation into the process on the other.

There are two minor changes which I would suggest to this final draft, as follows:

1) Where possible throughout the rules, paraphrase other statutes or administrative rules, rather than just referencing them by number. This would provide more complete information to citizens reading these rules and preclude their needing to go on a paper chase through rules and statutes which may not be easily accessible.

2) 340-130-010 (1)(b): Change the language to read "Which presently is regulated by a [a solid waste disposal permit, a hazardous waste management permit] Department permit or an order requiring remedial action, closure or corrective action issued by the Department or Commission;." This provides more latitude to the Department because it doesn't limit the exclusion to only a solid waste or hazardous waste permit.

Thanking you for the opportunity to comment, I remain,

Sincerely yours,

Jean Meddaugh

Jean C. Meddaugh
Associate Director

Portland General Electric Company

Hazardous & Solid Waste Division
Dept. of Environmental Quality
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DEC 15 1987

December 15, 1987
ES-984-87L
GEN GOV REL 9

Oregon Department of Environmental Quality
Hazardous and Solid Waste Division
Attn Bob Danko
811 SW 6th Ave
Portland OR 97204

Dear Sirs:

PGE appreciates the opportunity to comment on the proposed rules to establish Chapter 340, Division 130, the procedures governing the issuance of environmental notices. PGE agrees with the intent of the law - not disturbing sites which have functioned in the past as solid waste disposal sites and are not CERCLA sites. Sometimes it is better to leave disposed materials protected on site than to disturb the site and create a secondary problem. However, PGE also has some concerns about the proposed rules as follows:

1. 340-130-001(2): in order to clearly state the intent of ORS 466.360, PGE suggests the words disposal and hazardous be added to the first line of (2) which would then read:

   (2)Recognizing that <u>disposal</u> sites with <u>hazardous</u> waste or contamination exists in the .....

   ORS 466.360, clearly states "disposal sites" not just "sites". A clearly written policy for the rules is essential - especially if the DEQ implements the rules differently from the statutory authority.

2. The regulations are not clearly written. Some necessary definitions are cited and referenced instead of being written out. Excessive cross-referencing creates unnecessary confusion for the regulated community especially if the rules are also unclear. An alternative would be an informational handout for use by these "persons" affected by this division.

Hazardous & Solid Waste Division
Dept. of Environmental Quality
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3. 340-130-010 (1)(b): PGE believes that sites that have an active permit issued under the National Pollution Discharge Elimination System or Water Pollution Control Facility should be added to the exclusions contained in this section. The Clean Water Act allows controlled releases into water bodies and onto land under an environmental permit.

4. If a notice of Environmental Hazard restricts the use of real property, owners who are required to monitor should be able to offset costs for necessary monitoring equipment with DEQ-approved pollution tax credits.

5. PGE recognizes that very judicious interpretation of these rules is essential to prevent unnecessary burdens on businesses and land use as well as preventing financial hardships on owners, potential owners, adjacent land use and the general public. Serious environmental hazards should be identified and recognized, and the public be made aware of specific disposal sites by the careful application of these rules.

If you have additional questions or need further information, please call me at 226-5666 or Lolita Carter at 226-5616.

Sincerely,

R. J. Hess, Manager
Environmental Sciences Department

RJH/LMC/slc
es 1310

c: Robert Hall, PGE
Tom Donica, AOI

WASHINGTON COUNTY, OREGON

December 14, 1987

Fred Hansen, Director
Department of Environmental Quality
811 SW Sixth Avenue
Portland, OR 97204

After my staff belatedly reviewed the proposed rules to establish procedures governing the issuance of environmental hazard notices (OAR Chapter 340, Division 130), two areas of concern were identified. These are:

1) the amount of time available to a local jurisdiction to amend its comprehensive plan and land use regulations in response to an environmental hazard notice issued by the EQC (340-130-035(2)(b)); and

2) determination of which agency, DEQ or the local jurisdiction, bears responsibility for legally defending imposition of land use regulations on a property in response to an environmental hazard notice, should the property owner legally challenge the action.

A member of my staff, Hal Bergsma, did talk to Maggie Conley of your staff about these concerns on December 11, 1987. Maggie pointed out that the 120-day limit was included pursuant to ORS 466.385(b) of the enabling statute for the proposed rules. We cannot, therefore, ask you to amend this provision, but we would like to note that this time limit could be a problem for us if an environmental hazard notice is received at the wrong time of the year. This is because our charter prohibits legislative consideration of land use ordinances between November 1 and March 1 of any year. Because of this, it is likely that we will have to consider adoption of the model Environmental Hazard Overlay District your department prepared before we ever receive an environmental hazard notice. Only by doing this legislatively will we be able to respond within 120 days through a quasijudicial plan amendment to an environmental hazard notice.

In response to our second concern, Maggie noted that the Attorney General's office had assured your department that land use regulations imposed pursuant to an environmental hazard notice would be legally defensible if based on valid health, safety and welfare concerns. Nevertheless, in our view it is always possible for someone to legally oppose imposition of land use regulations, whether valid or not. Except where the local jurisdiction imposes regulations beyond those specified in the notice, it is acting solely on behalf of your department and the EQC in imposing

regulations pursuant to an environmental hazard notice. Yet it would seem that the local jurisdiction would be just as liable for providing legal defense as your department.

We believe the rules should be modified to specify that DEQ will bear full responsibility and all costs associated with legally defending local land use regulations imposed in direct response to an environmental hazard notice. Although this may be your intent, it is not clear to us. We have asked our County Counsel's office to look into this matter further.

Please contact me about your department's response to these concerns. Should you wish to discuss this matter further, please phone me at 648-8761.

Sincerely,

Brent Curtis

Brent Curtis
Planning Manager
Acting Land Development Manager

c: Bruce Warner, Director
Cheyenne Chapman, Assistant County Counsel

NEIL GOLDSCHMIDT
GOVERNOR

Department of Land Conservation and Development

1175 COURT STREET NE, SALEM, OREGON 97310-0590 PHONE (503) 378-4926

December 15, 1987

Hazardous & Solid Waste Division
Dept. of Environmental Quality
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Fred Hansen, Director
Department of Environmental Quality
881 S.W. Sixth Avenue
Portland, OR 97204

Dear Fred:

I am writing to provide our comments on DEQ's proposed Environmental Hazard Notice rule (OAR 340-130).

Overall, the rule is well organized and clearly written. This is due in large part to the successful efforts of the broad based advisory committee you appointed to assist in drafting the rule. We appreciated the opportunity to cooperate with your staff in working with the committee which was ably chaired by Steve Schell. Special thanks are owed to Bob Danko and Maggie Conley, both for their support of the committee's activities and for their skill in integrating the many, sometimes conflicting, points of view into the rule and the model ordinances.

Fred, as you know, unlike most new agency programs, the enabling statute for environmental hazard notice makes specific mention of our department and city and county comprehensive plans in implementing the notice process. It is this reliance on the land use program that underlies our comments on the notice rule.

Our suggestions are arranged into three categories: the rule itself, the model ordinances and general implementation of the process. We believe that if accepted, these points not only will enhance local government's understanding and involvement, but also will help demonstrate that a <u>new</u> agency program which affects land use can be carried out in a coordinated manner through state-initiated amendments to comprehensive plans.

<u>Administrative Rule</u>

The following comments offer specific changes to the text of the October 9, 1987 draft of OAR 340-130. New language is underlined; wording to be deleted is in brackets.

1. 340-130-001(2)(b)

(b) Use restrictions implemented through city and county comprehensive plans and land use regulations may be necessary on potentially....

2. 340-130-001(2)(c)

(c) Certain activities and c[C]hanges in uses affecting [on] potentially hazardous sites....

3. 340-130-005(6)

(6) "Environmental hazardous notice" means a document prepared by the Department and issued to a city and/or a county by the Commission containing:

4. 340-130-005(6)(e)

(e) The use and/or activity restrictions that apply....

Comment:

The Department suggests that other sections of the rule that refer to "use" restrictions similarly be amended to employ the more descriptive term, "use and/or activity" restrictions. Inclusion of the revised term in the rule should be helpful to DEQ, particularly in notice situations involving mixed uses or where the agency's concern deals with limiting a specific activity like drilling and not the overall use category allowed by the jurisdiction's plan and zoning ordinance.

An alternative to substituting "use and/or activity" throughout the rule would be to define the term "use" to include "activities".

5. 340-130 025(8)

(8) The Department shall notify those persons....The Department shall notify the owner of the site by[e] certified mail. [the owner of the site.] The notification shall....

6. 340-130-030(7)

(7) The Department shall notify, in writing, the appropriate city and/or county....to delete or modify use restrictions. The Department shall notify the owner of the site by certified mail.

7. 340-130-035(1)(a and b)

(1) Following the adoption of OAR 340 Division 130 by the Commission, the Department shall notify all cities and counties of their potential responsibilities to carry out the provisions of ORS 466.360 to 466.385 and this rule. The notification shall include:

(a) A copy and a brief summary explaining the requirements of ORS 466.360 to 466.385 and OAR 340 Division 130;

(b) Model language [ordinances] for amending [local] comprehensive plans and land use regulations to incorporate procedures to implement [address] environmental hazard notices;

8. 340-130-035(2)

(2) All cities and counties receiving an environmental hazard notice issued by the Commission shall amend their comprehensive plans[,] and land use regulations, including zoning maps, in accordance with the requirements of ORS 466.385,[and] section (4) [(3)] of this rule[.] and the requirements and restrictions specified in the jurisdiction's environmental notice. This amendment shall occur:

9. 340-130-035(2)(b)

(b) Within 120 days of receiving an....after its first periodic review [.] following adoption of these rules.

10. 340-130-035(3) (**Note:** This is a new section 3; succeeding sections would be numbered accordingly)

(3) The Department, as appropriate, shall participate in and review comprehensive plan and land use regulation amendments for compliance with environmental hazard notice requirements in accordance with state plan amendment and periodic review procedures contained in OAR 660, Divisions 18 and 19 respectively.

11. 340-130-035(5) (**Note:** This is a new section following the numbering order described in 10 above.)

(5) The Department may appeal to the state Land Use Board of Appeals any final land use decision by a city or county which conflicts with ORS 466.385, sections (2) and (4) of this rule or any requirement or restriction specified in a jurisdiction's environmental notice.

Finally, as a general reminder, adoption of OAR 340-130 needs to be accompanied by state goal compliance and comprehensive plan compatibility findings in accordance with DEQ's certified agency coordination program and the LCDC coordination rule (see OAR 660-30-075).

Model Plan and Ordinances

Our department was an active member of the advisory committee's group that drafted the two model ordinances which were sent out with the proposed rule. While we are pleased with the models which were produced, both probably can be improved with additional fine tuning. There is also the need to develop model language for insertion into comprehensive plans. Such plan provisions are important to address factual base requirements and to establish a suitable policy framework to guide the adoption of the overlay districts.

For these reasons and to advise on the implementation steps described below, we urge that your state-local land use working group be continued. This body, possibly with an expanded membership, could be quite useful in addressing land use issues which arise as the environmental notice program gets underway.

Program Implementation

Both of our agencies share responsibility for making sure that the environmental notice process starts off on a solid footing. We have identified several actions we believe can facilitate the implementation of this important DEQ program. These steps include:

--Designating DEQ and DLCD contacts for coordinating environmental notice and overseeing the provision of technical assistance.

--Conducting joint DEQ/DLCD work shops in the field to familiarize local governments with environmental notice requirements, particularly with regard to what plan changes are to occur before, during and after periodic review.

--Standardizing DEQ and DLCD mailing lists for communicating with cities and counties.

--Close staff coordination to streamline DEQ participation in the plan amendment and periodic review processes.

--Making sure that environmental hazard notices are sent to both a city and a county for a site located within an

urban growth boundary but outside the city limits.

--Active DEQ and DLCD support for the state-local land use working group mentioned above.

In closing, our department appreciates the opportunity to review the proposed environmental notice rule and we urge its adoption with the suggestions listed above. We have enjoyed working with your staff and the advisory committee and look forward to further cooperative efforts as the program moves into its operational phase. Please feel free to contact me if we can provide any additional information or assistance concerning our comments or to arrange follow up staff meetings.

Sincerely,

James F. Ross
Director

JFR:JBK
<sac>

cc: Bob Danko, DEQ
Maggie Conley, DEQ
Steve Schell, Attorney at Law
Russ Nebon, Marion County
Steve Bryant, City of Albany
Gordon Fultz, AOC
Phil Fell, LOC
Gabriella Lang, Justice
Kurt Burkholder, Justice
Craig Greenleaf, DLCD
Jim Knight,DLCD
DLCD Field Representatives and Review Staff

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

Attachment V
Agenda Item L
January 22, 1988 EQC Meeting

To: Environmental Quality Commission

From: Bob Danko

Subject: Response to Comment Summary

Comment

Brent Curtis expressed concern about the insufficient amount of time available for a local jurisdiction to amend its land use regulations in response to an environmental hazard notice issued by the EQC. He stated that 120 days is not enough for Washington County.

Response

The 120 day requirement of proposed rule 340-130-035(2)(b) is taken from ORS 466.385(1)(b). The Department believes that 120 days is generally sufficient for local governments to act. There is an extensive public comment and hearing process before the Commission considers issuance of an environmental hazard notice. Therefore, a city or county will be aware of the proposed notice for a particular site at least several months prior to the start of the 120 day period. Also, upon request from a city or county, the Commission could delay the issuance of a notice so that local statutes and rules could be complied with.

Comment

Brent Curtis requested a determination on which agency, DEQ or the local jurisdiction, is responsible for the legal defense if a property owner should challenge the imposition of an environmental hazard notice.

Response

Kurt Burkholder, Assistant Attorney General, states that the local jurisdiction is responsible for the legal defense. This is similar to a question that has been encountered numerous times in the land use arena. Local ordinances required by the state's statutes are defended by the local jurisdiction. In this case, a state statute makes the city or county responsible for imposing the requirements contained in an environmental hazard notice, and the city or county is responsible for defending the action it takes.

Comment

Jean Meddaugh and R.J. Ross mentioned the confusion caused by referencing other rules and statutes in these rules, and encouraged the Department to paraphrase or attach the complete definitions.

Response

The Department is very sympathetic to these comments and has attached the definitions referenced in proposed rule 340-130-005. Attempting to understand administrative rules that reference other rules and statutes can be a frustrating experience. Six definitions in proposed rule 340-130-005 reference statutes or other rules. These are "Dispose or Disposal," "Hazardous substance," "Hazardous waste," "Radioactive waste," "Release," and "Solid waste." Attachment A shows each of the definitions as contained in the referenced statutes or rules.

For several reasons, the Department does not support including the full text of these definitions in the proposed rules. Referencing is used throughout state statutes and administrative rules. Many of the definitions referenced in proposed rule 340-130-005 already reference other statutes or rules. In the case of "Hazardous waste," the referenced definition covers three pages and references many other rules. It is nearly impossible to include all referenced language in a proposed rule.

Most statutes and rules are modified over time. Referencing often avoids the problem of changing a definition in one place and not another. Referencing keeps statutes and rules a little shorter and avoids duplication. While the Department strives to keep proposed administrative rules clear and concise, the use of referencing is considered a necessary tool.

Comment

Jean meddaugh and R.J. Ross called for the expansion of proposed rule 340-130-010(1)(b) to include other permits issued by the Department.

Response

The Department agrees with the comments and the proposed rules have been modified accordingly.

Comment

R.J. Hess requested that proposed rule 340-130-001(2) reference disposal sites, not sites, and reference hazardous waste, not waste.

Response

The Department purposely used the words "sites" and "waste" in the proposed rule. The statute as modified by Oregon Laws 1987, Chapter 735 allows the issuance of an environmental hazard notice for sites other than disposal sites. Note that "site" is specifically defined in proposed rule 340-130-005(16). The use of "waste," not "hazardous waste" is appropriate because not all sites have hazardous waste. For example, notices may be appropriate for some solid waste disposal sites.

Comment

R.J. Hess stated that monitoring required by an environmental hazard notice should be eligible for pollution control tax credits.

Response

The Department does not anticipate that specific monitoring will be required by an environmental hazard notice. Monitoring is often required by permits issued by the Department which will generally precede an environmental hazard notice. When the Department requires monitoring to be done by a permittee, monitoring equipment and related capital expenses are generally eligible for pollution control tax credits.

Comment

R.J. Ross recognizes that very judicious interpretation and careful application of the proposed rules are essential.

Response

The Department appreciates the comment and agrees.

Comment

James Ross recommended 11 text changes in the proposed rules. The Department appreciates the detailed review of the proposed rules by Mr. Ross and staff at the Department of Land Conservation and Development.

1. 340-130-001(2)(b)

(b) Use restrictions <u>implemented through city and county comprehensive plans and land use regulations</u> may be necessary on potentially...

Response

The Department has modified the proposed rules accordingly.

2. 340-130-001(2)(c)

(c) Certain activities and c[C]hanges in uses affecting [on] potentially hazardous sites...

Response

The Department does not agree that adding the word "and activities" to "use" clarifies the proposed rules. The statute does not discuss "activities" and the addition of the word is not needed.

3. 340-130-005(6)

(6) "Environmental hazardous notice" means a document prepared by the Department and issued to a city and/or a county by the Commission containing:

Response

The Department has modified the proposed rules accordingly.

4. 340-130-005(6)(e)

(3) The use and/or activity restrictions that apply...

Comment:

The Department suggests that other sections of the rule that refer to "use" restrictions similarly be amended to employ the more descriptive term, "use and/or activity" restrictions. Inclusion of the revised term in the rule should be helpful to DEQ, particularly in notice situations involving mixed uses or where the agency's concern deals with limiting a specific activity like drilling and not the overall use category allowed by the jurisdiction's plan and zoning ordinance.

An alternative to substituting "use and/or activity" throughout the rule would be to define the term "use" to include "activities".

Response

Refer to the Response of 2. above.

5. 340-130-025(8)

(8) The Department shall notify those persons...The Department shall notify the owner of the site by[e] certified mail. [the owner of the site.] The notification shall...

Response

The Department has modified the proposed rules accordingly.

6. 340-130-030(7)

(7) The Department shall notify, in writing, the appropriate city and/or county...to delete or modify use restrictions. The Department shall notify the owner of the site by certified mail.

Response

The Department has modified the proposed rules accordingly.

7. 340-130-035(1)(a and b)

(1) Following the adoption of OAR 340 Division 130 by the Commission, the Department shall notify all cities and counties of their potential responsibilities to carry out the provisions of ORS 466.360 to 466.385 and this rule. The notification shall include:

(a) A copy and a brief summary explaining the requirements of ORS 466.360 to 466.385 and OAR 340 Division 130;

(b) Model language [ordinances] for amending [local] comprehensive plans and land use regulations to incorporate procedures to implement [address] environmental hazard notices;

Response

The Department has modified the proposed rules accordingly.

8. 340-130-035(2)

(2) All cities and counties receiving an environmental hazard notice issued by the Commission shall amend their comprehensive plans[,] and land use regulations, including zoning maps, in accordance with the requirements of ORS 466.385,[and] section (4) [(3)] of this rule[.] and the requirements and restrictions specified in the jurisdiction's environmental notice. This amendment shall occur:

Response

The Department has incorporated the intent of the recommended language in the proposed rules.

9. 340-130-035(2)(b)

(b) Within 120 days of receiving an....after its first periodic review [.] following adoption of these rules.

Response

The Department has modified the proposed rules accordingly.

10. 340-130-035(3) (**Note:** This is a new section 3; succeeding sections would be numbered accordingly)

(3) The Department, as appropriate, shall participate in and review comprehensive plan and land use regulation amendments for compliance with environmental hazard notice requirements in accordance with state plan amendment and periodic review procedures contained in OAR 660, Divisions 18 and 19 respectively.

Response

The Department agrees with the comment but finds it inappropriate to add to these proposed rules. This is a matter to be dealt with in the Department's coordination agreement with the Department of Land Conservation and Development.

11. 340-130-035(5) (**Note:** This is a new section following the numbering order described in 10 above.)

(5) The Department may appeal to the state Land Use Board of Appeals any final land use decision by a city or county which conflicts with ORS 466.385, sections (2) and (4) of this rule or any requirement or restriction specified in a jurisdiction's environmental notice.

Response

The Department has modified the proposed rules accordingly.

ZF2407.6

STORAGE, TREATMENT AND DISPOSAL OF HAZARDOUS WASTE AND PCB

(General Provisions)

466.005 Definitions for ORS 453.635 and 466.005 to 466.385. As used in ORS 453.635 and 466.005 to 466.385 and 466.890, unless the context requires otherwise:

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

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

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

(4) "Dispose" or "disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any hazardous waste into or on any land or water so that the hazardous waste or any hazardous constituent thereof may enter the environment or be emitted into the air or discharged into any waters of the state as defined in ORS 468.700.

(5) "Generator" means the person, who by virtue of ownership, management or control, is responsible for causing or allowing to be caused the creation of a hazardous waste.

(6) "Hazardous waste" does not include radioactive material or the radioactively contaminated containers and receptacles used in the transportation, storage, use or application of radioactive waste, unless the material, container or receptacle is classified as hazardous waste under paragraph (a), (b) or (c) of this subsection on some basis other than the radioactivity of the material, container or receptacle. Hazardous waste does include all of the following which are not declassified by the commission under ORS 466.015 (3):

(a) Discarded, useless or unwanted materials or residues resulting from any substance or combination of substances intended for the purpose of defoliating plants or for the preventing, destroying, repelling or mitigating of insects, fungi, weeds, rodents or predatory animals, including but not limited to defoliants, desiccants, fungicides, herbicides, insecticides, nematocides and rodenticides.

(b) Residues resulting from any process of industry, manufacturing, trade or business or government or from the development or recovery of any natural resources, if such residues are classified as hazardous by order of the commission, after notice and public hearing. For purposes of classification, the commission must find that the residue, because of its quantity, concentration, or physical, chemical or infectious characteristics may:

(A) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(B) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

(c) Discarded, useless or unwanted containers and receptacles used in the transportation, storage, use or application of the substances described in paragraphs (a) and (b) of this subsection.

(7) "Hazardous waste collection site" means the geographical site upon which hazardous waste is stored.

(8) "Hazardous waste disposal site" means a geographical site in which or upon which hazardous waste is disposed.

(9) "Hazardous waste treatment site" means the geographical site upon which or a facility in which hazardous waste is treated.

(10) "Manifest" means the form used for identifying the quantity, composition, and the origin, routing and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment or storage.

(11) "PCB" has the meaning given that term in ORS 468.900.

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

(13) "Store" or "storage" means the containment of hazardous waste either on a temporary basis or for a period of years, in a manner that does not constitute disposal of the hazardous waste.

(14) "Transporter" means any person engaged in the transportation of hazardous waste by any means.

(15) "Treat" or "treatment" means any method, technique, activity or process, including but not limited to neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize the waste or so as to render the waste nonhazardous, safer for transport, amena-

(d) "Collection." See "Storage."

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

(f) "Department" means the Department of Environmental Quality except it means the Commission when the context relates to a matter solely within the authority of the Commission such as: the adoption of rules and issuance of orders thereon pursuant to ORS 459.440, 459.445 and 468.903; the making of findings to support declassification of hazardous wastes pursuant to ORS 459.430(3); the issuance of exemptions pursuant to ORS 459.505(2); the issuance of disposal site permits pursuant to ORS 459.580(2);and the holding of hearings pursuant to ORS 459.560, 459.580(2), 459.620, 459.650, and 459.660.

(g) "Director" means:

(A) The "Department," except as specified in paragraph (2)(g)(B) of this rule; or

(B) The "permitting body," as defined in section (2) of this rule, when used in 40 CFR 124.5, 124.6, 124.8, 124.10, 124.12, 124.14, 124.15 and 124.17.

(h) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous waste or hazardous substance into or on any land or water so that the hazardous waste or hazardous substance or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters of the state as defined in ORS 468.700.

(i) "EPA" or "Environmental Protection Agency" means the Department of Environmental Quality.

(j) "EPA Form 8700-12" means EPA Form 8700-12 as modified by the Department.

(k) "Existing hazardous waste management (HWM) facility" or "existing facility" means a facility which was in operation or for which construction commenced on or before November 19, 1980, or is in existence on the effective date of statutory or regulatory changes under Oregon law that render the facility subject to the requirement to have a permit. A facility has commenced construction if:

(A) The owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction; and either

(B)(i) A continuous on-site, physical construction program has begun, or

(ii) The owner or operator has entered into contractual obligations--which cannot be cancelled or modified without substantial loss--for physical construction of the facility to be completed within a reasonable time.

(l) "Extraction of ores and minerals" means the process of mining and removing ores and minerals from the earth.

(m) "Generator" means the person who, by virtue of ownership, management or control, is responsible for causing or allowing to be caused the creation of a hazardous waste.

(n) "Hazardous substance" means any substance intended for use which may also be identified as hazardous pursuant to Division 101.

(o) "Hazardous waste" means a hazardous waste as defined in 40 CFR 261.3.

(p) "Identification number" means the number assigned by EPA to each generator, transporter, and treatment, storage and disposal facility.

(q) "License." See "Permit."

by lime stabilization of spent pickle liquor from the iron and steel industry (SIC Codes 331 and 332).

(B) Wastes from burning any of the materials exempted from regulation by § 261.6(a)(3) (iv), (vi), (vii), or (viii).

(d) Any solid waste described in paragraph (c) of this section is not a hazardous waste if it meets the following criteria:

(1) In the case of any solid waste, it does not exhibit any of the characteristics of hazardous waste identified in Subpart C.

(2) In the case of a waste which is a listed waste under Subpart D, contains a waste listed under Subpart D or is derived from a waste listed in Subpart D, it also has been excluded from paragraph (c) under §§ 260.20 and 260.22 of this chapter.

[45 FR 33119, May 19, 1980, as amended at 46 FR 56588, Nov. 11, 1981; 50 FR 14219, Apr. 11, 1985; 50 FR 49202, Nov. 29, 1985]

§ 261.4 Exclusions

(a) *Materials which are not solid wastes.* The following materials are not solid wastes for the purpose of this part:

(1)(i) Domestic sewage; and

(ii) Any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly-owned treatment works for treatment. "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

(2) Industrial wastewater discharges that are point source discharges subject to regulation under section 402 of the Clean Water Act, as amended.

[*Comment:* This exclusion applies only to the actual point source discharge. It does not exclude industrial wastewaters while they are being collected, stored or treated before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment.]

(3) Irrigation return flows.

(4) Source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.*

(5) Materials subjected to in-situ mining techniques which are not removed from the ground as part of the extraction process.

(6) Pulping liquors (*i.e.*, black liquor) that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless it is accumulated speculatively as defined in § 261.1(c) of this chapter.

(7) Spent sulfuric acid used to produce virgin sulfuric acid, unless it is accumulated speculatively as defined in § 261.1(c) of this chapter.

(b) *Solid wastes which are not hazardous wastes.* The following solid wastes are not hazardous wastes:

(1) Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered (e.g., refuse-derived fuel) or reused. "Household waste" means any material (including garbage, trash and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas). A resource recovery facility managing municipal solid waste shall not be deemed to be treating, storing, disposing of, or otherwise managing hazardous wastes for the purposes of regulation under this subtitle, if such facility:

(i) Receives and burns only

(A) Household waste (from single and multiple dwellings, hotels, motels, and other residential sources) and

(B) Solid waste from commercial or industrial sources that does not contain hazardous waste; and

(ii) Such facility does not accept hazardous wastes and the owner or operator of such facility has established contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in such facility.

(2) Solid wastes generated by any of the following and which are returned to the soils as fertilizers:

(i) The growing and harvesting of agricultural crops.

(ii) The raising of animals, including animal manures.

(3) Mining overburden returned to the mine site.

(4) Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from

the combustion of coal or other fossil fuels.

(5) Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy.

(6)(i) Wastes which fail the test for the characteristic of EP toxicity because chromium is present or are listed in Subpart D due to the presence of chromium, which do not fail the test for the characteristic of EP toxicity for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:

(A) The chromium in the waste is exclusively (or nearly exclusively) trivalent chromium; and

(B) The waste is generated from an industrial process which uses trivalent chromium exlcusively (or nearly exclusively) and the process does not generate hexavalent chromium; and

(C) The waste is typically and frequently managed in non-oxidizing environments.

(ii) Specific wastes which meet the standard in paragraphs (b)(6)(i)(A), (B) and (C) (so long as they do not fail the test for the charactristic of EP toxicity, and do not fail the test for any other characteristic) are:

(A) Chrome (blue) trimmings generated by the following subcategories of the leather tanning and finishing industry; hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(B) Chrome (blue) shavings generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(C) Buffing dust generated by the following subcategories of the leather tanning and finishing industry; hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue.

(D) Sewer screenings generat the following subcategories o leather tanning and finishing try: Hair pulp/crome tan/reta finish; hair save/chrome tan/ wet finish; retan/wet finish; no house; through-the-blue; and ling.

(E) Wastewater treatment s generated by the following subca ies of the leather tanning and ing industry: Hair pulp/chrom retan/wet finish; hair save/c tan/retan/wet finish; reta finish; no beamhouse; throug blue; and shearling.

(F) Wastewater treatment generated by the following subca ies of the leather tanning and ing industry: Hair pulp/chrom retan/wet finish; hair save/c tan/retan/wet finish; and th the-blue.

(G) Waste scrap leather fro leather tanning industry, the manufacturing industry, and leather product manufacturing tries.

(H) Wastewater treatment s from the production of TiO_2 p using chromium-bearing ores chloride process.

(7) Solid waste from the extr beneficiation and processing c and minerals (including coal), ing phosphate rock and over from the mining of uranium ore

(8) Cement kiln dust waste.

(9) Solid waste which consists carded wood or wood products fails the test for the character EP toxicity and which is not a ous waste for any other reasor waste is generated by persons w lize the arsenical-treated woc wood products for these mater tended end use.

(c) Hazardous wastes which empted from certain regulati hazardous waste which is gener a product or raw material tank, a product or raw materia port vehicle or vessel, a product material pipeline, or in a manu ing process unit or an associat waste-treatment-manufacturing is not subject to regulation Parts 262 through 265, 270, 2 124 of this chapter or to the r

B) The materials contain toxic constituents listed in Appendix VIII of rt 261 and these constituents are ordinarily found in raw materials products for which the materials ostitute (or are found in raw materi- or products in smaller quantities) and are not ring the recycling process; ii) The material may pose a substantial hazard to human health a e environment when recycled.

(e) *Materials that are not solid wa hen recycled.* (1) Materials are n lid wastes when they can be show be recycled by being:

(i) Used or reused as ingredients i n industrial process to make a proc ct, provided the materials are no eing reclaimed; or

(ii) Used or reused as effective sub titutes for commercial products; or

(iii) Returned to the original process rom which they are generated, with- ut first being reclaimed. The material nust be returned as a substitute for raw material feedstock, and the proc- ss must use raw materials as principal feedstocks.

(2) The following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process (described in paragraphs (e)(1)(i) through (iii) of this section):

(i) Materials used in a manner constituting disposal, or used to produce products that are applied to the land; or

(ii) Materials burned for energy recovery, used to produce a fuel, or contained in fuels; or

(iii) Materials accumulated speculatively; or

(iv) Materials listed in paragraph (d)(1) of this section.

(f) *Documentation of claims that materials are not solid wastes or are conditionally exempt from regulation.* Respondents in actions to enforce regulations implementing Subtitle C of RCRA who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so.

[50 FR 664, Jan. 4, 1985, as amended at 50 FR [illegible] Aug. 20, 1985]

§ 261.3 Definition of hazardous waste.

(a) A solid waste, as defined in § 261.2, is a hazardous waste if:

(1) It is not excluded from regulation as a hazardous waste under § 261.4(b); and

(2) It meets any of the following criteria:

(i) It exhibits any of the characteristics of hazardous waste identified in Subpart C.

(ii) It is listed in Subpart D and has not been excluded from the lists in Subpart D under §§ 260.20 and 260.22 of this chapter.

(iii) It is a mixture of a solid waste and a hazardous waste that is listed in Subpart D solely because it exhibits one or more of the characteristics of hazardous waste identified in Subpart C, unless the resultant mixture no longer exhibits any characteristic of hazardous waste identified in Subpart C.

(iv) It is a mixture of solid waste and one or more hazardous wastes listed in Subpart D and has not been excluded from this paragraph under §§ 260.20 and 260.22 of this chapter; however, the following mixtures of solid wastes and hazardous wastes listed in Subpart D are not hazardous wastes (except by application of paragraph (a)(2) (i) or (ii) of this section) if the generator can demonstrate that the mixture consists of wastewater the discharge of which is subject to regulation under either section 402 or section 307(b) of the Clean Water Act (including wastewater at facilities which have eliminated the discharge of wastewater) and:

(A) One or more of the following spent solvents listed in § 261.31—carbon tetrachloride, tetrachloroethylene, trichoroethylene—*Provided, That the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pre-treatment system does not exceed 1 part per million; or*

(B) One or more of the following spent solvents listed in § 261.31—methylene chloride, 1,1,1-trichloroethane, chlorobenzene, o-dichlorobenzene, cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, spent chlorofluorocarbon solvents—provided that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pre-treatment system does not exceed 25 parts per million; or

(C) One of the following wastes listed in § 261.32—heat exchanger bundle cleaning sludge from the petroleum refining industry (EPA Hazardous Waste No. K050); or

(D) A discarded commercial chemical product, or chemical intermediate listed in § 261.33, arising from *de minimis* losses of these materials from manufacturing operations in which these materials are used as raw materials or are produced in the manufacturing process. For purposes of this subparagraph, *"de minimis"* losses include those from normal material handling operations (e.g. spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials); minor leaks of process equipment, storage tanks or containers; leaks from well-maintained pump packings and seals; sample purgings; relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinsate from empty containers or from containers that are rendered empty by that rinsing; or

(E) Wastewater resulting from laboratory operations containing toxic (T) wastes listed in Subpart D, *Provided, That the annualized average flow of laboratory wastewater does not exceed one percent of total wastewater flow into the headworks of the facility's wastewater treatment or pre-treatment system, or provided the wastes, combined annualized average concentration does not exceed one part per million in the headworks of the facility's wastewater treatment or pre-treatment facility. Toxic (T) wastes used in laboratories that are demonstrated not to be discharged to wastewater are not to be included in this calculation.*

(b) A solid waste which is not excluded from regulation under paragraph (a)(1) of this section becomes a hazardous waste when any of the following events occur:

(1) In the case of a waste listed in Subpart D, when the waste first meets the listing description set forth in Subpart D.

(2) In the case of a mixture of solid waste and one or more listed hazardous wastes, when a hazardous waste listed in Subpart D is first added to the solid waste.

(3) In the case of any other waste (including a waste mixture), when the waste exhibits any of the characteristics identified in Subpart C.

(c) Unless and until it meets the criteria of paragraph (d):

(1) A hazardous waste will remain a hazardous waste.

(2)(i) Except as otherwise provided in paragraph (c)(2)(ii) of this section, any solid waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust, or leachate (but not including precipitation run-off) is a hazardous waste. (However, materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and hence are not hazardous wastes under this provision unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.)

(ii) The following solid wastes are not hazardous even though they are generated from the treatment, storage, or disposal of a hazardous waste, unless they exhibit one or more of the characteristics of hazardous waste: (A) Waste pickle liquor sludge generated

insure the public health. However, upon adequate documentation of the availability of reasonable substitutes which meet performance standards and environmental acceptability, the commission after public hearing by rule may modify these exclusions in whole or in part by requiring the phasing in of the substitute or substitutes.

(2) An item, product or material containing PCB may be manufactured for sale, sold for use or used in this state pursuant to an exemption certificate issued by the department under ORS 466.520. [Formerly 468.906]

466.520 Exemption certificates; applications; conditions. (1) A person may make written application to the department for an exemption certificate on forms provided by the department. The department may require additional information or materials to accompany the application as it considers necessary for an accurate evaluation of the application.

(2) The department shall grant an exemption for residual amounts of PCB remaining in electric transformer cores after the PCB in a transformer is drained and the transformer is filled with a substitute approved under ORS 466.515.

(3) The department may grant an exemption for an item, product or material manufactured for sale, sold for use, or used by the person if the item, product or material contains incidental concentrations of PCB.

(4) In granting a certificate of exemption, the department shall impose conditions on the exemption in order that the exemption covers only incidental concentrations of PCB.

(5) As used in this section, "incidental concentrations of PCB" means concentrations of PCB which are beyond the control of the person and which are not the result of the person having:

(a) Exposed the item, product or material to concentrations of PCB.

(b) Failed to take reasonable measures to rid the item, product or material of concentrations of PCB.

(c) Failed to use a reasonable substitute for the item, product or material for which the exemption is sought. [Formerly 468.909]

466.525 Additional PCB compounds may be prohibited. The commission after hearing by rule may include as a PCB and regulate accordingly any chlorinated biphenyls, terphenyls, higher polyphenyls, or mixtures of these compounds that have functional groups attached other than chlorine if that functional group on the chlorinated biphenyls, terphenyls, higher polyphenyls, or mixtures of these compounds is found to constitute a danger to public health. [Formerly 468.912]

466.530 Prohibited disposal of waste containing PCB. After October 4, 1977, a person shall not dispose of solid or liquid waste resulting from the use of PCB or an item, product or material containing or which has contained a concentration equal to or greater than 100 ppm of PCB except in conformity with rules of the commission adopted pursuant to ORS 466.005 to 466.385 and 466.890. [Formerly 468.921]

REMOVAL ON REMEDIAL ACTION TO ABATE HEALTH HAZARDS

466.540 Definitions for ORS 466.540 to 466.590. As used in ORS 466.540 to 466.590 and 466.900:

(1) "Claim" means a demand in writing for a sum certain.

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

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

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

(5) "Environment" includes the waters of the state, any drinking water supply, any land surface and subsurface strata and ambient air.

(6) "Facility" means any building, structure, installation, equipment, pipe or pipeline including any pipe into a sewer or publicly owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, above ground tank, underground storage tank, motor vehicle, rolling stock, aircraft, or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located and where a release has occurred or where there is a threat of a release, but does not include any consumer product in consumer use or any vessel.

(7) "Fund" means the Hazardous Substance Remedial Action Fund established by ORS 466.590.

(8) "Guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under ORS 466.540 to 466.590 and 466.900.

(9) "Hazardous substance" means:

(a) Hazardous waste as defined in ORS 466.005.

mission or its successor determines to be substantial and to have resulted in or to be likely to result in substantial damages to persons or property offsite.

(13) "Nuclear incident" means any occurrence, including an extraordinary nuclear occurrence, that results in bodily injury, sickness, disease, death, loss of or damage to property or loss of use of property due to the radioactive, toxic, explosive or other hazardous properties of source material, special nuclear material or by-product material as those terms are defined in ORS 453.605.

(14) "Nuclear installation" means any power reactor; nuclear fuel fabrication plant; nuclear fuel reprocessing plant; waste disposal facility for radioactive waste; and any facility handling that quantity of fissionable materials sufficient to form a critical mass. "Nuclear installation" does not include any such facilities which are part of a thermal power plant.

(15) "Nuclear power plant" means an electrical or any other facility using nuclear energy with a nominal electric generating capacity of more than 25,000 kilowatts, for generation and distribution of electricity, and associated transmission lines.

(16) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, government agency, people's utility district, or any other entity, public or private, however organized.

(17)(a) "Radioactive waste" means all material which is discarded, unwanted or has no present lawful economic use, and contains mined or refined naturally occurring isotopes, accelerator produced isotopes and by-product material, source material or special nuclear material as those terms are defined in ORS 453.605. The term does not include those radioactive materials identified in OAR 345-50-020, 345-50-025 and 345-50-035, adopted by the council on December 12, 1978, and revised periodically for the purpose of adding additional isotopes which are not referred to in OAR 345-50 as presenting no significant danger to the public health and safety.

(b) Notwithstanding paragraph (a) of this subsection, "radioactive waste" does not include uranium mine overburden or uranium mill tailings, mill wastes or mill by-product materials as those terms are defined in Title 42, United States Code, section 2014, on June 25, 1979.

(18) "Related or supporting facilities" means any structure adjacent to and associated with an energy facility, including associated transmission lines, reservoirs, intake structures, road and rail access, pipelines, barge basins, office or public buildings, and commercial and industrial structures proposed to be built in connection with the energy facility.

(19) "Site" means any proposed location of an energy facility and related or supporting facilities.

(20) "Site certificate" means the binding agreement between the State of Oregon and the applicant, authorizing the applicant to construct and operate an energy facility on an approved site, incorporating all conditions imposed by the state on the applicant and all warranties given by the applicant to the state.

(21) "Thermal power plant" means an electrical or any other facility using any source of thermal energy with a nominal electric generating capacity of more than 25,000 kilowatts, for generation and distribution of electricity, and associated transmission lines, including but not limited to a nuclear-fueled, geothermal-fueled or fossil-fueled power plant, but not including a portable power plant the principal use of which is to supply power in emergencies.

(22) "Transportation" means the transport within the borders of the State of Oregon of radioactive material destined for or derived from any location.

(23) "Utility" includes:

(a) An individual, a regulated electrical company, a people's utility district, a joint operating agency, an electric cooperative, municipality or any combination thereof, engaged in or authorized to engage in the business of generating, transmitting or distributing electric energy;

(b) A person or public agency generating electric energy from an energy facility for its own consumption; and

(c) A person engaged in this state in the transmission or distribution of natural or synthetic gas.

(24) "Waste disposal facility" means a geographical site in or upon which radioactive waste is held or placed but does not include a site at which radioactive waste used or generated pursuant to a license granted under ORS 453.635 is stored temporarily, a site of a thermal power plant used for the temporary storage of radioactive waste from that plant for which a site certificate has been issued pursuant to this chapter or a site used for temporary storage of radioactive waste from a reactor operated by a college, university or graduate center for research purposes and not connected to the Northwest Power Grid.

(b) Any substance defined as a hazardous substance pursuant to section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act, P.L. 96-510, as amended, P.L. 96-510 and P.L. 99-499.

(c) Oil.

(d) Any substance designated by the commission under ORS 466.553.

(10) "Natural resources" includes but is not limited to land, fish, wildlife, biota, air, surface water, groundwater, drinking water supplies and any other resource owned, managed, held in trust or otherwise controlled by the State of Oregon or a political subdivision of the state.

(11) "Oil" includes gasoline, crude oil, fuel oil, diesel oil, lubricating oil, oil sludge or refuse and any other petroleum-related product, or waste or fraction thereof that is liquid at a temperature of 60 degrees Fahrenheit and pressure of 14.7 pounds per square inch absolute.

(12) "Owner or operator" means any person who owned, leased, operated, controlled or exercised significant control over the operation of a facility. "Owner or operator" does not include a person, who, without participating in the management of a facility, holds indicia of ownership primarily to protect a security interest in the facility.

(13) "Person" means an individual, trust, firm, joint stock company, joint venture, consortium, commercial entity, partnership, association, corporation, commission, state and any agency thereof, political subdivision of the state, interstate body or the Federal Government including any agency thereof.

(14) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment including the abandonment or discarding of barrels, containers and other closed receptacles containing any hazardous substance, or threat thereof, but excludes:

(a) Any release which results in exposure to a person solely within a workplace, with respect to a claim that the person may assert against the person's employer under ORS chapter 656;

(b) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel or pipeline pumping station engine;

(c) Any release of source, by-product or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, as amended, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of the Atomic Energy Act of 1954, as amended, or, for the purposes of ORS 466.570 or any other removal or remedial action, any release of source by-product or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978; and

(d) The normal application of fertilizer.

(15) "Remedial action" means those actions consistent with a permanent remedial action taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of a hazardous substance so that they do not migrate to cause substantial danger to present or future public health, safety, welfare or the environment. "Remedial action" includes, but is not limited to:

(a) Such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches or ditches, clay cover, neutralization, cleanup of released hazardous substances and associated contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, onsite treatment or incineration, provision of alternative drinking and household water supplies, and any monitoring reasonably required to assure that such actions protect the public health, safety, welfare and the environment.

(b) Offsite transport and offsite storage, treatment, destruction or secure disposition of hazardous substances and associated, contaminated materials.

(c) Such actions as may be necessary to monitor, assess, evaluate or investigate a release or threat of release.

(16) "Remedial action costs" means reasonable costs which are attributable to or associated with a removal or remedial action at a facility, including but not limited to the costs of administration, investigation, legal or enforcement activities, contracts and health studies.

(17) "Removal" means the cleanup or removal of a released hazardous substance from the environment, such actions as may be necessary taken in the event of the threat of release of a hazardous substance into the environment, such actions as may be necessary to monitor, assess and evaluate the release or threat of release of a hazardous substance, the disposal of removed

(31) "Open Dump" means a facility for the disposal of solid waste which does not comply with these rules.

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

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

(34) "Public Waters" or "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.

(35) "Processing of Wastes" means any technology designed to change the physical form or chemical content of solid waste including, but not limited to, baling, composting, classifying, hydropulping, incinerating and shredding.

(36) "Putrescible Waste" means solid waste containing organic material that can be rapidly decomposed by microorganisms, which may give rise to foul smelling, offensive products during such decomposition or which is capable of attracting or providing food for birds and potential disease vectors such as rodents and flies.

(37) "Resource Recovery" means the process of obtaining useful material or energy from solid waste and includes:

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

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

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

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

(38) "Salvage" means the controlled removal of reusable, recyclable or otherwise recoverable materials from solid wastes at a solid waste disposal site.

(39) "Sanitary Landfill" means a facility for the disposal of solid waste which complies with these rules.

(40) "Sludge" means any solid or semisolid waste and associated supernatant generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant or air pollution control facility or any other such waste having similar characteristics and effects.

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

(a) Hazardous Wastes as defined in ORS 459.410;

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

(42) "Solid waste boundary" means the outermost perimeter (on the horizontal plane) of the solid waste at a landfill as it would exist at completion of the disposal activity.

(43) "Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

(44) "Transfer Station" means a fixed or mobile facility, normally used as an adjunct of a solid waste collection and disposal system or resource recovery system, between a collection route and disposal site, including but not limited to a large hopper, railroad gondola or barge.

(45) "Underground drinking water source" means an aquifer supplying or likely to supply drinking water for human consumption.

(46) "Vector" means any insect, rodent or other animal capable of transmitting, directly or indirectly, infectious diseases from one person or animal to another.

(47) "Waste" means useless or discarded materials.

(48) "Zone of saturation" means a three (3) dimensional section of the soil or rock in which all open spaces are filled with groundwater. The thickness and extent of a saturated zone may vary seasonally or periodically in response to changes in the rate or amount of groundwater recharge, discharge or withdrawal.

Stat. Auth.: ORS Ch. 459
Hist: DEQ 41, f. 4-5-72, ef. 4-15-72; DEQ 26-1981, f. & ef. 9-8-81; DEQ 2-1984, f. & ef. 1-16-84

Policy

340-61-015 Whereas inadequate solid waste collection, storage, transportation, recycling and disposal practices cause nuisance conditions, potential hazards to public health and safety and pollution of the air, water and land environment, it is hereby declared to be the policy of the Department of Environmental Quality to require effective and efficient solid waste collection and disposal service to both rural and urban areas and to promote and support comprehensive county or regional solid waste management planning, utilizing progressive solid waste management techniques, emphasizing recovery and reuse of solid wastes and insuring highest and best practicable protection of the public health and welfare and air, water and land resources. In keeping with the Oregon policy to retain primary responsibility for management of adequate solid waste programs with local government units (ORS 459.015) and the Environmental Quality Commission's preception of Legislative intent under Chapter 773, Oregon Laws 1979, the Commission will look for, and expect, the maximum participation of local government in the planning, siting, development and operation of needed landfills. It is expected that local government will have carried out a good faith effort in landfill siting, including but not limited to public participation and Department assistance, before requesting the Department to site the landfill. Local government will be expected to assume or provide for responsibility in the ownership and operation of any Department/Commission sited landfill under anything but an extraordinary circumstance.

Stat. Auth.: ORS Ch. 459
Hist: DEQ 41, f. 4-5-72, ef. 4-15-72; DEQ 25-1980, f. & ef. 10-2-80; DEQ 30-1980, f. & ef. 11-10-80

State of Oregon Solid Waste Plan

340-61-017 This solid waste plan is adopted as the State Plan pursuant to the Federal Resource Conservation and Recovery Act.

Attachment VI
Agenda Item L
January 22, 1988 EQC Meeting

RULEMAKING STATEMENTS

STATEMENT OF NEED FOR RULEMAKING

Pursuant to ORS 183.335(7), this statement provides information on the Environmental Quality Commission's intended action to adopt a rule.

(1) Legal Authority

ORS 466.356 authorizes the Environmental Quality Commission to establish rules adopted under ORS 183.310 to 183.550 to implement the Notice of Environmental Hazards statute, ORS 466.360 to 466.385. In addition, ORS 468.020 authorizes the Commission to adopt such rules and standards as it considers necessary and proper in performing the functions vested by law in the Commission.

(2) Need for the Rule

ORS 466.360 to 466.385 creates a framework to record environmental hazard notices and associated use restrictions for each potentially hazardous site in the appropriate local government's comprehensive plan and on zoning maps. However, this statute is not self implementing rules are needed to address the issuance of environmental hazard notices, the form and content of use restrictions, modifications and recession of notices and use restrictions, and the filing of notices with local governments.

(3) Principal Documents Relied Upon in this Rulemaking

ORS 466.360 to 466.385
Oregon Laws 1987, Chapter 735
OAR Chapter 340, Divisions 11, 61 and 100 to 110
ORS 469.300
OAR Chapter 660

Land Use Consistency

The proposal appears to affect land use and to be consistent with the Statewide Planning Goals. Specifically, the proposed rules comply with Goal 6 by protecting the health, safety and environment. The proposed rules establish procedures for the Environmental Quality Commission and the Department of Environmental Quality to issue environmental hazard notices and use restrictions for sites that contain waste or contamination. Presently many of these sites are not regulated and their disturbance could negatively impact the health, safety and the environment.

These proposed rules do not appear to conflict with other goals.

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

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

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

Fiscal and Economic Impact

The proposed rules establish the procedures to issue environmental hazard notices for sites that contain waste or contamination. Use restrictions will be imposed on these sites. Any economic impact to the site owners will be indirect. The notice and use restrictions will be imposed by local governments through zoning ordinances. The ordinances may additionally restrict present and future uses and activities on sites. These restrictions might have a negative economic impact on site owners, but that impact is impossible to estimate.

The proposed rules will have a relatively minor fiscal impact on the local governments which have jurisdiction over sites receiving an environmental hazard notice. The impact will be through additional staff work that will be required to implement the requirements of the notice.

The proposed rules may have an indirect positive economic impact as well. Sites with waste or contamination will be known, regulated and not forgotten. Unregulated disturbance of these sites could significantly impact the health, safety or the environment, and could cause additional monies to be spent on cleanups.

The small business impact of the proposed rules will be insignificant unless a small business is presently operating on a site that receives an environmental hazard notice. Then, the economic impact is impossible to estimate. The proposed rules do not add compliance or reporting requirements to small businesses.

ZF2408

Attachment VII
Agenda Item L
January 22, 1988 EQC Meeting

ENVIRONMENTAL HAZARD NOTICE
ADVISORY COMMITTEE

Steve Schell, Chair
Rappleyea, Beck, Helterline,
Spencer & Roskie

Steve Krugel
Brown & Caldwell

Tom Donaca
Associated Oregon Industries

Russ Nebon
Chief Planner
Marion County Planning Department

Jean Meddaugh
Oregon Environmental Council

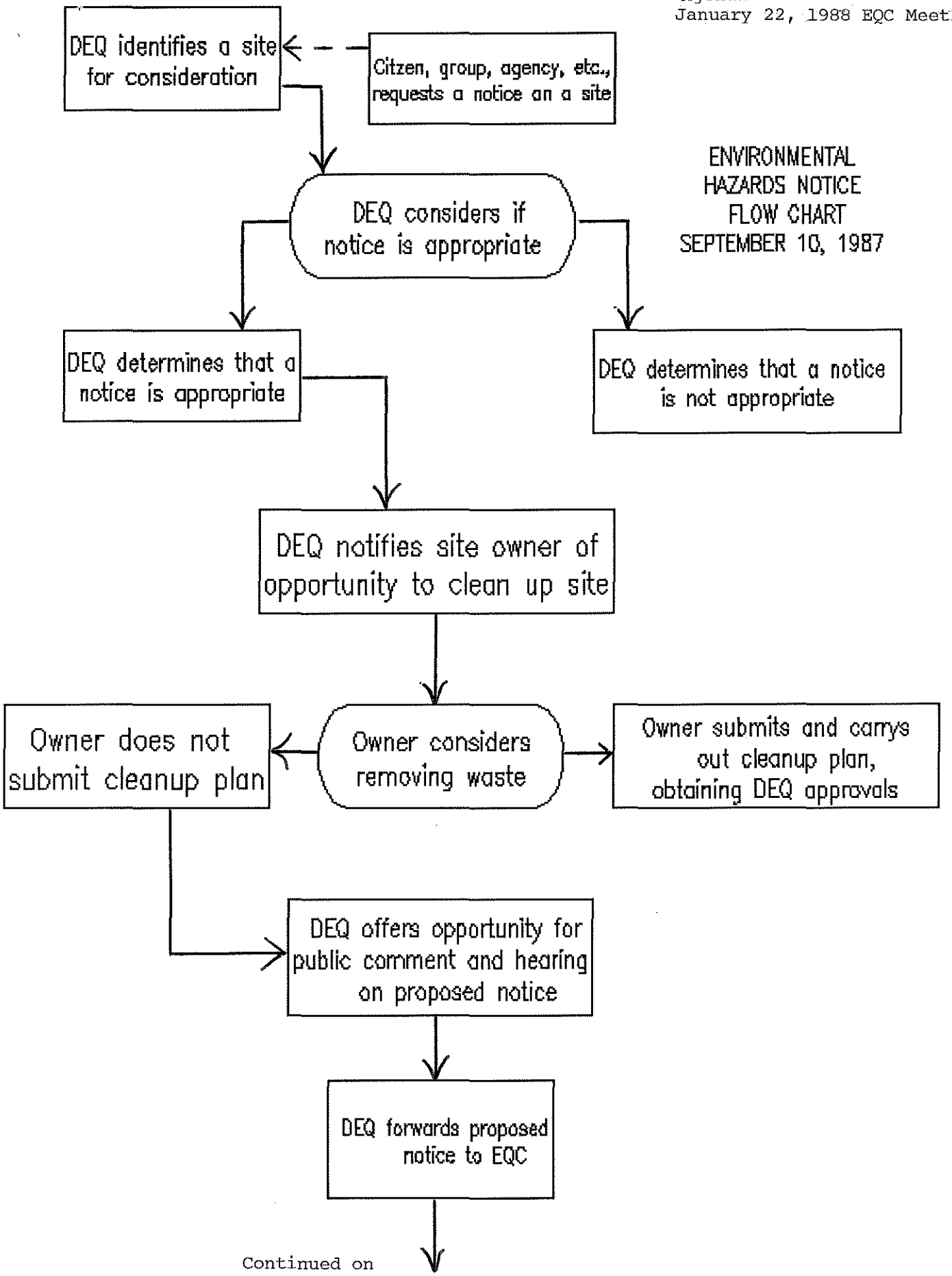
Sara Laumann
OSPIRG

Bill Webber
Valley Landfills, Inc.

Steve Bryant
Planning Director
City of Albany

William Wright
Wright and Associates

ZF2425



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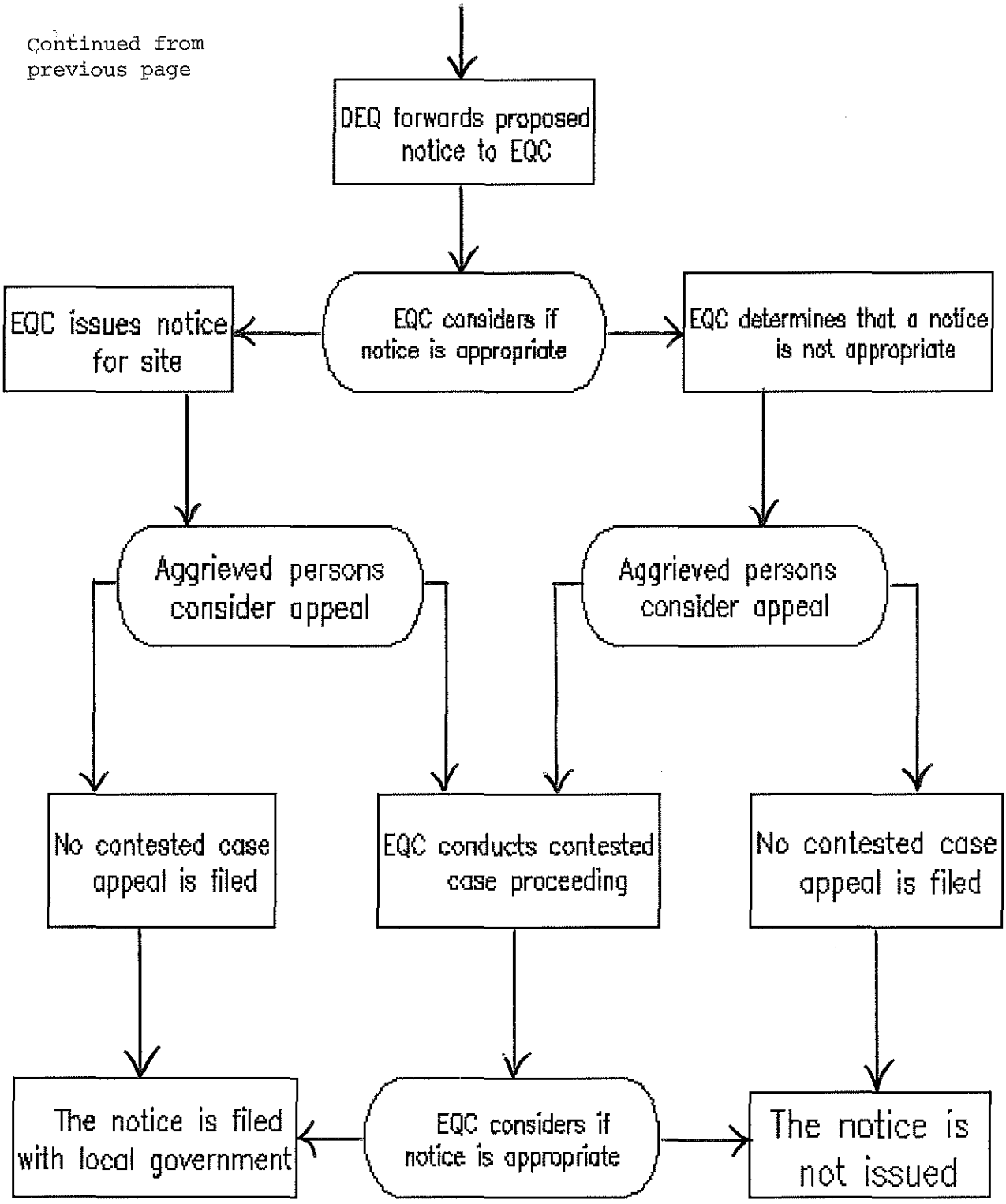

DAVE FROHNMAYER
ATTORNEY GENERAL

Attachment IX .
Agenda Item
January 22, 1988 EQC
Meeting

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

Hazardous & Solid Waste Division
Dept. of Environmental Quality
RECEIVED
AUG 25 1987

MEMORANDUM

DATE: August 24, 1987

TO: Bob Danko
DEQ

FROM: Kurt Burkholder
Assistant Attorney General

SUBJECT: Environmental Hazard Notice

This memorandum confirms my verbal advice concerning (1) the availability of contested case procedures for the listing of sites, and (2) the time by which local governments must amend comprehensive plans and land use regulations. This memorandum also addresses a third issue of whether an environmental hazard notice may be issued for property containing radioactive materials when those materials do not meet the definition of "radioactive waste" under ORS 469.300(17)..

1. Contested Case.

Functionally, an environmental hazard notice would consist of two elements--the listing of a site and the application of use restrictions to that site. The statute contemplates two different processes to implement the two functions. For the listing of sites, ORS 466.365 authorizes the EQC to list sites by rule. For use restrictions, ORS 466.370 provides that, once a site is listed, the owner shall be given notice (which notice includes the proposed use restrictions) and opportunity for a contested case hearing before the EQC. It has been recommended that the listing of a site and the determination of use restrictions be merged into one process. Out of due process concerns, I suggested that a contested case hearing be made

available for appeal of the listing of a site as well as for appeal of proposed use restrictions. The question is whether the contested case procedure is an available option as to site listing in light of section 466.365's provision for rulemaking proceedings.

My opinion is that the EQC has the discretion to employ contested case procedures in lieu of rulemaking. This is primarily because the commission is not required to use rulemaking under section 466.365 ["The commission may establish by rule. . .a list of sites. . ." ORS 466.365(1)(a) (emphasis added)]. Also, again, I think a decision to list a site subject to a contested case hearing would be more defensible against a due process challenge than would be a decision by rulemaking.

2. Plan Amendment.

ORS 466.385(1) states:

> "By the first periodic review under ORS 197.640 after development of model language under subsection 2 of this section, the governing body of a city or county shall amend its comprehensive plan and land use regulations as provided in ORS 197.610 to 197.640 to establish and implement policies regarding potentially hazardous environmental conditions on sites listed under ORS 466.365. . ."

This section is capable of two reasonable readings. The first is that it requires all local governments to amend their plans and regulations "by the first periodic review" after receipt of model language, regardless of whether an environmental notice has been issued for a site listed within the local government's jurisdiction. The second reading is that a local government need only amend its plan and regulations for "sites listed under ORS 466.365"--that is, the local government need not amend its plan and regulations until a site has been listed within its jurisdiction, even if that listing does not occur until after the first periodic review. The first reading is probably the better reading, although the second would be defensible (unless there is legislative history to the contrary, which I have not had the opportunity to research).

3. Radioactive Materials.

ORS 466.365(1)(a) (as amended by 1987 Oregon Laws chapter 735 § 25.) provides that the listing of sites:

"[M]ay include any of the following sites that contain potential hazards to the health, safety and welfare of Oregon's citizens:
(A) A land disposal site as defined by ORS 459.005;
(B) A hazardous waste disposal site as defined by ORS 466.005;
(C) A disposal site containing radioactive wastes as defined by ORS 469.300(17); and
(D) A facility."

Three questions have arisen involving materials that are radioactive but do not meet the threshold for definition as a "radioactive waste" under ORS 469.300(17): (a) whether the presence of such materials makes a site capable of listing as a "facility"; (b) whether the presence of such materials makes a site capable of listing as a "land disposal site"; and (c) whether the types of sites set forth in § 466.365(1)(a) are exclusive--that is, could the commission list a site containing radioactive materials if the site does not constitute any of the types of sites set forth in § 466.365(1)(a)?

Basically, a "facility" is any site where a hazardous substance has been released. 1987 Ore. L. ch. 735 § 1(6), "Hazardous substance", in turn, includes oil, hazardous waste, any substance defined as a hazardous substance under the federal CERCLA, and any substance designated a hazardous substance by EQC rule. Supra, § 1(9). My preliminary research indicates that radioactive materials are not considered a "hazardous substance" under CERCLA. See 42 USC § 9601(14). Thus, unless full research were to discover otherwise, or unless the EQC were to designate a radioactive material a hazardous substance by rule, a site containing radioactive materials alone could not be listed and issued an environmental hazard notice as a "facility".

A "land disposal site" under section 459.005 is a site where solid waste is disposed by landfill, dump, pit, pond, or lagoon. ORS 459.005(9). "Solid waste" is defined broadly to include all putrescible and non-putrescible wastes, but excludes hazardous waste and certain materials connected with agricultural operations. ORS 459.005(18). In contrast to the

federal Solid Waste Disposal Act, radioactive materials (using the term generically) are not expressly excluded from the definition of solid waste under ORS chapter 459. However, if the radioactive material meets the definition of radioactive waste under ORS 469.300(17), it cannot be disposed within the state. ORS 469.525. Exempted from this prohibition are wastes containing naturally occurring radioactive isotopes generated before June 1, 1981; radioactive coal ash maintained at a thermal power plant; and medical, industrial, and research laboratory waste, which may be disposed at a hazardous waste disposal facility. Id. Also, exempted from the definition of radioactive waste are uranium mill tailings, which may be disposed at an uranium mill tailings disposal site. ORS 469.300(17)(b); 465.553.

If a radioactive material is not a radioactive waste or one of the specifically-addressed exempted materials, I do not think that the section 469.525 prohibition against disposal applies to the material. Moreover, a cursory review of the statutes and a followup conversation with Dave Stewart-Smith reveals no prohibition against disposal of such materials in a solid waste land disposal site and no federal authority preempting state disposal authority. Therefore, my tentative opinion, without the benefit of exhaustive research, is that the presence of radioactive materials (not meeting the definition of radioactive waste) makes a site capable of listing as a "land disposal site" requiring an environmental hazard notice. To support this listing, the EQC or DEQ would have to find (1) that the radioactive material is a solid waste disposed in a landfill, dump, pit, pond, or lagoon, and (2) that the radioactive material poses a potential hazard to the public health, safety, and welfare.

Since I think that sites containing radioactive materials may be listed as a "land disposal site" under ORS 466.365(1)(a), I have not examined the third question of whether that section's enumeration of sites is exclusive.

KB:ys
cc: Maggie Conley
Michael Huston
Dave Stewart-Smith
0835L

NEIL GOLDSCHMIOT
GOVERNOR

Department of Environmental Quality

811 SW SIXTH AVENUE, PORTLAND, OREGON 97204-1334 PHONE (503) 229-5696

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item M, January 22, 1988 EQC Meeting

Request for Adoption of Proposed Amendments to Rules Concerning Hazardous Waste Disposal Fee to Support the Remedial Action Program

Purpose

In 1985, ORS 466.685 established a $10 per ton fee on the treatment by incineration and the land disposal of hazardous wastes and PCBs at facilities subject to a license for that purpose. The EQC adopted OAR 340-105-120 to implement procedures for collecting that fee. Senate Bill 122, which is now known as Chapter 735, Oregon Laws 1987, repeals ORS 466.685 but under a new section reestablishes the hazardous waste fee at $20 per ton, effective July 1, 1987. The Department proposes to amend OAR 340-105-120 to incorporate the fee increase required by SB 122 and other minor changes.

Background

Prior to the 1987 Legislative Session, the Department convened the Remedial Action Advisory Committee for the purpose of evaluating proposed legislation to establish a state program for the cleanup of hazardous waste sites. The Advisory Committee was composed of representatives from industry, environmental groups, and citizens.

The Advisory Committee supported the continuation of the existing hazardous waste fee but at the higher rate of $20 per ton. The 1987 Legislature approved the $20 per ton fee to support the state remedial action program established by SB 122.

The Advisory Committee and the Legislature also supported the establishment of a new fund for deposits and expenditures of this fee revenue. Chapter 735 repeals the previous fund--the CERCLA (Comprehensive Environmental Response, Compensation and Liability Act) Matching Fund and establishes the Hazardous Substances Remedial Action Fund.

The CERCLA Matching Fund could be used only to: (1) provide the state match for federal Superfund grants and (2) investigate potential Superfund sites. The new Hazardous Substances Remedial Action Fund may be used to support the administration of the remedial action program and for conducting or overseeing cleanups at federal superfund sites and at any other contaminated site.

Discussion

The proposed rule amendment makes the following changes:

- Amends the rule to increase the fee to $20 per ton.
- Changes the implementation date to July 1, 1987.
- Renames the fee from the "Hazardous Waste Management Fee" to the "Hazardous Substances Remedial Action Fee" to be consistent with the name of the new fund.
- Updates statutory references.
- Makes minor grammatical and textual changes.

Summation

1. Senate Bill 122 repealed ORS 466.685, reestablished the fee at the higher rate of $20 per ton, and made other minor changes.

2. OAR 340-120-105, which implemented ORS 466.685, must be amended to clarify the new statutory authority conferred by Chapter 735, to increase the fee and to reflect other minor changes.

3. The Commission is authorized by Section 4 of Chapter 735 to adopt rules to implement the law.

Director's Recommendation

Based upon the findings in the summation above, it is recommended that the Commission adopt the proposed amendments to the rule concerning the Hazardous Substances Remedial Action Fee, OAR 340-105-120, as presented in Attachment I.

Fred Hansen

Attachments:

I. Draft rule amendments, OAR 340-105-120
II. Statement of Need for Rulemaking
III. Statement of Land Use Consistency
IV. Oregon Revised Statutes 466.685
V. Senate Bill 122, Section 18 (also known as Chapter 735, Oregon Laws 1987) establishing the $20/ton fee
VI. Hearing officer's report
VII. Response to Comment Summary

Allan Solares
229-5071
December 28, 1987

Attachment I
Agenda Item M
January 22, 1988 EQC Meeting

PROPOSED AMENDMENTS TO OREGON ADMINISTRATIVE RULE 340-105-120

(1) {Except as provided by subsection (2) of this section, b}Beginning {January 1, 1986} July 1, 1987, every person who operates a facility for the purpose of disposing of hazardous waste or polychlorinated biphenyl (PCB) that is subject to interim status or a {license} permit issued under ORS {459.410 to 459.450 and 459.460 to 459.690} Chapter 466 shall pay a monthly {h}Hazardous {waste management} Substances Remedial Action {f}Fee by the 45th day after the last day of each month in the amount {of $10 per dry weight} authorized by statute. Chapter 735 Oregon Laws of 1987 authorizes a fee of $20 per ton of hazardous waste or PCB brought into the facility for treatment by incinerator or for disposal by landfill at the facility. For purposes of calculating the Hazardous {Waste Management} Substances Remedial Action Fee required by this section, the facility operator does not need to include hazardous waste resulting from on-site treatment processes used to render a waste less hazardous or reduced in volume prior to land disposal.

{(2) When the balance in the Comprehensive Environmental Response, Compensation and Liability Act Matching Fund reaches $500,000 minus any moneys approved for obligation under subsection 3 of Section 20 of Chapter 733, Oregon Laws 1985, payment of fees required by subsection (1) of this section shall by suspended upon written notice from the Department. Payment of fees shall resume upon written notice from the Department when approval of funds by the Legislative Assembly or the Emergency Board decrease the balance in the fund to $150,000 or lower.}

{(3)} (2) The term "hazardous waste" means any hazardous waste as defined by rules adopted by the Environmental Quality Commission and includes any hazardous waste as defined in OAR 340 - Division 100 or 101 or 40 CFR Part 261 handled under the authority of interim status or a management facility permit.

{(4)} (3) The term "PCB" shall have the meaning given to it in OAR 340 - Division 110.

{(5)} (4) The term "ton" means 2000 pounds {.}

{(6) The term "dry weight ton" as used in Chapter 733, Oregon Laws 1985} and means the weight of hazardous waste or PCBs in tons as determined at the time of receipt at a hazardous waste or PCB management facility. The term {dry weight} "ton" shall include the weight of any containers treated or disposed of along with the hazardous wastes being held by the container.

{(7)} (5) In the case of a fraction of a ton, the fee imposed by subsection (1) of this section shall be the same fraction multiplied by {of} the amount of such fee imposed on a whole ton.

{(8)} (6) Every person subject to the fee requirement of subsection 1 of this section shall record the actual weight of any hazardous waste and PCB received for treatment by incinerator or disposal by landfilling in tons at the time of receipt. Beginning January 1, 1986, the scale shall be licensed in accordance with ORS Chapter 618 by the Weights and Measures Division of the Department of Agriculture.

{(9)} (7) Accompanying each monthly payment shall be a detailed record identifying the basis for calculating the fee that is keyed to the monthly waste receipt information report required by OAR 340-104-075(2)(c) and (2)(d).

{(10)} (8) All fees shall be made payable to the Department of Environmental Quality. All fees received by the Department of Environmental Quality shall be paid into the State Treasury and credited to the [Comprehensive Environmental Response, Compensation and Liability Act Matching Fund,] Hazardous Substances Remedial Action Fund.

Attachment II
Agenda Item M
January 22, 1988 EQC Meeting

Before the Environmental Quality Commission
of the State of Oregon

In the Matter of Amending OAR 340-105-120	}	Statement of Need for Rule Amendment and Fiscal and Economic Impact.

1. Statutory Authority

In 1985, ORS 466.685 established a $10 per ton fee on the treatment by incineration and the land disposal of hazardous wastes and PCBs at facilities subject to a license for that purpose. The EQC adopted OAR 340-105-120 to implement that fee.

Section 27 of Senate Bill 122, Chapter 735, Oregon Laws 1987, repeals ORS 466.685. However section 18 reestablishes the fee at $20 per ton.

Section 4 authorizes the commission to adopt any rules necessary to carry out Chapter 735.

2. Statement of Need

The Legislature has already authorized the fee increase to $20 per ton. The amendments also reflect minor changes made to the original statute (ORS 466.685) for purposes of clarification or accuracy.

3. Principal Documents Relied Upon

Oregon Revised Statutes, Chapter 735, Oregon Laws 1987.
Oregon Administrative Rules, Chapter 340, Division 105.

4. Fiscal and Economic Impact

The fee will have an impact on agencies, local government, and businesses that generate hazardous waste or PCBs and must pay the fee to dispose or incinerate their hazardous wastes at Oregon's sole hazardous waste disposal facility. The fee is expected to generate approximately $5 million during the 1987-89 biennium. However the fiscal and economic impact of the fee was imposed by the Legislature's passage of Senate Bill 122 which mandates the payment of this fee at the rate of $20 per ton. This rule amendment simply brings the existing rule into conformance with the Legislature's decision.

Attachment III
Agenda Item M
January 22, 1988 EQC Meeting

Before the Environmental Quality Commission
of the State of Oregon

In the Matter of Amending OAR 340-105-120	}	Land Use Consistency

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

Attachment IV
Agenda Item M
January 22, 1988 EQC Meeting

OREGON REVISED STATUTES (CHAPTER 733 OREGON LAWS OF 1985)

ORS 466.685 Monthly fee; suspension of fees; notice of suspension or resumption of fees. (1) Except as provided by subsection (2) of this section, beginning on January 1, 1986, every person who operates a facility for the purpose of disposing of hazardous waste or PCB that is subject to interim status or a license issued under ORS 466.005 to 466.385 and 466.890 shall pay a monthly hazardous waste management fee by the amount of $10 per dry-weight ton of hazardous waste or PCB brought into the facility for treatment by incinerator or for disposal by landfill at the facility. Fees under this section shall be calculated in the same manner as provided in section 231 of the federal Comprehensive and Liability Act. P.L. 96-510, as amended.

(2) When the balance in the Comprehensive Environmental Response, Compensation and Liability Act Matching Fund established in ORS 466.690 reaches $500,000 minus any moneys approved for obligation under ORS 466.690 (3), payment of fees under subsection (1) of this section shall be suspended. Payment of fees shall resume upon approval of funds by the Legislative Assembly or the Emergency Board to the department sufficient to decrease the balance in the fund to $150,000 or lower.

(3) If payment of fees is to be suspended or resumed under subsection (2) of this section, the department shall give reasonable notice of the suspension or resumption to every person obligated to pay a fee under subsection (1) of this section. (1985 c.733 S.9)

Attachment V
Agenda Item M
January 22, 1988 EQC Meeting

SENATE BILL 122 (CHAPTER 735 OREGON LAWS OF 1987)

SECTION 18. Beginning on July 1, 1987, every person who operates a facililty for the purpose of disposing of hazardous waste or PCB that is subject to interim status or a license issued under ORS 466.005 to 466.385 and 466.890 shall pay a monthly hazardous waste management fee by the 45th day after the last day of each month in the amount of $20 per ton of hazardous waste or PCB brought into the facility for treatment by incinerator or for disposal by landfill at the facility.

NEIL GOLDSCHMIDT
GOVERNOR

Department of Environmental Quality

811 SW SIXTH AVENUE, PORTLAND, OREGON 97204-1334 PHONE (503) 229-5696

Attachment VI
Agenda Item M
1/22/88 EQC Meeting

MEMORANDUM

To: Environmental Quality Commission

From: Allan Solares, Hearing Officer

Date: December 28, 1987

Subject: Agenda Item No.___, January 22, 1988, EQC Meeting

Hearing Officer's Report on Proposed Amendments to Rules Concerning Hazardous Waste Disposal Fee to Support the Remedial Action Program

Pursuant to public notice, a public hearing was held on December 2, 1987 at 9 am, in the Department's conference room at 811 S.W. Sixth Avenue. The purpose of the hearing was to receive testimony concerning proposed amendments to the hazardous waste rule -- OAR 340-105-120 -- that implements the fee on the disposal or incineration or hazardous substances and PCBs at permitted disposal facilities.

Tom McCue, Environmental Programs Manager for Tektronix, Inc., submitted written testimony which was also signed by Richard D. Zweig, General Manager of Chem-Security Systems, Inc..
Tom McCue's written and oral testimony stated that the Advisory Committee, which assisted DEQ in drafting Senate Bill 122, had strongly supported a package of three funding mechanisms. This package included not only the $20 per ton fee identified in this rule amendment, but also an importation tax on hazardous substances and petroleum (the latter requiring a constitutional amendment), and also a landfill fee. He further urged the department, and offered his support, to the pursuit of additional funding to adequately fund cleanup of toxic waste sites in Oregon.

This was the only oral or written testimony received.

Attachments: 1. Tom McCue and Richard Zweig

December 2, 1987

Testimony: Hazardous Waste Fee Increase

Good Morning. For the record, my name is Tom McCue. I am here to comment on funding mechanisms that were supported by the Remedial Action Advisory Committee of which I was a member. The Advisory Committee assisted the Remedial Action staff of DEQ in drafting SB122 the enabling legislation for todays proposed fee increase.

From the first meeting September 26, 1986, we discussed funding issues. Questions raised were: How much money is needed for site clean-up in Oregon, who should pay for abandoned sites, is the fee structure broad based? Most of the questions could not be answered completely. However, after several months of meeting the Advisory Committee agreed on three funding mechanisms. All three funding mechanisms were part of a package designed to support a strong program and create a clean-up fund. Any one funding mechanism standing alone would not provide sufficient funds nor would it seek funds from all contributing parties.

The three funding mechanisms approved by the Advisory Committee are the following:

- "CSSI increase from $10 to $20 was supported... with one vote in opposition

- A tax on hazardous substances including a petroleum based tax requiring a constitutional amendment, plus taxes on other chemicals, at the distributor levels, was supported unanimously

- A landfill fee was supported strongly with one (vote in) opposition" [a]

Additional support outside of the Advisory Committee was provided by various members of the committee and both environmental and industry groups. Ospirg sponsored a bill during the 1987 legislative session calling for a tax on hazardous substances. Associated Oregon Industries, American Electronics Association and individually, Tektronix, Inc. provided testimony in support of a landfill tipping fee.

[a]RAAC meeting minutes January 14, 1987

While it is correct that the Remedial Action Advisory Committee approved and supported the fee increase established in SB122, the CSSI fee increase was part of a package. All three funding mechanisms listed here are part of that package and are needed to adequately fund clean-ups in Oregon. The department will find strong support for a landfill tipping fee and a hazardous substance tax by both industry and environmental groups. The department will not find support if you stop with one funding mechanism which assesses fees against companies who are managing waste responsibility. I urge the department to continue the pursuit of additional funding for Oregon's Superfund and offer my support of those efforts.

Thomas C. McCue
Environmental Programs Mgr.
Tektronix, Inc.

Richard D. Zweig
General Manager
Chem-Security Systems, Inc.

Enclosures

MINUTES
Remedial Action Advisory Committee
Meeting
January 14, 1987
Room 400, 811 SW 6th Ave, Portland

Attending:	Staff:
Debbie Bailey (guest)	Carolee Cummings
Dan Cooper, CHAIR	Alan Goodman
Deborah Gallagher	Allan Solares
Bob Gilbert	
David Harris	
Keith Henson	
Sara Laumann	
Tom McCue	
Jean Meddaugh	
Tom Novick	
Jack Payne	
Larry Svart	
Ian Tinsley	
Robert Wesley	

Chairman Cooper opened the meeting at 9:00 am. The minutes of the December 10, 1986 meeting were approved as written.

David Harris asked that materials be sent out earlier. Staff concurred.

Chairman Cooper commenced discussion with Section 10, "Cleanup Levels". Goodman affirmed that public participation would be provided for, in response to Meddaugh's inquiry. In response to Payne's question, Goodman specified that cleanup requirements could be identified in the rules. The DEQ Proposal for this section was discussed and amended with the following changes:

-- change "may" to "shall" and
-- add "within one year" of the effective date of the Act.

Vote was 9 - 4 with 1 abstention. (Note: Staff has since rewritten this proposal for clarity and consistency. See attachment.)

Section 11, "Liability", was discussed next. Solares explained changes made by DEQ; he also explained the Florida Inland Protection Trust Fund and its provisions for amnesty from liability, on self-reported sites, during a 15 month grace period.

A proposal to create a cleanup fund, which would be available on a no-fault or a limited liability basis, was supported unanimously.

A proposed grace period for such an amnesty cleanup fund of no more than 2 years-- taking into account reporting requirements and capability to report-- was accepted unanimously, except for one abstention.

Retention of liability for negligence, misconduct, etc. during the grace period was also accepted unanimously, except for one abstention.

The liability provisions applicable after the grace period or for ineligible sites during the grace period, still needs to be discussed.

The following fees were approved as fund sources for a cleanup fund:

-- CSSI increase from $10 to $20 was supported strongly with one vote in opposition.
-- A tax on hazardous substances including a petroleum-based tax requiring a constitutional amendment, plus taxes on other chemicals, at the supplier or distributor levels, was supported unanimously.
-- A landfill fee was supported strongly with one opposition.

Chairman Cooper requested staff to obtain a reading on the Department's position on the concept of an Amnesty cleanup fund. Staff concurred.

Meeting was adjourned at 12:00 noon.

The next meeting will be held Thursday, January 29, 1987, from 9:00am - 2:00pm. Lunch will be provided. The remaining items listed on the January 14, 1987 Agenda will be discussed at the next meeting.

NEIL GOLDSCHMIDT
GOVERNOR

Department of Environmental Quality

811 SW SIXTH AVENUE, PORTLAND, OREGON 97204-1334 PHONE (503) 229-5696

Attachment VII
Agenda Item
1/22/88 EQC Meeting

MEMORANDUM

To: Environmental Quality Commission

From: Allan Solares

Date: December 28, 1987

Subject: Response to Comment Summary

Proposed Amendments to Hazardous Waste Disposal Fee

COMMENT

The sole comment received stated that this fee was but one of three revenue sources supported by the Advisory Committee which assisted DEQ to draft Senate Bill 122. A copy of the Advisory Committee's minutes were attached which support this statement. The commentor urged the DEQ to seek additional revenue to adequately fund cleanup of toxic waste sites in Oregon.

No changes to the proposed rule were suggested by the commentor.

DEPARTMENT'S RESPONSE

The department sought and won approval for this $20 per ton disposal fee, however, the department recognizes that additional revenue will be needed from a new source(s) to adequately support Oregon's remedial action program.

Allan Solares
229-5071
12/28/87

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item O, January 22, 1988, EQC Meeting

Request For Issuance Of An Environmental Quality Commission Compliance Order For The City Of Lowell, Oregon.

Background and Problem Statement

The Department is requesting that the Commission issue a compliance order to the City of Lowell. The compliance order would be used to resolve National Pollution Discharge Elimination System (NPDES) permit compliance problems and address other policy issues related to the Federal Water Pollution Control Act Amendments of 1972 (the Clean Water Act).

The City of Lowell operates a sewage treatment plant that is located within its city limits directly adjacent to Dexter Reservoir. The plant is approximately 35 years old and consists of a bar screen, Parshall flume, Imhoff tank, trickling filter, secondary clarifier, and a chlorine contact basin. The City currently discharges its treated effluent to Dexter Reservoir under NPDES permit number 3680-J (Attachment A). The existing permit was issued on May 16, 1983 and it expires on May 31, 1988.

As described in Attachment B, the City of Lowell has had difficulty meeting its NPDES effluent discharge requirements due to the age and condition of the sewage treatment plant and due to the occurrence of high inflow and infiltration into the sewage collection system. During 1985-86 the City violated its monthly average biochemical oxygen demand (BOD) concentration limit (30 mg/l) 17 out of 24 times, or 71% of the time. BOD loading limits were also exceeded during this time period. Total Suspended Solids (TSS) concentration limits were not exceeded during 1985-86 but loading limits were. Fecal coliform limits were exceeded during 1985-86 as well but on an infrequent basis. The City has had a better record in meeting its NPDES permit requirements during 1987. Concentration limits for BOD and SS have

not been exceeded. Loading limits for BOD and SS, however, were exceeded during February and March. Notices of Violation have been sent in the past but the city was actively involved in planning for construction of new sewage treatment facilities and, therefore, no further enforcement action was taken (Attachment C).

The City of Lowell violates provisions of the Clean Water Act by exceeding secondary treatment limits. In order to address such violations and to achieve the water quality objectives of the Act, the Environmental Protection Agency (EPA) introduced the National Municipal Policy (NMP) in 1984. The NMP is designed to bring all noncomplying Publicly Owned Treatment Works (POTWs) into compliance with the Clean Water Act as soon as possible, but no later that July 1, 1988. If the July 1, 1988 deadline cannot be met, the EPA and the State are to work with the affected municipality to ensure that they are on enforceable schedules for achieving compliance. Additionally, interim measures are to be taken to abate water pollution while working towards achieving compliance.

The City has initiated work to achieve compliance with its NPDES permit as required by the Clean Water Act. They have prepared a wastewater facilities plan that reviews the problems of their existing facilities and outlines various alternatives for adequately collecting, treating, and disposing of their sewage. The draft facilities plan is currently under review by the Department.

In conjunction with the planned upgrade and expansion of the existing treatment facilities outlined in the draft facilities plan, the City will be required to remove its effluent discharge from Dexter Reservoir. This is consistent with Oregon Administrative Rules 340-41-026(4) which states that "no discharges of waste to lakes or reservoirs shall be allowed without specific approval of the Environmental Quality Commission."

The City proposes to finance the alternative recommended in the final facilities plan through a combination of EPA and Oregon Economic Development Department (EDD) grants and local funding. They have submitted an application for EDD assistance and are awaiting announcement of the EDD awards. Once their facilities plan is accepted by the Department, they can prepare engineering plans and specifications for the Department's review and then apply for an EPA construction grant. EPA has advised the Department, however, that to qualify for a construction grant, the City must be under a compliance order since construction activities would extend beyond the July 1, 1988 deadline listed in the National Municipal Policy.

The City of Lowell has completed a project implementation schedule as part of the facilities planning process. The implementation schedule provides a reasonable timetable for completing planning, design, and construction. The schedule leads to the goal of obtaining operational level of acceptable sewage treatment and disposal facilities by December 1, 1989.

Alternatives and Evaluation

For the Commission's consideration, the Department has identified the following alternatives that would address the City of Lowell's noncompliance with the Clean Water Act:

1. Direct the Department to renew the NPDES permit and include interim and final effluent limits and a compliance schedule that identifies dates to complete specific tasks that would bring the City into compliance.

Alternative 1 would not involve an administrative order or further EQC action. The NPDES permit would be used as a compliance mechanism and the City would be expected to meet the compliance schedule and conditions outlined in the permit.

The Department has been advised by EPA, however, that for minor municipal facilities, compliance conditions, schedules, and interim limits for meeting requirements of the Clean Water Act should be contained in Administrative Orders. EPA also maintains that the National Municipal Policy prevents them from awarding construction grants to municipalities where construction of sewage treatment facilities would take place after July 1, 1988 unless the municipality is covered by an Administrative Order.

2. Direct the Department to litigate against the City of Lowell pursuant to ORS 468.035 and ORS 454.020 for noncompliance and have a federal or state court issue a court order that would include compliance conditions and a schedule that extends beyond July 1, 1988.

The Department staff do not recommend pursuing this alternative. It implies that the City of Lowell is being uncooperative and it would not necessarily expedite compliance. The City of Lowell has been conscientiously working towards a solution to its sewage treatment and disposal problems. They have submitted a draft facilities plan that addresses their sewerage needs and outlines an implementation schedule for coming into compliance with the Clean Water Act. They are also pursuing funding assistance and will contribute local funds in order to pay for the required wastewater treatment facilities.

3. Issue a Stipulated and Final Order to the City of Lowell. The Order would contain interim effluent limitations, a schedule of milestones for bringing the City into compliance, and penalties for failure to meet milestones by the specified dates in the compliance schedule (Attachment D).

The Department staff recommends Alternative 3 for the following reasons: (a) it recognizes the Commission's authority to enforce water quality objectives of the State under ORS 468.090 et. seq., (b) this approach has been used in the past to address similar water quality violations by other municipalities, (c) the Commission Order recognizes that the terms of the existing NPDES permit cannot be met, (d) Commission Orders have been acceptable to EPA in the past with regard to the National Municipal Policy and compliance with the Clean Water Act, (e) the City of Lowell is agreeable to the Order, and (f) the Order would be a positive reinforcement to the City's ongoing sewer system planning efforts and commit the city to attaining the necessary long-term solution to its sewage treatment and disposal needs in a timely manner.

Summation

1. Due to the age and condition of its sewage treatment plant and due to the occurrence of large quantities of inflow and infiltration into the sewage collection system, the City of Lowell frequently violates provisions of the Clean Water Act by failing to meet its NPDES permitted discharge limits.

2. The City is unable to meet the July 1, 1988 deadline for achieving secondary treatment standards as required by the National Municipal Policy.

3. The City of Lowell has submitted a draft facilities plan that outlines wastewater treatment and disposal alternatives and is pursuing federal and local funding to pay for the alternative recommended in the final facilities plan.

4. Each alternative outlined in this report for addressing Lowell's compliance problems involves setting interim and final effluent limits and establishing a compliance schedule. The first alternative would do this through the NPDES permit process; the second alternative, through litigation and a court order; and the third alternative, through an EQC order.

5. The Department staff prefers the issuance of an EQC order since it would: address EPA's concerns with regard to noncompliance and the National Municipal Policy, address the Department's concerns about continued discharge to Dexter Reservoir, and act as a positive commitment by the City to adequately treat and dispose of its municipal sewage.

Directors Recommendation

Based on the Summation, the Director recommends that the Commission issue the Compliance Order as discussed in Alternative 3 by signing the document prepared as Attachment D.

Fred Hansen

Attachments

A. NPDES permit number 3680-J
B. Summary of NPDES permit violations Jan. 1985 to Oct. 1987
C. Past Notices of Violation
D. Proposed Environmental Quality Commission Compliance Order

Ken Vigil:c
WC2869
229-5622
December 30, 1987

Permit Number: 3680-J
Expiration Date: 5-31-88
File Number: 51447

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

WASTE DISCHARGE PERMIT

Department of Environmental Quality
522 Southwest Fifth Avenue, Portland, OR
Mailing Address: Box 1760, Portland, OR 97207
Telephone: (503) 229-5696

Issued pursuant to ORS 468.740 and The Federal Clean Water Act

ISSUED TO:

City of Lowell
P. O. Box 347
Lowell, OR 97452

SOURCES COVERED BY THIS PERMIT:

Type of Waste	Outfall Number	Outfall Location
Treated municipal sewage	001	Dexter Reservoir

PLANT TYPE AND LOCATION:

Trickling Filter
Sewage Treatment Plant

RECEIVING SYSTEM INFORMATION:

Major Basin: Willamette
Minor Basin: Middle Fork Willamette R.
Receiving Stream: Dexter Reservoir
County: Lane
Applicable Standards: OAR 340-41-445

Issued in response to Application No. OR 202004-4 received 10-11-82.

William H. Young
William H. Young, Director

MAY 16 1983
Date

PERMITTED ACTIVITIES

Until this permit expires or is modified or revoked, the permittee is authorized to construct, install, modify, or operate a waste water collection, treatment, control and disposal system and discharge to public waters adequately treated waste waters only from the authorized discharge point or points established in Schedule A and only in conformance with all the requirements, limitations, and conditions set forth in the attached schedules as follows:

Each other direct and indirect discharge to public waters is prohibited.

This permit does not relieve the permittee from responsibility for compliance with any other applicable federal, state, or local law, rule, standard, ordinance, order, judgment, or decree.

SCHEDULE A

1. Waste Discharge Limitations not to be Exceeded After Permit Issuance.

Outfall Number 001

Parameter	Average Effluent Concentrations Monthly	Weekly	Monthly Average lb/day	Weekly Average lb/day	Daily Maximum lbs
BOD	30 mg/1	45 mg/1	25	38	50
TSS	30 mg/1	45 mg/1	25	38	50
FC per 100 m1	200	400			

Other Parameters (year-round)	Limitations
pH	Shall be within the range 6.0-9.0
Average dry weather flow to the treatment facility	.1 MGD

2. Notwithstanding the effluent limitations established by this permit, no wastes shall be discharged and no activities shall be conducted which will violate Water Quality Standards as adopted in OAR 340-41-445 except in the following defined mixing zone:

That portion of Dexter Reservoir within a radius of 150 ft. of the point of discharge.

SCHEDULE B

Minimum Monitoring and Reporting Requirements
(unless otherwise approved in writing by the Department)

Outfall Number 001 (sewage treatment plant outfall)

Item or Parameter	Minimum Frequency	Type of Sample
Total Flow (MGD)	Daily	Measurement
Quantity Chlorine Used	Daily	Measurement
Effluent Chlorine Residual	Daily	Grab
BOD-5 (influent)	2/monthly	Composite
BOD-5 (effluent)	2/monthly	Composite
TSS (influent)	2/monthly	Composite
TSS (effluent)	2/monthly	Composite
pH (influent and effluent)	3/week	Grab
Fecal Coliform (effluent)	2/monthly	Grab
Average Percent Removed (BOD & TSS)	2/monthly	Calculation
Sludge Disposed	Each Occurrence	
1) Quantity		
2) Location of disposal		

Monitoring reports shall include a record of the location and method of disposal of all sludge and a record of all applicable equipment breakdowns and bypassing.

Reporting Procedures

Monitoring results shall be reported on approved forms. The reporting period is the calendar month. Reports must be submitted to the Department by the 15th day of the following month.

SCHEDULE C

Compliance Conditions and Schedules

1. As soon as practicable, but not later than June 1, 1986, the permittee shall initiate work to remove the existing point source effluent discharge from Dexter Reservoir by September 1, 1988.

P51447 (g)

NPDES GENERAL CONDITIONS

G1. All discharges and activities authorized herein shall be consistent with the terms and conditions of this permit. The discharge of any pollutant more frequently than or at a level in excess of that identified and authorized by this permit shall constitute a violation of the terms and conditions of this permit.

G2. Monitoring records:

a. All records of monitoring activities and results, including all original strip chart recordings for continuous monitoring instrumentation and calibration and maintenance records, shall be retained by the permittee for a minimum of three years. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the permittee or when requested by the Director.

b. The permittee shall record for each measurement or sample taken pursuant to the requirements of this permit the following information: (1) the date, exact place, and time of sampling; (2) the dates the analyses were performed; (3) who performed the analyses; (4) the analytical techniques or methods used; and (5) the results of all required analyses.

c. Samples and measurements taken to meet the requirements of this condition shall be representative of the volume and nature of the monitored discharge.

d. All sampling and analytical methods used to meet the monitoring requirements specified in this permit shall, unless approved otherwise in writing by the Department, conform to the Guidelines Establishing Test Procedures for the Analysis of Pollutants as specified in 40 CFR, Part 136.

G3. All waste solids, including dredgings and sludges, shall be utilized or disposed of in a manner which will prevent their entry, or the entry of contaminated drainage or leachate therefrom, into the waters of the state, and such that health hazards and nuisance conditions are not created.

G4. The diversion or bypass of any discharge from facilities utilized by the permittee to maintain compliance with the terms and conditions of this permit is prohibited, except (a) where unavoidable to prevent loss of life or severe property damage, or (b) where excessive storm drainage or runoff would damage any facilities necessary for compliance with the terms and conditions of this permit. The permittee shall immediately notify the Department in writing of each such diversion or bypass in accordance with the procedure specified in Condition G12.

G5. The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State, or local laws, or regulations.

G6. Whenever a facility expansion, production increase, or process modification is anticipated which will result in a change in the character of pollutants to be discharged or which will result in a new or increased discharge that will exceed the conditions of this permit, a new application must be submitted together with the necessary reports, plans, and specifications for the proposed changes. No change shall be made until plans have been approved and a new permit or permit modification has been issued.

G7. After notice and opportunity for a hearing, this permit may be modified, suspended, or revoked in whole or in part during its term for cause including but not limited to the following:

a. Violation of any terms or conditions of this permit or any applicable rule, standard, or order of the Commission;

b. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts;

c. A change in the condition of the receiving waters or any other condition that requires either a temporary or permanent reduction or elimination of the authorized discharge.

G8. If a toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under Section 307(a) of the Federal Act for a toxic pollutant which is present in the discharge authorized herein and such standard or prohibition is more stringent than any limitation upon such pollutant in this permit, this permit shall be revised or modified in accordance with the toxic effluent standard or prohibition and the permittee shall be so notified.

G9. The permittee shall, at all reasonable times, allow authorized representatives of the Department of Environmental Quality:

a. To enter upon the permittee's premises where an effluent source or disposal system is located or in which any records are required to be kept under the terms and conditions of this permit;

b. To have access to and copy any records required to be kept under the terms and conditions of this permit;

c. To inspect any monitoring equipment or monitoring method required by this permit; or

d. To sample any discharge of pollutants.

G10. The permittee shall maintain in good working order and operate as efficiently as practicable all treatment or control facilities or systems installed or used by the permittee to achieve compliance with the terms and conditions of this permit.

G11. The permittee shall provide an adequate operating staff which is duly qualified to carry out the operation, maintenance and testing functions required to insure compliance with the conditions of this permit.

G12. The Department of Environmental Quality, its officers, agents, or employees shall not sustain any liability on account of the issuance of this permit or on account of the construction or maintenance of facilities because of this permit.

G13. In the event the permittee is unable to comply with all the conditions of this permit because of a breakdown of equipment or facilities, an accident caused by human error or negligence, or any other cause such an an act of nature, the permittee shall:

a. Immediately take action to stop, contain, and clean up the unauthorized discharges and correct the problem.

b. Immediately notify the Department of Environmental Quality so that an investigation can be made to evaluate the impact and the corrective actions taken and determine additional action that must be taken.

c. Submit a detailed written report describing the breakdown, the actual quantity and quality of resulting waste discharges, corrective action taken, steps taken to prevent a recurrence, and any other pertinent information.

Compliance with these requirements does not relieve the permittee from responsibility to maintain continuous compliance with the conditions of this permit or the resulting liability for failure to comply.

G14. If the permittee wishes to continue an activity regulated by the permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.

G15. All applications, reports, or information submitted to the Director shall be signed and certified in accordance with 40 CFR 122.6.

G16. This permit is not transferable except as provided in OAR 340-45-045.

G17. Definitions of terms and abbreviations used in this permit:

a. BOD means five-day biochemical oxygen demand.
b. TSS means total suspended solids.
c. mg/l means milligrams per liter.
d. kg means kilograms.
e. m^3/d means cubic meters per day.
f. MGD means million gallons per day.
g. Composite sample means a combination of samples collected, generally at equal intervals over a 24-hour period, and apportioned according to the volume of flow at the time of sampling.
h. FC means fecal coliform bacteria.
i. Averages for BOD, TSS, and Chemical parameters based on arithmetic mean of samples taken.
j. Average Coliform or Fecal Coliform is based on geometric mean of samples taken.

(GC 3-20-81)
Revised 6/16/81

CITY OF LOWELL
NPDES PERMIT VIOLATIONS
JAN 1985-TO-DEC 1986

1. Monthly average BOD concentration limit (30mg/l) exceeded 17 out of 24 times, (71%).

2. Weekly average BOD concentration limit (45mg/l) exceeded 20 out of 48 times, (42%).

3. Monthly average BOD loading limit (25#/d) exceeded 13 out of 24 times, (54%).

4. Weekly average BOD loading limit (38#/d) exceeded 10 out of 48 times, (21%).

5. Daily maximum BOD loading limit (50#/d) exceeded 8 out of 48 times, (17%).

6. Total suspended solids concentration limits were not exceeded during 1985-86; but the daily, weekly, and monthly TSS loading limits, (#/d) were exceeded 3 (6%), 4 (8%), and 3 (12.5%) times, respectively. Excessive inflow and infiltration is a major problem in Lowell.

7. Weekly and monthly average fecal coliform limits were exceeded 3 (6%) and 3 (12.5%) times, respectively.

City of Lowell
NPDES Permit Violations
January to October 1987

VIOLATION	PERMIT LIMIT
August Monthly Average	
Fecal Coliform = 255/100 ml	200/100 ml
March Monthly Average	
BOD = 65 lbs	25 lbs
TSS = 50 lbs	25 lbs
March 18, Daily Maximum	
BOD = 123 lbs	50 lbs
TSS = 91.7 lbs	50 lbs
February Monthly Average	
BOD = 200 lbs	25 lbs
TSS = 154 lbs	25 lbs
February 4, Daily Maximum	
BOD = 330 lbs	50 lbs
TSS = 250 lbs	50 lbs
February 18, Daily Maximum	
BOD = 69 lbs	50 lbs
TSS = 57 lbs	50 lbs

Regional Operations
CWP

Attachment C

51447

VICTOR ATIYEH
GOVERNOR

Department of Environmental Quality

WILLAMETTE VALLEY REGION

895 SUMMER, N.E., SALEM, OR 97310 PHONE (503) 378-8240

May 25, 1984

Mr. Stanley Denton
City of Lowell
P.O. Box 347
Lowell, OR 97452

RE: NOTICE OF VIOLATION WVR-84-65
WQ-City of Lowell; File #51447
Lane County

Dear Mr. Denton:

Your monitoring reports for the last few months have shown violations of your permit limits for BOD and suspended solids. Since you are actively pursuing a new wastewater treatment system, no further enforcement action will be taken at this time. Please remember to note on the report the causes for any violations, if they are known.

If you have any questions, please call me at 686-7601, Eugene.

Sincerely,

Mark W. Whitson
Environmental Consultant

MWW:gs
cc: Water Quality Division via Regional Operations

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
JUN 4 1984
WATER QUALITY CONTROL

REGIONAL OPERATIONS DIVISION
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
MAY 31 1984

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
JUL 16 1984
WATER QUALITY CONTROL

51447

July 13, 1984

Mr. Stanley Denton
City of Lowell
P.O. Box 347
Lowell, OR 97452

RE: NOTICE OF VIOLATION
WQ-WVR-84-86
WQ-City of Lowell
File 51447; Lane County

Dear Mr. Denton:

Your monitoring report for the month of May showed violations of the BOD and Suspended Solids limits of your waste discharge permit. Since you are actively pursuing a new wastewater treatment system, no further enforcement action will be taken at this time.

If you have any questions, please call me at 686-7601, Eugene.

Sincerely,

Mark W. Whitson
Environmental Consultant

MWW/wr

cc: Water Quality Division
cc: Regional Operations

VICTOR ATIYEH
GOVERNOR

Department of Environmental Quality

WILLAMETTE VALLEY REGION

895 SUMMER, N.E., SALEM, OR 97310 PHONE (503) 378-8240

February 25, 1985

Mr. Stan Denton, City Administrator
City of Lowell
P.O. Box 347
Lowell, OR 97452

RE: NOTICE OF VIOLATION
WQ-WVR-85-30
City of Lowell
File 51447; Lane County

Your January monitoring report showed violations of the BOD limits established in your permit. Since you are pursuing a solution to the sewage treatment plant problems, no further enforcement action will be taken at this time.

Please remember to note the cause of any violations on your monitoring report. If you have any questions, please call me at 686-7601, Eugene.

Sincerely,

Mark W. Whitson, P.E.
Environmental Engineer

MWW/wr

cc: Enforcement Section
cc: [redacted]

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
FEB 27 1985
WATER QUALITY CONTROL

May 1, 1985

Mr. Stan Denton, City Administrator
City of Lowell
P.O. Box 347
Lowell, OR 97452

RE: NOTICE OF VIOLATION
WQ-WVR-85-65
City of Lowell
File 51447, Lane County

Your March monitoring report showed a violation of your BOD permit limit. I have repeatedly asked for explanations of any violations.

Please provide a written explanation for the violation that occurred in March. Failure to provide written explanations for future violations may result in further enforcement action. This may include the assessment of civil penalties.

If you have questions, please call me.

Mark Whitson is no longer with the Agency. We anticipate hiring a replacement for his position by June 3.

Sincerely,

David St. Louis, P.E.
Region Manager

DSL/wr
cc: Water Quality Division
cc: Enforcement Section

51447

DMR VIOLATION FORM

file

PERMITTEE: Lowell

COUNTY: Lamar

WQ FILE NUMBER: 51447 1st Discharged

PERMIT #: 3680-01

REPORTING PERIOD: Feb 87 / 800 TSS

MAJOR: YES NO

VIOLATION(s): 4 Feb 330 250
18 Feb 59 57
Permit Limit Daily Max 50 50
Wkly Avg 38 38 all exceeded
Mo. Avg 25 25
Flow was 1.7 and 7 times the allowed Dslmod dry weather limits

ACTION TAKEN:
HQ working on extension for construction schedule
copy sent to permittee.

SIGNATURE D. J. Hennessy

cc: City Council
City of Lowell
PO Box 347
77452

DATE 4/6 1987

Division Copy

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY, OF THE STATE OF OREGON, Department, v. CITY OF LOWELL, Respondent.	)	STIPULATION AND FINAL ORDER No. WQ-WVR-88-02 Lane County

WHEREAS:

1. On May 16, 1983, the Department of Environmental Quality ("Department") issued National Pollutant Discharge Elimination System ("NPDES") Waste Discharge Permit Number 3680-J ("Permit") to City of Lowell, ("Respondent") pursuant to Oregon Revised Statutes ("ORS") 468.740 and the Federal Water Pollution Control Act Amendments of 1972, P.L. 92-500. The Permit authorizes the Respondent to construct, install, modify or operate waste water treatment control and disposal facilities and discharge adequately treated waste waters into Dexter Reservoir, waters of the State, in conformance with the requirements, limitations and conditions set forth in the Permit. The Permit expires on May 31, 1988.

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2. Condition 1 of Schedule A of the Permit does not allow Respondent to exceed the following waste discharge limitations after the Permit issuance date:

Outfall Number 001

	Average Effluent Concentrations		Effluent Loadings Monthly Average lb/day	Weekly Average lb/day	Daily Maximum lbs
	Monthly	Weekly			
Parameter					
BOD	30 mg/l	45 mg/l	25	38	50
TSS	30 mg/l	45 mg/l	25	38	50
FC per 100 ml	200	400			

Other Parameters (year-around)	Limitations
pH	Shall be within the range 6.0 - 9.0
Average dry weather flow to the treatment facility.	.1 MGD

3. During the time period the Permit has been in effect, Respondent has not been able to consistently meet the above effluent limitations due to the age and condition of the sewage treatment plant and due to the high inflow and infiltration into the sewage collection system.

4. Department and Respondent recognize that until new or modified waste water treatment facilities are constructed and put into full operation with discharge of waste water to the middle fork Willamette River, Respondent will continue to violate the permit effluent limitations at times. In addition, Respondent will not be able to meet the compliance schedule contained in Schedule C of the Permit which requires Respondent to remove its effluent discharge from Dexter Reservoir by September 1, 1988.

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5. Respondent presently is capable of treating its effluent so as to meet the following effluent limitations, measured as specified in the Permit:

	Average Effluent Concentrations		Effluent Loadings Monthly Average lb/day	Weekly Average lb/day	Daily Maximum lbs
	Monthly	Weekly			
Parameter					
BOD	75 mg/l	75 mg/l	70	70	70
TSS	30 mg/l	45 mg/l	60	60	60
FC per 100 ml	200	400			

Other Parameters (year-around)	Limitations
pH	Shall be within the range 6.0 - 9.0.
Average dry weather flow to the treatment facility	.1 MGD

6. The Department and Respondent recognize that the Environmental Quality Commission has the power to impose a civil penalty and to issue an abatement order for violations of conditions of the Permit. Therefore, pursuant to ORS 183.415(5), the Department and Respondent wish to settle those past violations referred to in Paragraph 3 and to limit and resolve the future violations referred to in Paragraph 4 in advance by this stipulated final order.

7. This stipulated final order is not intended to settle any violation of any interim effluent limitations set forth in Paragraph 5 above. Furthermore, this stipulated final order is not intended to limit, in any way, the Department's right to proceed against Respondent in any forum for any past or future violation not expressly settled herein.

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NOW THEREFORE, it is stipulated and agreed that:

A. The Environmental Quality Commission shall issue a final order:

(1) Requiring Respondent to comply with the following schedule:

(a) By February 1, 1988, submit to the Department a facilities plan which meets the facility plan requirements for obtaining a federal sewage construction grant.

(b) By March 1, 1988, arrange for local funding and notify the Department in writing when such has been accomplished.

(c) By June 1, 1988, submit to the Department engineering plans and specifications.

(d) By July 1, 1988, submit to the Department a complete construction grant application.

(e) By November 1, 1988, advertise for bids.

(f) By January 1, 1989, award contract for construction.

(g) By March 1, 1989, begin construction of facilities.

(h) By May 1, 1989 and August 1, 1989, submit progress reports to the Department.

(i) By October 1, 1989, complete construction of facilities.

(j) By December 1, 1989, attain operational level and meet all waste discharge limitations of the NPDES waste discharge permit in effect at that time.

(2) Requiring Respondent to meet the interim effluent limitations set forth in Paragraph 5 above until December 1, 1989.

(3) Requiring Respondent to comply with all the terms, schedules and conditions of the Permit, except those modified by Paragraph A(2) above and except for Schedule C of the Permit, or of any other

NPDES waste discharge permit issued to Respondent while this stipulated final order is in effect.

(4) Requiring Respondent, should Respondent fail to comply with the above schedule, to cease allowing new connections to Respondent's sewage collection system upon written requirement of the Department.

B. Regarding the violations set forth in Paragraph 3 and 4 above, which are expressly settled herein without penalty, Respondent and Department hereby waive any and all of their rights to any and all notices, hearings, judicial review, and to service of a copy of the final order herein. Department reserves the right to enforce this order through appropriate administrative and judicial proceedings.

C. Regarding the schedule set forth in Paragraph A(1) above, Respondent acknowledges that Respondent is responsible for complying with that schedule regardless of the availability of any federal or state grant monies.

D. Respondent acknowledges that it has actual notice of the contents and requirements of this stipulated and final order and that failure to fulfill any of the requirements hereof would constitute a violation of this stipulated final order. Therefore, should Respondent commit any violation of this stipulated order, Respondent hereby waives any rights it might have to an ORS 468.125(1) advance notice prior to the assessment of civil

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penalties. However, Respondent does not waive its rights to an ORS 468.135(1) notice of assessment of civil penalty.

RESPONDENT

Date

(Name_____)
(Title_____)

DEPARIMENT OF ENVIRONMENTAL QUALITY

Date

Fred Hansen
Director

FINAL ORDER

IT IS SO ORDERED:

ENVIRONMENTAL QUALITY COMMISSION

Date

James E. Petersen, Chairman

Date

Mary V. Bishop, Member

Date

Wallace B. Brill, Member

Date

Arno H. Denecke, Member

Date

William P. Hutchison, Jr., Member

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item P, January 22, 1988 EQC Meeting

Request for Commission Approval of Metropolitan Service District Updated Regional Waste Treatment Management Plan

Background

In response to provisions of the Clean Water Act of 1972, as amended in 1977, the Metropolitan Service District (Metro) prepared a Regional Waste Treatment Management Plan (Management Plan) for the Portland Metropolitan Area within Metro boundaries and the Metro Council adopted the plan in 1980. That plan defined the service area boundaries for collection, transport and treatment of municipal waste throughout the Metro Area which includes portions of Multnomah, Washington, and Clackamas Counties. The Management Plan was subsequently approved by the Department and was certified by the U.S. Environmental Protection Agency. The Management Plan was developed under section 208 of the Clean Water Act and is sometimes referred to as the areawide 208 Plan.

Since 1980, the Management Plan has been updated on several occasions. These updates reflected housekeeping changes in service area boundaries resulting from annexations and amended service area agreements between municipalities. The Department staff reviewed these updated plans and submitted them to the U.S. Environmental Protection Agency for recertification. The 1986 Management Plan update incorporated the Commission's Findings and Order, pursuant to ORS 454.275 declaring a Threat to Drinking Water and the Mid-Multnomah County Sewer Implementation Plan as the basis for the Regional Plan in the Mid-Multnomah County Area.

During 1987, a regional advisory committee to Metro reviewed and updated the Management Plan. Following a public hearing on the plan, the Metro Council adopted the updated plan by ordinance on October 22, 1987. The adopted plan was submitted to the Department on November 30, 1987, with a request that it be forwarded to EPA for recertification.

The 1987 Management Plan update contains a number of changes made throughout the Metro area. This Commission agenda item, however, specifically focuses on those plan changes made in the area affected by the Commission's Threat to Drinking Water action. These changes are listed below:

Fairview: Amend the collection and treatment systems maps to reflect annexations to Fairview. Wastewater is collected by Fairview and treated by Gresham.

Gresham: Amend the treatment system map to include recently annexed land to Fairview. Gresham treats Fairview's wastewater. This is established by intergovernmental agreement.

Amend the treatment system map to reflect treatment by Portland for the area bounded by S. E. 175th Avenue, 187th Avenue, Brooklyn, S. E. 182nd Avenue, S. E. Tibbets and S. E. Haig. Collection is still provided by Gresham with treatment by Portland.

Amend the collection and treatment service systems maps to reflect collection and treatment by Portland for the area bounded by N. E. Glisan, N. E. Hoyt, 162nd Avenue, S. E. Stark, and 144/146th Avenues.

Text change: add the two following documents to the text Section 3. Policies and Procedures, Item E, (pages II-4 to II-6 of the plan) : (22) The City of Gresham Wastewater Treatment Plant Facilities Plan, Brown and Caldwell, February 1985, Amended January 1986 by Black and Veatch; and (23) City of Gresham Mid-County Interceptor Sewers Facilities Plan, Brown and Caldwell, May 1987.

Multnomah Co.: Text changes: page II-20, Central Multnomah County Service District No. 3 no longer has its own treatment facilities (service provided by Portland); and Highlands Service District should be West Hills Service District No. 2, which is already listed.

Portland: Amend the treatment system map to reflect treatment by Portland for the area bounded by S. E. 175th Avenue, 187th Avenue, Brooklyn, S. E. 182nd Avenue, S. E. Tibbets and S. E. Haig. Collection is still provided by Gresham with treatment by Portland.

Amend the collection and treatment service systems maps to reflect collection and treatment by Portland for the area bounded by N. E. Glisan, N. E. Hoyt, 162nd Avenue, S. E. Stark, and 144/146th Avenues.

Text change: page II-20, delete Central Multnomah County Service District No. 3 (Inverness) as a management agency. Service is now provided by Portland.

Text change: Page II-4(E) (1) add "as amended by amendments one through eight". Should now read, "Volume 1 -- Proposed Plan as amended by amendments one through eight".

Staff has reviewed these changes and has concluded that they are minor housekeeping measures that do not conflict with the Commission's Threat to Drinking Water action.

Chapter 627, Oregon Laws 1987 (HB3101)

The 1987 Legislature passed legislation (Chapter 627 Oregon Laws 1987) which amended the "Threat to Drinking Water Statute" -- ORS 454.275 et. seq. Section 2 of this law relates to the Management Plan and reads as follows:

> Section 2. "The areawide 208 Plan, adopted pursuant to the Federal Water Pollution Control Act of 1972, PL92-500, as amended, and any sewer implementation plan approved by the Commission under ORS 454.275 to 454.350 shall be the governing master plan for the provision of sewage collection, treatment and disposal services by municipalities in an affected area. Any substantial amendment to such plan shall be submitted to and approved by the commission before taking affect."

The updated management plan is the "governing master plan" in the mid-Multnomah County affected area. The municipalities of Gresham, Multnomah County, and Portland are under Commission order to construct sewage collection, conveyance, and treatment facilities for this affected area.

The Department believes, that because the mid-Multnomah County area is under Commission order pursuant to ORS 454.275 and because the updated Management Plan includes some changes in the service area boundaries in this area, the updated plan should be submitted to the Commission for approval, even though the identified changes are housekeeping measures that would not be considered significant under Chapter 627.

Alternatives and Evaluation

The Management Plan is included as Attachment 1. This update includes an adoption and implementation ordinance together with plan text and maps. The plan text specifies areas of responsibility including treatment, transmission and collection system service areas and responsible implementing agencies. The maps describe the collection system service areas and the sewerage transmission and treatment service areas.

1. Approve the updated Management Plan. Chapter 627 requires Commission approval of substantial amendments to a Management Plan in an affected area. The Management Plan includes the mid-Multnomah County affected area. The amendments include changes to collection and treatment system service area maps for Gresham and Portland. The service area boundary changes reflect recent annexations by Fairview, Gresham and Portland and are a logical extension of sewerage service by these municipalities. These boundary changes are also consistent with the Commission's findings and order in 1986 which declared a Threat to Drinking Water in mid-Multnomah County. If approved, Chapter 627, Section 2 indicates that the plan update could take effect.

2. Do not Approve the updated Management Plan. If the updated Management Plan is not approved by the Commission as required by Chapter 627, then state law indicates that the plan can not be implemented. Such a decision would not be consistent with the Commission's 1986 findings that mid-Multnomah County is an affected area needing sewerage services to alleviate the threat to drinking water.

Summation

1. The Metro Council adopted a Regional Waste Treatment Management Plan in 1980 in response to provisions of the Clean Water Act. The plan was subsequently approved by the Department and certified by EPA.

2. The Metro Council has periodically adopted updates to the Management Plan since 1980.

3. The Metro Council updated the Management Plan on October 22, 1987 and submitted it to the Department for transmittal to EPA for recertification.

4. Chapter 627, Oregon Laws 1987 requires Commission approval of any substantial areawide 208 Plan amendments in an affected area.

5. The Metro Management Plan covers the Mid-Multnomah County affected area.

6. The plan amendments reflect minor housekeeping changes in the service area boundaries which are a logical extension of sewerage services by Gresham and Portland in the affected area.

7. The plan amendments are consistent with the Commission's Order in 1986 which includes provision for sewerage services in the Mid-Multnomah County affected area.

Director's Recommendation

Based on the findings in the Summation the Director recommends the Commission approve the updated 208 Management Plan adopted by Metro Council on October 22, 1987, and authorize the Department to submit the plan to the U.S. Environmental Protection Agency for recertification.

Lydia Taylor for
Fred Hansen

Attachments (1)
A. Metro's November 30, 1987 Management Plan Recertification Submittal (without detailed maps)

N. J. Mullane:tas
WT16
229-5284
December 29, 1987

METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

ATTACHMENT A

RECEIVED
DEC 07 1987
Water Quality Division
Dept. of Environmental Quality

November 30, 1987

Metro Council
Richard Waker
Presiding Officer
District 2
Jim Gardner
Deputy Presiding Officer
District 3
Mike Ragsdale
District 1
Corky Kirkpatrick
District 4
Tom DeJardin
District 5
George Van Bergen
District 6
Sharron Kelley
District 7
Mike Bonner
District 8
Tanya Collier
District 9
Larry Cooper
District 10
David Knowles
District 11
Gary Hansen
District 12
Executive Officer
Rena Cusma

Mr. Fred Hansen, Director
Department of Environmental Quality
811 S. W. Sixth Avenue
Portland, OR 97204-1334

Dear Fred:

Re: Annual Recertification of the
Regional Waste Treatment "208" Management Plan

Metro hereby transmits a copy of the updated Regional Waste Treatment Management Plan with accompanying staff report, updated maps and ordinance for the annual recertification process. DEQ is responsible for coordinating this process and submitting the plan to the Federal Environmental Protection Agency (EPA).

The regional plan is required under the Clean Water Act of 1977 (P.L. 95-217), and was first adopted by the Metro Council in 1980. The plan was last amended in August 1986. The plan delineates water quality management service areas within the Metro boundaries for the collection, transmission and treatment of wastewater. Local plans have been coordinated with and comply with the regional plan.

A regional advisory body, the Water Resources Policy Alternatives Committee (WRPAC), which is composed of local staff persons, reviewed and updated the plan on August 4, 1987. The Metro Council held a public hearing on the plan on October 8, 1987, and adopted the updated plan by ordinance on October 22, 1987.

If you have any questions on this matter, call Mel Huie, Senior Analyst, at 220-1186. I look forward to the timely

recertification of the wastewater treatment management plan so our region will remain eligible for federal sewer assistance grants.

Sincerely,

Rena Cusma
Executive Officer

RC/MH/gl
8560C/D2

Attachments: 1. Regional Waste Treatment Management Plan
2. Staff Report and Ordinance
3. Updated Maps

cc: Neil Mulane, DEQ
Tom Lucas, DEQ

Certified A True Copy of the Original Thereof

Clerk of the Council

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 3.02, AMENDING THE REGIONAL WASTE TREATMENT MANAGEMENT PLAN, AND SUBMITTING IT FOR RECERTIFICATION	)))))	ORDINANCE NO. 87-229

WHEREAS, Metropolitan Service District Code Section 3.02.008(a) and (b) set forth criteria for the continuing planning process to implement the Regional Waste Treatment Management Plan (Regional Plan) and for amending support documents and maps; and

WHEREAS, The Water Resources Policy Alternatives Committee (WRPAC) met on August 4, 1987, and recommends Council adoption of amendments; and

WHEREAS, Amendments needed to update the Regional Plan are based on new information from Beaverton, Fairview, Gresham, Hillsboro, Milwaukie, Clackamas County, Multnomah County, Portland, Troutdale, Tigard, Tualatin, Washington Co./Unified Sewerage Agency, Lake Oswego, Wilsonville and Sherwood showing updated local plans, maps and service agreements, and conformance of local plans with the Regional Plan; and

WHEREAS, If the Regional Plan is amended by the Council of the Metropolitan Service District, the Regional Plan will be submitted to the Oregon Environmental Quality Commission and Department of Environmental Quality and, in turn, to the U. S. Environmental Protection Agency for recertification; and

WHEREAS, Metro Code Chapter 3.02 has not been amended since August 1986; now, therefore,

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

Section 1. Chapter 3.02 of the Code of the Metropolitan Service District is amended to read as follows:

> 3.02.002 Adoption: The Regional Waste Treatment Management Plan, as amended, copies of which are on file at Metro offices, is adopted and shall be implemented as required by this chapter.

Section 2. The Regional Waste Treatment Management Plan Text and Maps (Collection System Service Areas Map, adopted August 28, 1986, and Transmission and Treatment Service Areas Map, adopted August 28, 1986), adopted by Metro's Code Section 3.02.002, are amended to read as shown in attached Exhibit A, which is hereby incorporated by reference and made a part of this Ordinance.

Section 3. The Council of the Metropolitan Service District hereby orders the Regional Plan, as amended, be submitted to the Oregon Environmental Quality Commission and Department of Environmental Quality and, in turn, to the U.S. Environmental Protection Agency for recertification.

ADOPTED by the Council of the Metropolitan Service District this 22nd day of October, 1987.

Richard Waker, Presiding Officer

ATTEST:

Clerk of the Council

MH/gl
6000C/471
10/26/87

I certify this ordinance was not vetoed by the Executive Officer.

Clerk of the Council

10/29/87

Date

STAFF REPORT

Agenda Item No. 7.3

Meeting Date Oct. 22, 1987

CONSIDERATION OF ORDINANCE NO. 87-229 FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 3.02, AMENDING THE REGIONAL WASTE TREATMENT MANAGEMENT PLAN, AND SUBMITTING IT FOR RECERTIFICATION

Date: October 8, 1987 Presented by: Mel Huie

FACTUAL BACKGROUND AND ANALYSIS

The Regional Waste Treatment Management Plan is required under the Clean Water Act of 1977 (P.L. 95-217), and was first adopted by the Metro Council in 1980. The plan was last amended in August of 1986.

An ongoing requirement of the Act is that the Plan be maintained as an accurate statement of the region's water quality management problems and the short- and long-term solutions to those problems. The Plan also delineates the region's water quality management service areas for collection, transmission and treatment. Local plans must be coordinated and comply with the regional plan prior to the allocation of federal funds for sewers, transmission lines and sewage treatment plants.

To assist in the maintenance of the plan, the Council maintains an advisory body on water quality management issues called the Water Resources Policy Alternatives Committee (WRPAC). The WRPAC is composed of individuals representing the region's cities, the three counties, sanitary districts, as well as soil and water conservation districts.

On August 4, 1987, WRPAC held its annual meeting to review the Regional Waste Treatment Plan (attached as Exhibit A). The following amendments were approved by WRPAC. The amendments are map changes which reflect updated local plans and service agreements or minor text changes. Maps highlighting the local changes will be available at the Council meetings.

Amendments to the Regional Waste Treatment Plan

1. Beaverton: Amend the collection system map to reflect newly annexed areas.

2. Fairview: Amend the collection and treatment systems maps to reflect annexations to Fairview. Wastewater is collected by Fairview and treated by Gresham.

3. Gresham: Amend the treatment system map to include recently annexed land to Fairview. Gresham treats Fairview's wastewater. This is established by intergovernmental agreement.

Amend the treatment system map to reflect treatment by Portland of the area bounded by S. E. 175th Avenue., 187th Avenue, Brooklyn, S. E. 182nd Avenue, S. E. Tibbets and S. E. Haig. Collection still provided by Gresham. Treatment by Portland.

Amend the collection and treatment service systems maps to reflect collection and treatment by Portland of the area bounded by N. E. Glisan, N. E. Hoyt, 162nd Avenue, S. E. Stark, and 144/146th Avenues.

Text change: add the two following documents to the text Section 3. Policies and Procedures, Item E, (pages II-4 to II-6 of the plan): (22) The City of Gresham Wastewater Treatment Plant Facilities Plan, Brown and Caldwell, February 1985, Amended January 1986 by Black & Veatch; and (23) City of Gresham Mid-County Interceptor Sewers Facilities Plan, Brown and Caldwell, May 1987.

4. Hillsboro: Amend the collection system map to reflect recent annexations to Hillsboro.

5. Milwaukie/ Clackamas Co.: Establish a collection system study area for the geographic area east of Milwaukie which is currently unsewered. The City of Milwaukie and Clackamas County Service District No. 1 will work with Metro and other governmental agencies and commissions to develop a plan to service the area.

The city of Milwaukie has received approval from the Portland Metropolitan Area Local Government Boundary Commission for extraterritorial extensions to serve the areas designated on the Milwaukie/Clackamas County map. The map will be available at the Council meetings. The city is in the process of forming local improvement districts to serve portions of the area.

6. Multnomah Co.: Text changes: page II-20, Central Multnomah County Service District No. 3 no longer has its own treatment facilities (service provided by Portland); and Highlands Service District should be West Hills Service District No. 2 which is already listed.

7. Portland: Amend the treatment system map to reflect treatment by Portland of the area bounded by S. E. 175th Avenue., 187th Avenue, Brooklyn, S. E. 182nd Avenue, S. E. Tibbets and S. E. Haig. Collection still provided by Gresham. Treatment by Portland.

Amend the collection and treatment systems maps to reflect collection and treatment by Portland of the area bounded by N. E. Glisan, N. E. Hoyt, 162nd Avenue, S. E. Stark, and 144/146th Avenues.

Text change: Page II-20, delete Central Multnomah County Service District No. 3 (Inverness) as a management agency. Service is now provided by Portland.

Text change: page II-4(E)(1) add "as amended by amendments one through eight." Should now read, "Volume 1 -- Proposed Plan as amended by amendments one through eight."

8. Troutdale: Amend collection and treatment systems maps to reflect recent annexations to Troutdale and Fairview. Land previously in the Troutdale service area which was annexed to Fairview now will have its sewage collected by Fairview and treated by Gresham.

9. Tigard: Amend collection system map to reflect recent annexations to Tigard.

10. Tualatin: Amend collection system map to reflect recent annexations to Tualatin and to reflect areas actually served by Tualatin.

11. Washington Co./Unified Sewerage Agency (USA): Amend collection system map to reflect recently annexed lands to cities which will now collect the sewage. Amend collection system and transmission and treatment system maps to reflect areas actually served by USA.

12. Lake Oswego: Amend collection system map to reflect areas actually served by Lake Oswego. Amend transmission and treatment system map to reflect areas actually served by Lake Oswego/Portland Tryon Creek.

13. Wilsonville: Add a footnote to collection and treatment systems maps that Wilsonville currently provides service to the I-5 Baldock Rest Area, which is outside the city limits and Urban Growth Boundary (UGB).

The area has been serviced since 1971 by agreement with the Oregon Department of Transportation (ODOT).

14. Sherwood: Amend collection system map to reflect newly annexed lands.

15. Metro: Metro Code:
3.02.002 Adoption: delete "June 1986" and replace with "as amended."

WRPAC recommends to the Metro Council that the package of amendments be approved, and that the amended plan be forwarded to the Oregon Environmental Quality Commission and Department of Environmental Quality and, in turn, the Federal Environmental Protection Agency for recertification.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends the Council adopt Ordinance No. 87-229.

MH/gl
6000C/471-4
09/28/87

Regional Waste Treatment Management Plan

October 1987

METRO

REGIONAL WASTE TREATMENT MANAGEMENT PLAN

Adopted October 22, 1987

CONTENTS

I. Adoption & Implementation Ordinance

METRO CODE

CHAPTER 3.02

WASTE TREATMENT MANAGEMENT PLAN

SECTIONS:

3.02.001 Authority and Purpose:

(a) This chapter is adopted pursuant to 268.390(1)(b) and 268.390(2) for the purpose of adopting and implementing the Regional Waste Treatment Management Plan, hereinafter referred to as the "Regional Plan." The Regional Plan shall include the Regional Waste Treatment Management Plan Text, Sewerage Transmission and Treatment Service Areas Map and Collection System Service Areas Map. (Amended by Ordinance No. 84-184)

(b) These rules shall become effective forty-five (45) days after the date of adoption. As a result of Metro's continuing "208" Water Quality Program, the Council hereby designates water quality and waste treatment management as an activity having significant impact upon the orderly and responsible development of the region. (Adopted by CRAG Rule; amended by Ordinance No. 80-102, Sec. 1; amended by Ordinance No. 84-184, Sec. 1)

3.02.002 Adoption: The Regional Waste Treatment Management Plan, as amended, copies of which are on file at Metro offices, is adopted and shall be implemented as required by this chapter. (Adopted by CRAG Rule; amended by Ordinance No. 80-102, Sec. 2; Ordinance No. 86-206)

3.02.003 Conformity to the Regional Plan:

(a) Management agencies shall not take any land use related action or any action related to development or provision of public facilities or services which are not in conformance with the Regional Plan.

(b) For purposes of this chapter "management agencies" shall mean all cities, counties and special districts involved with the treatment of liquid wastes within the Metro jurisdiction. (Adopted by CRAG Rule; amended by Ordinance No. 80-102, Sec. 3)

3.02.004 Review of Violations of the Regional Plan:

(a) Any member management agency, interested person or group may petition the Council for review of any action, referred to in 3.02.003 of this chapter, by any management agency within thirty (30) days after the date of such action.

(b) Petitions filed pursuant to this section must allege and show that the subject action is of substantial regional significance and that the action violates the Regional Plan.

(c) Upon receipt of a petition for review, the Council shall decide, without hearing, whether the petition alleges a violation of the Regional Plan and whether such violation is of substantial regional significance and, if so, shall accept the petition for review. The Council shall reach a decision about whether to accept the petition within thirty (30) days of the filing of such petition. If the Council decides not to accept the petition, it shall notify the petitioner in writing of the reasons for rejecting said petition. If the Council decides to accept the petition, it shall schedule a hearing to be held within thirty (30) days of its decision. A hearing on the petition shall be conducted in accordance with applicable procedural rules. (Adopted by CRAG Rule; amended by Ordinance No. 80-102, Sec. 4)

3.02.005 Regional Plan Amendments:

(a) Revisions in the Regional Plan shall be in accordance with procedural rules adopted by the Council.

(b) Mistakes discovered in the Regional Plan may be corrected administratively without petition, notice or hearing. Such corrections may be made by order of the Council upon determination of the existence of a mistake and of the nature of the correction to be made. (Adopted by CRAG Rule; amended by Ordinance No. 80-102, Sec. 5)

3.02.006 Study Areas:

(a) Treatment System Study Areas.

(1) Certain areas may be designated on the Treatment System Service Area Map as "Treatment System Study Areas." Such designations are temporary and indicate areas requiring designation of that land to which each management agency intends to provide wastewater treatment services, as identified in an acceptable Facilities Plan.

(2) Wastewater treatment facilities within Treatment System Study Areas shall be allowed only if:

(A) Required to alleviate a public health hazard or water pollution problem in an area officially designated by the appropriate state agency;

(B) Needed for parks or recreation lands which are consistent with the protection of natural resources or for housing necessary for the conduct of resource-related activities; or

(C) Facilities have received state approval of a Step 1 Facilities Plan, as defined by the U. S. Environmental Protection Agency regulations (Section 201, PL 92-500), prior to the effective date of this chapter.

(3) Facilities planning for a designated Treatment System Study Area shall include investigation of the regional alternative recommended in the support documents accepted by the Regional Plan. Such investigations shall be conducted in accordance with Article V, Section 1, (A)(2)(a)(iv) of the Regional Plan text.

(4) No federal or state grants or loans for design or construction of any major expansion or modification of treatment facilities shall be made available to or used by agencies serving designated Treatment System Study Areas until such time as a state-approved Facilities Plan has been completed.

(5) Upon completion of a Facilities Plan and acknowledgment by Metro of compliance with the Regional Plan, a Treatment System Study Area shall become a designated Treatment System Service Area and shall be eligible to apply for Step 2 and Step 3 construction grants. The Treatment System Service Area shall be incorporated by amendment into the Regional Plan and all appropriate support documents pursuant to Section 3.02.008 of this chapter.

(b) Collection System Study Areas:

(1) Certain areas are designated on the Collection System Service Area Map as 'Collection System Study Areas.' Such designations are temporary and exist only until such time as each member and special district designates that land to which it intends to provide sewage collection services. At the time of designation, Collection System Study Areas shall become designated Collection System Service Areas. The Regional Plan and the appropriate support documents shall be amended to incorporate the Collection System Service Area pursuant to Section 3.02.008 of this chapter.

(2) Designation as a Collection System Study Area shall not be construed to interfere with any grants or loans for

facility planning, design or construction. (Adopted by CRAG Rule; amended by Ordinance No. 80-102, Sec. 6)

3.02.007 Project Prioritization: Metro shall review each publication of the DEQ grant priorities list and shall have the opportunity to comment thereon. (Adopted by CRAG Rule; amended by Ordinance No. 80-102, Sec. 8)

3.02.008 Continuing Planning Process:

(a) For the purpose of implementing Article V, Section 1 (A)(2)(b)(i) of the Regional Plan, the continuing planning process shall follow, but not be limited to, the procedure shown below.

(1) Evaluation of new information with respect to its impact on the Regional Plan. Regional Plan changes shall be based upon:

(A) Changes in custody, maintenance and/or distribution of any portion of the Waste Treatment Component;

(B) Changes in population forecasts and/or wasteload projections;

(C) Changes in state goals or regional goals or objectives;

(D) Changes in existing treatment requirements;

(E) Implementation of new technology or completion of additional study efforts; development of more energy-efficient wastewater treatment facilities; or

(F) Other circumstances which because of the impact on water quality are deemed to affect the Waste Treatment Component.

(2) Adequate public review and comment on the change.

(3) Adoption of Regional Plan change by Metro Council.

(4) Submittal of change to DEQ for approval and state certification.

(5) EPA approval of change.

(b) For the purpose of amending support documents referenced in Article I, Section 3(F) of the Regional Plan, the process shall be as shown below:

(1) Any proposed change to the support documents shall be presented to the Metro Council with the following information:

(A) Reasons for proposed action;

(B) Basis of data;

(C) Method of obtaining data;

(D) Period in which the data was obtained;

(E) Source of the data;

(F) Alternatives considered; and

(G) Advantages and disadvantages of the proposed action.

(2) Following approval by the Metro Council, amendments to the support documents shall be attached to appropriate documents with the following information:

(A) Approved change and replacement text for the document;

(B) Specific location of change within the document;

(C) Reasons for the change; and

(D) Date of Council action approving the change. (Adopted by CRAG Rule; amended by Ordinance No. 80-102, Sec. 9)

3.02.009 Application of Ordinance: This chapter shall apply to all portions of Clackamas, Washington and Multnomah Counties within the jurisdiction of Metro. (Adopted by CRAG Rule; amended by Ordinance No. 80-102, Sec. 10)

3.02.010 Severability:

(a) The sections of this chapter shall be severable, and any action or judgment by any state agency or court of competent jurisdiction invalidating any section of this chapter shall not affect the validity of any other section.

(b) The sections of the Regional Plan shall also be severable and shall be subject to the provisions of subsection (a) of this section.

(c) For purposes of this section, the maps included in the Regional Plan shall be considered as severable sections, and any section or portion of the maps which may be invalidated as in subsection (a) above shall not affect the validity of any other section or portion of the maps. (Adopted by CRAG Rule; amended by Ordinance No. 80-102, Sec. 11)

II. Text

REGIONAL WASTE TREATMENT MANAGEMENT PLAN

TABLE OF CONTENTS

REGIONAL WASTE TREATMENT MANAGEMENT PLAN

TEXT

ARTICLE I. INTENT AND POLICIES

SECTION 1. INTENT: The Regional Waste Treatment Management Plan is intended to:

(A) Address and implement portions of ORS 268.390 Planning for Activities and areas with Metropolitan impact; Review of local plans; urban growth boundary. A district council shall:

> "(1) Define and apply a planning procedure which identifies and designates areas and activities having significant impact upon the orderly and responsible development of the Metropolitan area, including, but not limited to, impact on:
> . . . (b) Water quality . . .
> (2) Prepare and adopt functional plans for those areas designated under Subsection (1) of this section to control metropolitan area impact on air and water quality. . . ."

(B) Address portions of State Planning Goals #6 (Air, Water and Land Quality) and #11 (Public Facilities and Services).

(C) Establish a structure within which staging of regional wastewater management facilities for a minimum of twenty (20) years can be accomplished by local jurisdictions in conformance with the State Planning Goals.

(D) Provide a means for coordination of this Plan with regional and local jurisdiction plans.

(E) Allow establishment of a priority-setting structure for water quality needs within the Metro region.

SECTION 2. ASSUMPTIONS: The Regional Waste Treatment Management Plan is based upon the following assumptions:

(A) Publicly-owned wastewater management facilities will serve only those geographical areas as defined in the maps included as Part III of this plan.

(B) All wastewater facilities will be designed and operated in conformance with regional, state and federal water quality standards and regulations, and with due consideration for the groundwater resources of the area.

(C) Identification of a local jurisdiction's responsibility to provide wastewater management facilities in a geographical area will not be construed as a requirement to provide immediate public services.

(D) Any land use related action or any action related to development or provision of a public facility or service may be reviewed by the Metro Council for consistency with this Plan. The Metro Council will accept for review only actions which are of regional significance or which concern areas or activities of significant regional impact.

(E) The control of waste and process discharges from privately-owned industrial wastewater facilities not discharging to a public sewer is the responsibility of the State of Oregon.

(F) Because the need for wastewater treatment facilities is based on population, employment and waste load projections which cannot be estimated with certainty, use of such projections must be limited to a best effort evaluation. To ensure that these projections are sufficiently reliable, a monitoring process will be established to regularly compare the projected values with both actual values and new projections as they are produced by Metro studies. The projections are subject to revision to achieve

consistency with actual conditions and new adopted projections in accordance with the Rules, Section 8, Continuing Planning Process.

SECTION 3. POLICIES AND PROCEDURES: The Regional Waste Treatment Management Plan includes the following policies and procedures:

(A) The Regional Waste Treatment Management Plan will be reviewed and updated annually. The timing, schedule and submission of this review and update shall be in compliance with the "recertification" procedures established by the Oregon Department of Environmental Quality and the U.S. Environmental Protection Agency. (Amendment No. 15, Ordinance No. 84-184)

(B) Projects receiving review under Executive Order No. 12372 shall be given positive comment only if in conformance with this Plan.

(C) Treatment plants shall be programmed for modification only when one or more of the following conditions will exist:

(1) Dry weather flow exceeds plant capacity;

(2) Life of plant is reached;

(3) Wet weather flow exceeds plant capacity and I/I study results indicate wet weather flow should be treated;

(4) Organic loadings reach critical stage in plant operation as determined by the Oregon Department of Environmental Quality;

(5) Facility Plan underway at the time of adoption of Part I of this Element;

(6) Metro Council determines modification to be necessary;

(7) Effluent flows result in an adverse effect on groundwater resources; or

(8) New treatment standards are adopted.

(D) Operating agencies, so designated by Part I of this Plan, shall conduct or provide such services as are mutually agreed upon with all management agencies which provide services to the same geographical area.

(E) The Regional Waste Treatment Management Plan is based on a large body of information, including technical data, observations, findings, analysis and conclusions, which is documented in the following reports:

(1) Volume 1--Proposed Plan as amended by amendments 1 through 8 adopted October 2, 1980.

(2) Volume 2--Planning Process.

(3) Technical Supplement 1--Planning Constraints.

(4) Technical Supplement 2--Water Quality Aspects of Combined Sewer Overflows, Portland, Oregon.

(5) Technical Supplement 3--Water Quality Aspects of Urban Stormwater Runoff, Portland, Oregon.

(6) Technical Supplement 4--Analysis of Urban Stormwater Quality from Seven Basins Near Portland, Oregon.

(7) Technical Supplement 5--Oxygen Demands in the Willamette.

(8) Technical Supplement 6--Improved Water Quality in the Tualatin River, Oregon, Summer 1976.

(9) Technical Supplement 7--Characterization of Sewage Waste for Land Disposal Near Portland, Oregon.

(10) Technical Supplement 8--Sludge Management Study.

(11) Technical Supplement 9--Sewage Treatment Through Land Application of Effluents in the Tualatin River Basin and Supplemental Report, Land Application of Sewage Effluents Clackamas and Multnomah Counties.*
*Portland-Vancouver Metropolitan Area Water Resources Study, U. S. Army Corps of Engineers, 1979.

(12) Technical Supplement 10--Institutional, Financial and Regulatory Aspects.

(13) Technical Supplement 11--Public Involvement.

(14) Technical Supplement 12--Continuing Planning Process.

(15) Technical Supplement 13--Storm Water Management Design Manual.

(16) City of Gresham Sewerage System Master Plan, Brown and Caldwell, December 1980. (Amendment No. 14, Ordinance No. 84-184)

(17) Sewerage System Facility Plan for the I-205 Corridor and the Johnson Creek Basin, City of Portland, Oregon, Bureau of Environmental Services, June 1984. (Amendment No. 14, Ordinance No. 84-184)

(18) Sewerage Master Plan Update, Central County Service District No. 3, Multnomah County, Oregon, Kramer, Chin & Mayo, Inc., July 1983. (Amendment No. 14, Ordinance No. 84-184)

(19) Mid-Multnomah County Sewer Implementation Plan, CH2M HILL, September 1985.

(20) Findings and Order In the Matter of the Proposal to Declare a Threat to Drinking Water in a Specially Defined Area in Mid-Multnomah County Pursuant to

ORS 454.275 et. seq., Environmental Quality Commission, as ordered on April 25, 1986

(21) Evaluation of Hearing Record for Proposal to Declare a Threat to Drinking Water in a Specifically Defined Area of Mid-Multnomah County Pursuant to ORS 454.275 et seq., Department of Environmental Quality, January 30, 1986, and February 1986

(22) The City of Gresham Waste Water Treatment Plant Facilities Plan, Brown and Caldwell, February 198_. Amended January 1986 by Black & Veatch.

(23) City of Gresham Mid-County Interceptor Sewers Facility Plan, Brown and Caldwell, May 1987.

This support documentation shall be used as a standard of comparison by any person or organization proposing any facilities plan or action related to the provision of public facilities and services.

(F) Metro shall review state-approved facilities plans for compliance with the Regional Plan. Upon acknowledgment of compliance, the approved facilities plan shall be incorporated by amendment to the Regional Plan and all appropriate support documents pursuant to Section 9 of the Adoption and Implementation Ordinance.

ARTICLE II. BOUNDARY AND ALIGNMENT INTERPRETATION

SECTION 1. Boundaries and alignments appearing on maps contained in the Regional Waste Treatment Management Plan are of two types with respect to the level of specificity. They are:

(A) Type 1. Boundaries and alignments fully specified along identified geographic features such as rivers and roads or other described legal limits such as section lines and district boundaries. Such boundaries and alignments appear on the Waste Treatment Management Maps as solid lines. Unless otherwise specified, where a Type 1 line is located along a geographic feature such as a road or river, the line shall be the center of that feature.

(B) Type 2. Boundaries and alignments not fully specified and not following identified geographic features. Such lines will be specified by local jurisdiction plans. Such lines appear on the Waste Treatment Management Maps as broken lines.

ARTICLE III. DEFINITIONS

Terms used in this text employ the definitions defined herein:

(A) Collection System. A network of sewer pipes for the purpose of collecting wastewater from individual sources.

(B) Combined Sewer. A sewer which carries both sewage and stormwater runoff.

(C) Effluent. The liquid that comes out of a treatment plant after completion of the treatment process.

(D) Facilities Plan. Any site-specific plan for wastewate treatment facilities. Said Plan shall be equivalent to those p pared in accordance with Section 201 of PL 92-500.

(E) Interceptor. A major sewerage pipeline with the purpose of transporting waste from a collection system to the treatment facility, also a transmission line.

(F) Land Application. The discharge of wastewater or effluent onto the ground for treatment or reuse, including irrigation by sprinkler and other methods.

(G) Pollution. Such contamination or other alteration of the physical, chemical or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, silt or odor of the waters, or such radioactive or other substance into any waters of the state which either by itself or in connection with any other substance present, will or can reasonably be expected to create a public nuisance or render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses or to livestock, wildlife, fish or other aquatic life or the habitat thereof.

(H) Sanitary Sewers. Sanitary sewers are pipes that carry only domestic or sanitary sewers.

(I) Sewage. Refuse liquid or waste normally carried off by combined or sanitary sewage.

(J) Sewers. A system of pipes that collect and deliver wastewater to treatment plants or receiving streams.

(K) Sludge. The solid matter that settles to the bottom, floats, or becomes suspended in sedimentation tanks of a wastewater treatment facility.

(L) Step 2 Construction Grant. Money for preparation of construction drawings and specifications of major wastewater treatment facilities pursuant to PL 92-500, Section 201.

(M) Step 3 Construction Grant. Money for fabrication and building of major wastewater treatment facilities pursuant to PL 92-500, Section 201.

(N) Treatment Plant. Any devices and/or systems used in storage, treatment, recycling and/or reclamation of municipal sewage or industrial wastewater.

(O) Wastewater. The flow of used water (see "Sewage").

(P) Wastewater Treatment Facility. Any treatment plants, intercepting sewers, outfall sewers, pumping, power and other equipment and their appurtenances; any works, including land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment; or, any other method or system for preventing, abating, reducing, storing, treating, separating or disposing of municipal waste, including stormwater runoff, or industrial waste, waste in combined stormwater and sanitary sewer systems.

ARTICLE IV. AREAS OF RESPONSIBILITY

SECTION 1. TREATMENT AND TRANSMISSION SERVICE AREAS

(A) General. Geographical areas provided service by sewage treatment plants within the Metro region are designated on the Sewerage Treatment and Transmission Service Area Map, incorporated by reference herein. (Amendment No. 12)

(B) Policies. All planning and/or provision of service by each treatment plant must be consistent with the Sewerage Treatment and Transmission Service Area Map. (Amendment No. 12)

SECTION 2. COLLECTION SYSTEM SERVICE AREAS

(A) General. Geographical areas provided service by wastewater collection facilities of local agencies within the Metro region are designated on the Collection System Service Areas Map, and incorporated by reference herein.

(B) Policies. All local sewage collection planning and/or provision of service must be consistent with the Collection System Service Areas Map.

ARTICLE V. IMPLEMENTING AGENCIES

SECTION 1. MANAGEMENT AGENCIES

(A) Designated management agencies shall include the following:

(1) Operating agency, with the following authorities or responsibilities:

(a) Coordination with Metro during formulation, review and update of the Regional Waste Treatment Management Plan;

(b) Conducting facilities planning consistent with the terms and conditions of this Plan;

(c) Constructing, operating and maintaining waste treatment facilities as provided in this Plan, including its capital improvement program;

(d) Entering into any necessary cooperative arrangements for sewage treatment or sludge management to implement this Plan;

(e) Financing capital expenditures for waste treatment;

(f) Developing and implementing a system of just and equitable rates and charges pursuant to federal and state law;

(g) Implementing recommended systems development charges or connection fee policies, if any; and

(h) Enacting, enforcing, or administering regulations or ordinances to implement non-structural controls.

(2) Planning agency: For the purposes of this section, planning shall be defined to include regional planning

and comprehensive land use planning. Agencies and their intended planning functions are as follows:

(a) Local Management Agencies: Local management agencies, as defined in Article V, shall have responsibility for waste treatment management planning within the Metro region as follows:

(i) Coordination with Metro to ensure that facilities planning and management activities conform to The Waste Treatment Management Plan;

(ii) Coordination with Metro and DEQ in the grant application, capital improvement programming, project prioritization and continuing planning process;

(iii) Preparation of master plans, capital improvement programs and project priority lists; and

(iv) Participation in a planning consortium to conduct 201 Step 1 facility planning for plant expansions within a designated Treatment System Study Area. Agencies affected by a proposed regional alternative shall form a consortium, deliberate and designate a lead agency to undertake an investigation of the regional alternative in light of any proposed non-regional plant expansion. Any such agency shall notify Metro of its intent

to form a consortium. If, after 90 days of such notification a consortium has not been formed and a lead agency has not been designated, Metro shall assume the lead agency role, or designate a lead agency. If, by mutual agreement of the affected local jurisdictions and Metro, an extension of time is necessary, the 90-day time limit may be extended.

(b) Metropolitan Service District (Metro): Metro shall be designated as the planning agency for areawide waste treatment management planning, within its boundaries* with responsibility for:

(i) Operating the continuing planning process or the process by which the Regional Waste Treatment Management Plan will be kept responsive to changing information, technology and economic conditions;

(ii) Maintaining coordination between:

(aa) All appropriate state agencies, including DEQ, on matters such as discharge permits, water quality standards and grant evaluation procedures; and the Water Resources Department, on matters

*The Department of Environmental Quality shall assume responsibility for those portions of the CRAG "208" Study Area outside the boundaries of the Metropolitan Service District.

such as contemplated needs and uses of water for pollution abatement;

(bb) All Metro Region Governmental jurisdictions on matters such as review of local agency grant applications and local agency plans for conformance to the Waste Treatment Management Component:

(iii) Designation of management agencies as required;

(iv) Carrying out or contracting for studies to identify water quality problems and recommended means of control;

(v) Receiving grants and other revenues for planning purposes;

(vi) Metro shall be responsible for comprehensive land use planning including waste treatment management planning under ORS 197;. and

(vii) Metro shall have responsibility for developing and implementing plans for processing, treatment and disposal of solid waste within MSD boundaries.

(c) Department of Environmental Quality (DEQ) shall have responsibility for waste treatment management planning within the Metro region in the following areas:

(i) Coordination with Metro to ensure that The Regional Waste Treatment Management Plan is

in conformance with the Statewide (303e) Plan.

(ii) Coordination with Metro and local agencies to set grant and capital improvement priorities and administer grant programs.

(iii) Determination of statewide standards and regulations applicable to the Metro region.

(iv) Other areas as prescribed by state law.

(d) Water Resources Department (WRD); WRD shall have responsibility for determination of statewide water resources policies applicable to the Metro region.

(3) Regulatory agency: For the purposes of this section, regulation shall mean to identify problems and to develop and enforce consistent solutions to those problems. Agencies and their regulatory responsibilities for the Regional Waste Treatment Management Plan are as follows:

(a) Local Agencies: Regulation of waste treatment management through the enforcement of building code provisions, construction practices, sewer use regulations, zoning ordinances, land use plans, pretreatment requirement (where appropriate), grant and loan conditions (where appropriate), and all other local regulations affecting water quality.

(b) Metropolitan Service District (Metro): Metro shall perform the following regulatory functions in the area of waste treatment management:

(i) Develop, enforce and implement the Regional Waste Treatment Management Plan by means of:

(aa) Review and coordination of grants and loans for waste treatment facilities.

(bb) Coordination with local and state agencies.

(ii) Ensure conformance of local wastewater planning to The Regional Waste Treatment Management Plan:

(iii) Regulation of all solid waste disposal and other functions as may be assumed by the Metro Council within Metro region.

(c) Department of Environmental Quality (DEQ): Regulatory functions of DEQ for waste treatment management in the Metro region are as follows:

(i) Develop and monitor water quality standards consistent with state and federal regulations.

(ii) Control of the location, construction, modification and operation of discharging facilities through the discharge permit process and through administration of the state's water quality laws.

(iii) Review and approval of grants and loans for waste treatment facilities.

(iv) Other functions as provided by state law.

(d) Department of Agriculture (DA): The application of pesticides is within the regulatory powers of the DA pursuant to ORS 634.

(e) Department of Forestry (DF): The DF shall be responsible for the enforcement of the Forest Practices Act, ORS 527.

(f) Portland Metropolitan Area Local Government Boundary Commission (LGBC) or its successor organization: The LGBC is responsible for regulating sewer extension policies outside local jurisdictional boundaries within the Metro region and for formation of new governmental entities.

(g) Water Resources Department (WRD): WRD shall control the quantity of water available for all beneficial uses including pollution abatement through administration of the state's water resources law (ORS Ch. 536 and 537).

(B) Designated management agencies and their classifications are listed below. Some designations are subject to resolution of Study Areas.

MANAGEMENT AGENCY CLASSIFICATIONS

Management Agency	Operating*	Planning	Regulatory
Beaverton	C	X	X
Cornelius	C	X	X
Durham		X	
Fairview	C	X	X
Forest Grove	C	X	X
Gladstone	C	X	X
Gresham	T,C	X	X
Happy Valley	C	X	X
Hillsboro	C	X	X
Johnson City	C	X	X
King City	C	X	X
Lake Oswego	T,C	X	X
Maywood Park	C	X	X
Milwaukie	C	X	
Oregon City	C	X	
Portland	T,C	X	
Rivergrove	C	X	X
Sherwood	C	X	X
Tigard	C	X	X
Troutdale	T,C	X	X
Tualatin	C	X	X
West Linn	C	X	X
Wilsonville	T,C	X	X
Wood Village	C	X	X
Clackamas County	C	X	X
Multnomah County		X	X
Washington County		X	X
Clackamas County S.D. #1	T,C	X	X
Dunthorpe-Riverdale County S.D.	C	X	X
Tri-City Service District	T,C	X	X
West Hills S.D. #2	C	X	X
Oak Lodge Sanitary District	T,C	X	X
Unified Sewerage Agency	T,C	X	X
Metro	Solid Waste Facilities Only	X	X
State DEQ	NA	X	X
State Water Resources Department	NA	X	X
Department of Agriculture	NA	NA	X

*T = Treatment and/or Transmission System Operation
C = Collection System Operation
NA = Not Applicable

Management Agency	Operating*	Planning	Regulatory
Department of Forestry	NA	NA	X
Portland Metropolitan Area Local Government Boundary Commission	NA	NA	X

*T = Treatment and/or Transmission System Operation
C = Collection System Operation
NA = Not Applicable

SECTION 2. NON-DESIGNATED AGENCIES: Agencies not designated as management agencies are not eligible for federal water pollution control grants except as may be provided elsewhere in this Plan.

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12/02/87

ADOPTED AMENDMENTS TO SUPPORT DOCUMENTS

On the following pages are a number of revisions and amendments to Volume I, Proposed Plan.

The revisions and amendments are published exactly as adopted, including the amendment or revision date. Text deleted is crossed out with hyphens. Text added is underlined. These notations will be carried forward in any further publications of the Support Documents (but not in the Text, Maps or Rules of the Regional Plan).

Page numbers shown on the following sheets are from Volume I, Proposed Plan.

Amendment No. 1: (General Amendment) Adopted October 2, 1980

In any Support Document referenced herein the use of MSD, CRAG and Member Jurisdictions shall be interpreted as follows:

- CRAG read as Metro
- MSD read as Metro
- Member Jurisdiction read as Management Agency

Amendment No. 2: (Pg. 1-4) Adopted October 2, 1980

The methodologies used to derive these projections are presented in Technical Supplement 1, as follows:

- Appendix A. Population Projection Methodology
- Appendix B. Point Source Waste Flow Projection Methodology
- Appendix C. Sludge Volume Projection Methodology

Other elements of ~~CRAG's~~ Metro's Regional Transportation Plan will involve projecting population and employment. It is intended that the Regional Waste Treatment Management ~~Component~~ Plan be reviewed against these new projections as they are developed. The Regional Waste Treatment Management ~~Component~~ Plan is subject to amendment to achieve consistency with new adopted projections.

Amendment No. 3: (Pg. 2-11) Adopted October 2, 1980

Net energy consumption for the proposed plan is exceeded by only one of the eight alternatives considered. The reason for such high energy consumption is the assumption of continued use of heat treatment at Gresham for processing sludge into a form suitable for land application. Future 201 facilities planning for the Gresham treatment plant may result in abandoning heat treatment in favor of digestion. Such a change would significantly lower the net energy consumption of the proposed plan.

The proposed plan faces a potentially major problem: achieving cooperation and agreement among the Inverness (Multnomah County), Troutdale and Gresham sewerage agencies. Specifically, a difficulty may arise initially regarding abandoning the Inverness and Troutdale plants, and subsequently, regarding management and financing of the regionalized wastewater treatment facilities. A possible interim step to meet treatment needs would be the construction of the pump station and force main from Troutdale to Gresham to handle Troutdale's expected overflow. After this, financial details can be settled, the regional plant at Gresham can be built, and the Troutdale plant can be abandoned.

Interim expansions of the Troutdale and Gresham plants of 1.6 MGD and 6 MGD respectively as well as the interim expansion to the Inverness Plant planned by Multnomah County are recommended to insure continuity of sewerage service in those communities until more detailed engineering studies of the regional treatment alternative can be performed.

Amendment No. 4: (Pg. 2-17) Adopted: October 2, 1980

Interceptor System (Reference to Figure 2-12 changed to 2-14)

Figure 2-~~12~~14 shows the existing collection system and interceptors proposed for Hillsboro-East and -West and a proposed force main from North Plains.

Hillsboro's existing collection system is quite old in central areas of the City. Average wet weather flows frequently exceed twice the average dry weather flow. Figure 2-~~12~~14 shows how the northern area in the Urban Growth Boundary in the Hillsboro-West service area will be served by interceptor extensions previously planned by the City, and by additional extensions proposed in this study. For purposes of computing present worth costs, all new interceptors will be built in 1980.

The Hillsboro-East service area's existing interceptor system is also shown in figure 2-~~12~~14. No additional interceptors are needed to collect flows to the year 2000. Repair or replacement of some existing interceptors may be needed, particularly to control infiltration/inflow that should be considered in facilities planning for the City.

North Plains is not sewered at present. Figure 2-~~12~~14 shows how the North Plains area will be served by an interceptor system.

Amendment No. 5: (PG. 2-19A + 2-19B) Adopted October 2, 1980

LAND TREATMENT

In land application, the effluent from treatment plants represents a potential resource, rather than a waste to be disposed of. While the sludge is generally incinerated, used in landfill or as fertilizer, the effluent stream is conventionally discharged to a nearby stream such as the Tualatin River. The remaining nutrients, solids, oxygen demanding toxic and pathogenic constituents in the effluent add to the pollution of the stream from natural sources from overland runoff and agricultural chemicals. Conditions are aggravated during the summer because of high water temperatures and low stream flow due to irrigation water withdrawals and a low stream recharge from groundwater, rather than from snow melt.

Elimination of all pollutant discharges into the nation's waters is a goal established by federal law. Technical alternatives to attain this goal are either advanced waste treatment facilities or land application of effluent. Advanced treatment normally requires large amounts of chemicals and energy and generates substantial amounts of chemical waste sludge which requires ultimate disposal.

Health and aesthetic considerations in regard to crop production, potential groundwater contamination and pathogens are major concerns in land application. However, intensive research over the past few years indicates that proper land application techniques, site selection and monitoring can prevent adverse effects. Most heavy metals are removed by absorption or precipitation in insoluble form within the first few feet of the soil. Removal efficiencies for nitrogen and coliform bacteria, after effluent passage through approximately five feet of soil are generally adequate to meet public health criteria for drinking water. Indications are that the quality of land renovated wastewater is nearly the same regardless of whether raw, primary or secondary effluence is applied.

The following summarizes the conclusions of this study in regard to land treatment technology and its application in Tualatin basin:

- Land application keeps nutrients and pollutants out of the rivers and assists in the goal of zero pollutant discharge.
- Land application makes sewage treatment more reliable since effluents of widely varying quality are purified to high degree.
- Irrigation of farm crops appears to be the most suitable land application method in the Tualatin basin and probably in other areas of the CRAG Metro region.
- Nutrients and water of the effluent would be recycled into plant tissue and produce higher crop yields.
- Effluent should be collected only during the irrigation season, which coincides approximately with the low stream flow period, in order to reduce the necessary storage capacity.

- Public health concerns are related to potential transmission of pathogens to animal and man, to potential pollution of groundwater and to the quality of crops.

- Proper techniques can prevent health hazards. Public perceptions in regard to sewage effluent could be an essential factor.

- Irrigation on agency-owned land would simplify operations. However, irrigation on private farm land would require less capital expenditure, the land would remain on the county tax roll and opposition to government competition with private farming would be avoided. Irrigation on private farms appears to be the better plan.

- Revenue from the sale of effluent could reduce the cost of the system. There appears to be a good demand for supplemental irrigation water.

- Most farm land in the Tualatin basin could be made irrigable for wastewater application by building tile underdrains.

- Regulatory restrictions in regard to the type of crops raised with effluent irrigation could impede the acceptance of land application by private farmers.

- Energy use for pumping can be considerable. The possibility of gravity flow must be investigated case-by-case. However, the use of energy and other natural resources is probably less for land application than for alternative tertiary treatment.

- Forest irrigation and rapid infiltration ponds appear to be viable alternatives to crop irrigation in Multnomah and Clackamas Counties. The size of treatment plants in these counties, the type of solid and vegetable cover require that these alternatives be examined.

Recommendations: Actual detailed alternatives for the land application of effluents was initially done only for the treatment plants discharging into the Tualatin River in Washington County. This is where DEQ felt that the water quality problems were the most critical. However, based on the ~~new~~ completed 303e basin plan and results of the preliminary investigations in other areas of the ~~CRAG~~ Metro region, land treatment in Clackamas and Multnomah Counties ~~will be~~ has been studied and the results incorporated into this plan as ~~a portion of the continuing planning process~~ an addition to Technical Supplement 9.

~~The following initial recommendations can be made:~~

As a result of this study the following Recommendations can be made:

1. Sewage effluent should be applied to land only during the growing season (May to October). Large storage capacities would be required to store effluent generated during the winter months when land application is not feasible.

2. For the land application system to work to the treatment agency's advantage, the agency should purchase the land.

3. Except in the Damascus/Boring and Happy Valley areas, spray irrigation should be the method of land application. Although overland flow application is technically feasible for these areas, institutional and regulatory constraints make land application infeasible. Other methods of wastewater treatment should be investigated for the Damascus/Boring and Happy Valley study areas, since it appears that DEQ discharge regulations will not be relaxed in the future and will become more restrictive. Alternatives which still remain for these communities include advanced (tertiary) waste treatment facility construction or connection to a nearby sewerage system.

4. Application rates for effluent application should be set to dispose of effluent at the maximum rate which the crops will tolerate without losses, and, preferably, to optimize crop yields at the same time.

5. Alternative plans for land application of wastewater effluents should employ features recommended in (1) through (4) above, and should be evaluated against alternative plans for advanced waste treatment in the Multnomah and Clackamas Counties expanded study area.

6. The Oregon State Department of Environmental Quality should examine and revise the guidelines on pre-treatment for sewage utilized in land application throughout the state.

7. The use of lagoons followed by dry weather (summer) land application and wet weather (winter) river discharge should be utilized in the smaller outlying communities. This would comply with DEQ's effluent limitations on many of the area's smaller streams and rivers, especially in Multnomah and Clackamas Counties.

8. Portions of the Sandy and Estacada land application sites are showing signs of imminent subdivision, although currently in agricultural use. This potential conflict in land use should be reviewed by Metro.

Amendment No. 6: (Pg 2-22) Adopted October 2, 1980

Sludge Handling

(Deleted third sentence of first paragraph)

At both Wilsonville and Canby, aerobic sludge digestion facilities will be expanded as part of the independent wastewater treatment facilities expansions. Digested sludge will be trucked and applied to farmers' fields. ~~The two jurisdictions should share the costs of sludge trucking equipment~~. Operation and maintenance costs of trucking equipment and costs associated with the management and monitoring the land application operation could also be shared. Sludge storage is available at the existing Canby humus ponds while storage at Wilsonville could be provided by reworking the existing drying beds into a lagoon.

Total capital expenditures for Wilsonville sludge handling are estimated to be $238,000. The 5-year capital outlay for sludge handling at Wilsonville will be $208,000. Capital expenditures for sludge handling at Canby total $165,000, while the 5-year capital outlay will be $30,000.

Advantages, Potential Problems and Variations

Independent operation of the treatment facilities and financing and operation of the proposed new facilities is the lowest-total-cost method for wastewater management in this region. It involves the simplest institutional form for management and financing, requiring virtually no change from the existing institutional arrangement.

Independent wastewater treatment at two plants has, for this region, a higher environmental compatibility than regionalization of treatment facilities at either of the treatment plants. Pipelines between the two communities will be needed for regionalization and will cause some disturbance to wildlife. Also, the proposed plan requires less energy in its operation than do alternative plans proposing greater regionalization.

This plan assumes that Barlow will be eventually served by Canby. Facilities planning should evaluate this assumption and possible alternative sewage disposal systems, such as septic tanks, for Barlow.

Staged development of treatment facilities may be to the advantage of either municipality and should be considered. Both communities should from time to time consider the economics of selling effluent for irrigation of local farms. This might offer some savings in the cost of operations and would lead to an improvement in Willamette River water quality, however small.

Amendment No. 7: (Pg 2-30) Adopted October 2, 1980

Total Runoff	1 Average Overflow 1954 to 1959	2 Storm of 8/25/56	Ratio 2/1
Total Overflows (ft^3)	694,000	4,061,000	5.85
Antecedent Dry Days[a]	2.45	76.9	31.26
Storm Duration (hr)	5.2	8.0	1.53
Sus-S (lb)	2,646	84,002	31.75
Set-S (lb)	2,278	74,067	32.51
BOD_5 (lb)	670	14,357	21.42
N (lb)	34	412	12.11
P (lb)	24	234	9.75
Coliforms[b] (MPN/100 ml)	0.575×10^6	1.238×10^6	2.15

RECOMMENDATIONS

A complete plan for abatement of combined sewer overflows cannot begin until regulating bodies determine the effect of pollution from this source on receiving waters and issue standards of treatment or load limits. Recognizing that combined sewer overflows are a significant source of pollutants, however, and in light of DEQ's interim policy that pollution of nonpoint sources should not be allowed to increase, the following initial recommendations can be made:

- DEQ should remove the requirement to limit diversions to divert 3 times average dry weather (ADW) flow for individual basins in favor of a general standard for the whole system. This would allow the flexibility to capture and treat more flow from basins with higher pollutant loads (i.e., industrial and commercial areas) while diverting more than ADW flow from cleaner basins.

- ~~Development that would add to flows in sewerage subject to overflow should not be allowed until a plan for reduction of overflows is adopted.~~

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[a]Days of pollutant build-up not washed off by preceding storms.
[b]Average concentration for duration of the storm.

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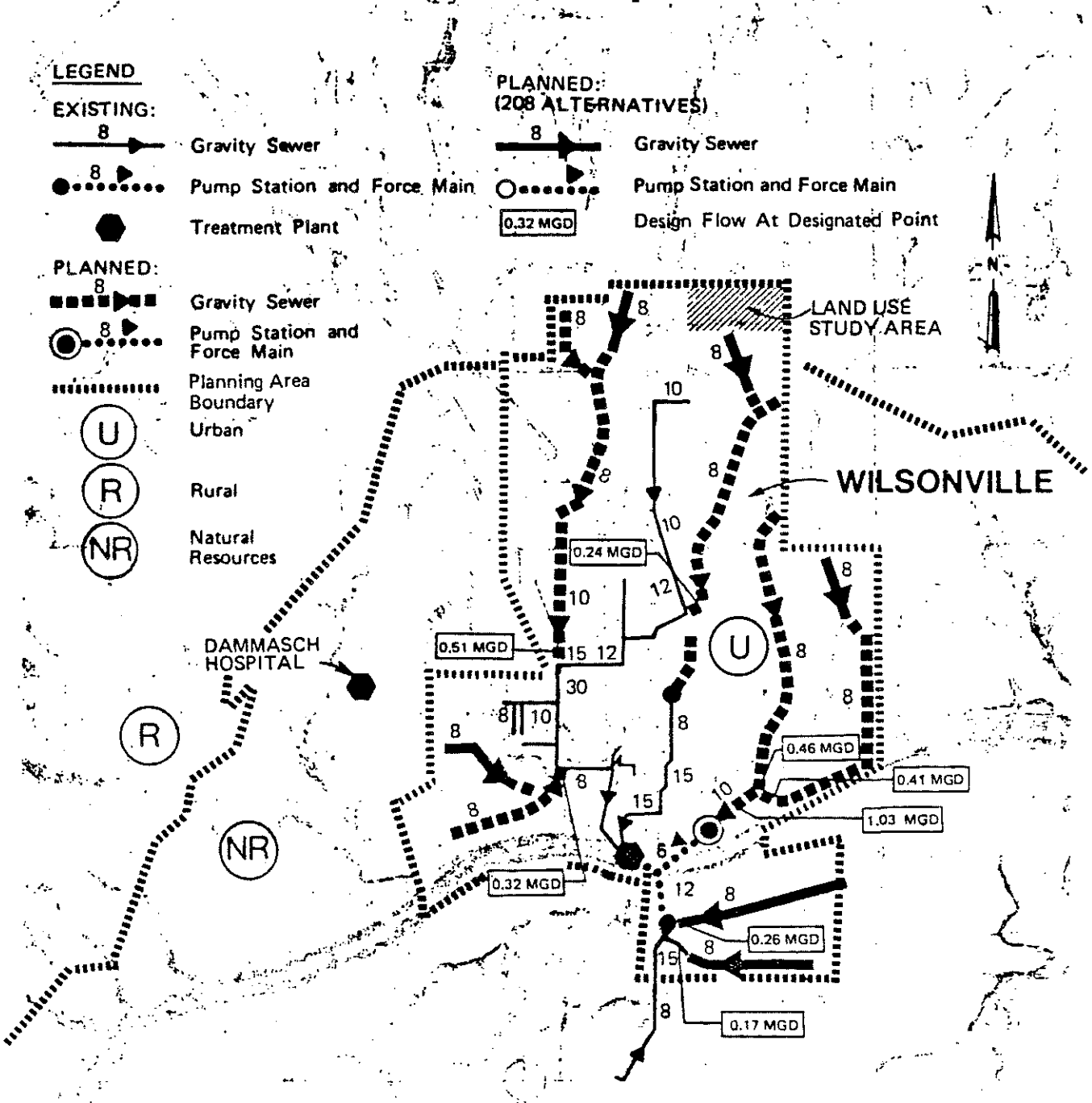
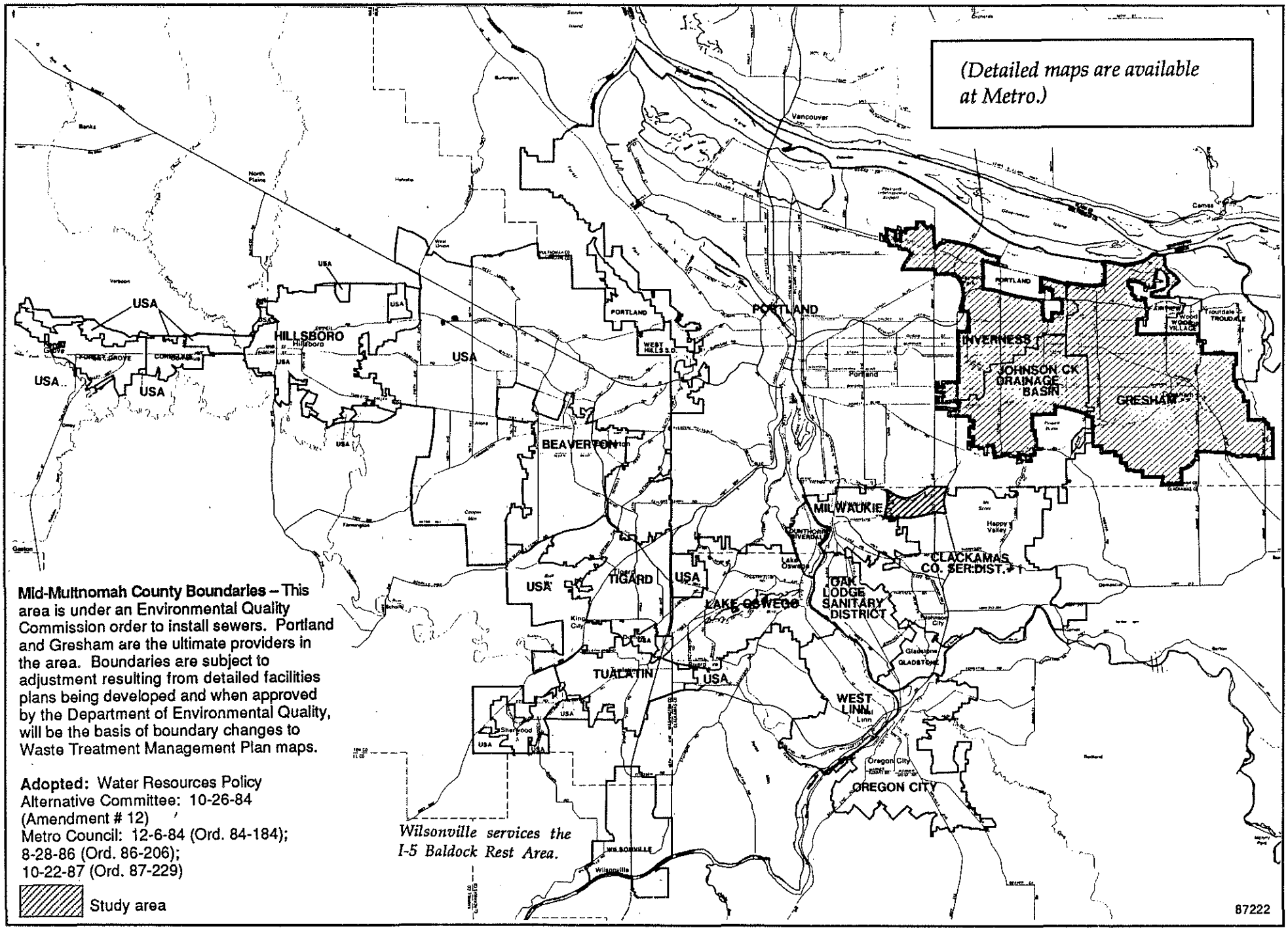


Note: Incorrect mapping of gravity sewers on this map to be corrected upon receipt of information from City of Wilsonville. This mapping error shall not impair provision of sewerage service in any way.

FIGURE 2-17
WILSONVILLE
PROPOSED PLAN

III. Maps



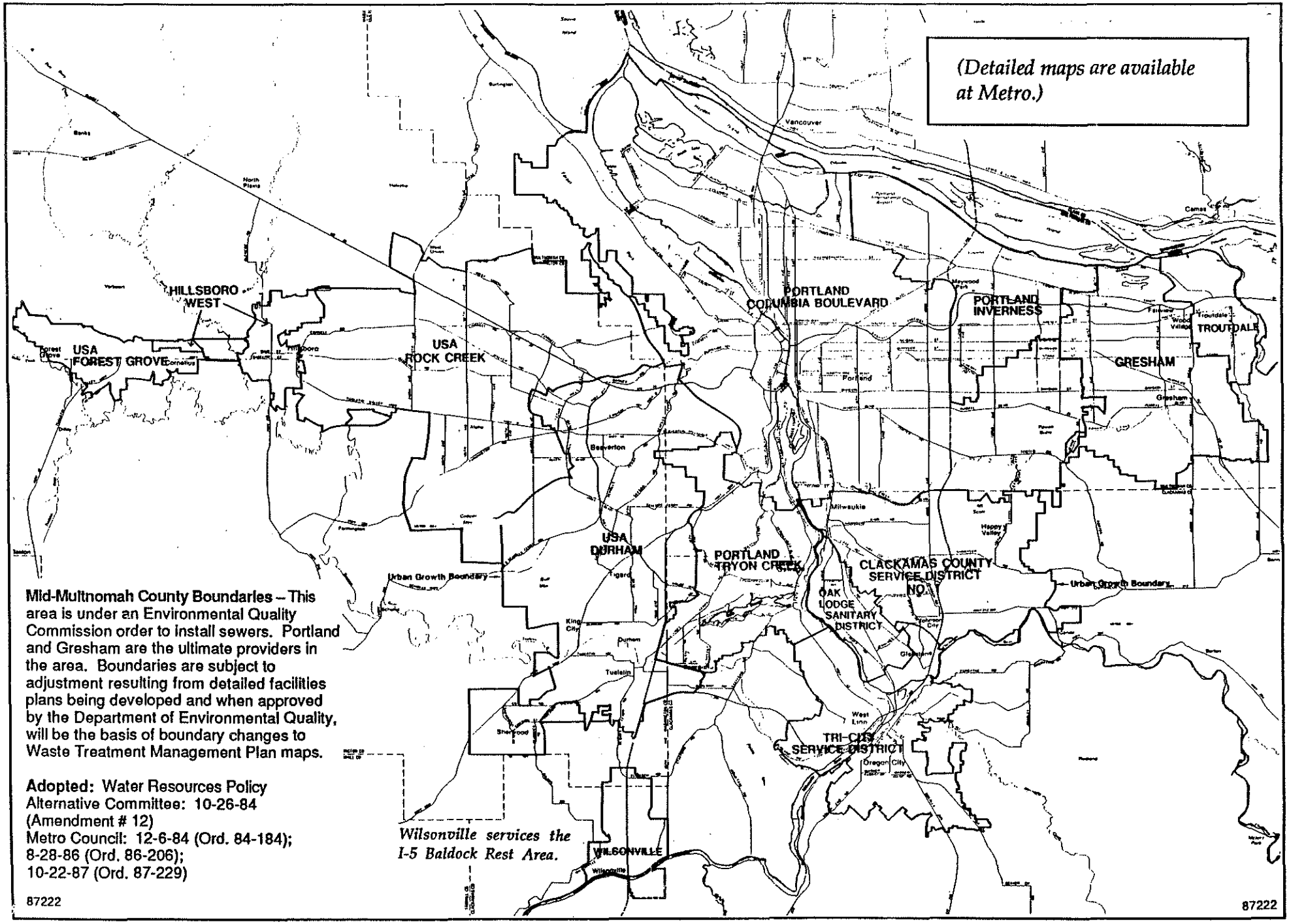
Mid-Multnomah County Boundaries – This area is under an Environmental Quality Commission order to install sewers. Portland and Gresham are the ultimate providers in the area. Boundaries are subject to adjustment resulting from detailed facilities plans being developed and when approved by the Department of Environmental Quality, will be the basis of boundary changes to Waste Treatment Management Plan maps.

Adopted: Water Resources Policy Alternative Committee: 10-26-84 (Amendment # 12)
Metro Council: 12-6-84 (Ord. 84-184); 8-28-86 (Ord. 86-206); 10-22-87 (Ord. 87-229)

Study area

METRO

Collection System Service Areas



METRO

Sewerage Transmission & Treatment Service Areas

(5) Upon notification under subsection (4) of this section, the commission shall hold a public hearing within the affected area of the wasteshed.

(6) If, after the public hearing and based on the department's findings on review of the recycling report and the hearing record, the commission determines that all or part of the opportunity to recycle is not being provided, the commission may by order require the opportunity to recycle to be provided. The commission order may include, but need not be limited to:

(a) The materials which are recyclable;

(b) The manner in which recyclable material must be collected;

(c) The responsibility of each person in the solid waste collection and disposal process for providing the opportunity to recycle;

(d) A timetable for development or implementation of the opportunity to recycle;

(e) Methods for providing the public education and promotion program;

(f) A requirement that as part of the recycling program a city or county franchise to provide for collection service; and

(g) Minimum standards for the mandatory program.

(7) If a recycling program is ordered under this section, the department shall work with affected persons and designate the responsibilities of each of them.

(8)(a) Upon written application by an affected person, the commission may, to accommodate special conditions in the wasteshed or a portion thereof, grant a variance from specific requirements of the rules or guidelines adopted under ORS 459.170 or a recycling program required by the commission under subsection (6) of this section.

(b) The commission may grant all or part of a variance under this section.

(c) Upon granting a variance, the commission may attach any condition the commission considers necessary to carry out the provisions of ORS 459.015, 459.165 to 459.200 and 459.250.

(d) In granting a variance, the commission must find that:

(A) Conditions exist that are beyond the control of the applicant;

(B) Special conditons exist that render compliance unreasonable or impractical; or

(C) Compliance may result in a reduction in recycling.

(9) An affected person may apply to the commission to extend the time permitted under ORS 459.005, 459.015, 459.035, 459.165 to 459.200, 459.250, 459.992 and 459.995 for providing for all or a part of the opportunity to recycle or submitting a recycling report to the department. The commission may:

(a) Grant an extension upon a showing of good cause;

(b) Impose any necessary conditions on the extension; or

(c) Deny the application in whole or in part. [1983 c.729 §7]

459.188 Mandatory participation in recycling. (1) Upon findings made under subsection (3) of this section, the commission may require one or more classes of solid waste generators within all or part of a wasteshed to source separate identified recyclable material from other solid waste and make the material available for recycling.

(2) In determining which materials are recyclable for purposes of mandatory participation, the cost of recycling from commercial or industrial sources shall include the generator's cost of source separating and making the material available for recycling or reuse.

(3) Before requiring solid waste generators to participate in recycling under this section, the commission must find, after a public hearing, that:

(a) The opportunity to recycle has been provided for a reasonable period of time and the level of participation by generators does not fulfill the purposes of ORS 459.015;

(b) The mandatory participation program is economically feasible within the affected wasteshed or portion of the wasteshed; and

(c) The mandatory participation program is the only practical alternative to carry out the purposes of ORS 459.015.

(4) After a mandatory participation program is established for a class of generators of solid waste, no person within the identified class of generators shall put solid waste out to be collected nor dispose of solid waste at a disposal site unless the person has separated the identified recyclable material according to the requirements of the mandatory participation program and made the recyclable material available for recycling. [1983 c.729 §8]

459.190 Limitation on amount charged person who source separates recyclable material. A collection service or disposal site

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

Date: January 22, 1988

To: Environmental Quality Commission

From: Director

Subject: Status of the Department's Activities Regarding Concerns Expressed by Mr. Gary Newkirk at the Public Forum, December 11, 1987 EQC Meeting

At the December 11, 1987 EQC meeting, Mr. Gary Newkirk presented his concerns regarding sewage backups into his home which is served by the Twin Rocks Sanitary District sewer system. The Commission requested the Department:

1. Visit Mr. Newkirk's property and determine whether the on-site system that served his property prior to connection to the sewer or a new on-site system are feasible alternatives for treatment and disposal of Mr. Newkirk's wastewater, and

2. Follow-up with Twin Rocks Sanitary District to determine what actions they were pursuing to address Mr. Newkirk's problem and to clarify the Department's authority in this matter.

To date, the following have been accomplished:

1. By letter dated January 7, 1988, Twin Rocks Sanitary District was advised of the Department's authority where pollutants on private property are likely to enter public waters, and of the Department's intent to arrange a compliance meeting with the District's Board of Directors to discuss pertinent issues.

2. A site visit to Mr. Newkirk's property was made to determine if some means of on-site sewage treatment and disposal might be used in lieu of the existing sewer connection. It was determined that a low-pressure distribution system may be possible and adequately protect water quality if variances can be obtained from several rules concerning on-site systems. The on-site system that previously served Mr. Newkirk's property was not inspected since he had advised staff that the old septic tank had been filled. Staff is concerned that it may not be possible to approve a variance to allow an on-site distribution treatment and disposal system since ORS 454.655(4) (attached) prohibits issuance of an on-site sewage disposal permit if a community or area-wide sewerage system is available which will satisfactorily accommodate the proposed sewage discharge.

Staff are currently in the process of preparing a letter response to Mr. Newkirk about his options and scheduling a meeting with Twin Rocks Sanitary District to discuss their responsibilities to assure inadequately treated sewage does not reach public waters. A January 20, 1988 letter from the Sanitary District's attorney expressing some concerns about this issue is attached.

Fred Hansen
Director

Attachments
MMH:kjc (WQ140)
229-6099
1-21-88

NEIL GOLDSCHMIDT
GOVERNOR

Department of Environmental Quality

811 SW SIXTH AVENUE, PORTLAND, OREGON 97204-1334 PHONE (503) 229-5696

1/13
LJM

January 7, 1988

TWIN ROCKS SANITARY DISTRICT
P.O. Box 69
Rockaway, OR 97136

RE: WQ - Twin Rocks STP
File No. 90578
Tillamook County

Dear Board Members:

Mr. Gary Newkirk presented testimony during the public forum session of the December 11, 1987, Environmental Quality Commission meeting. Mr. Newkirk related his views of the situation regarding sewage backups into his house in Barview.

The Commission was sympathetic to Mr. Newkirk's problems and has requested that the Department review certain circumstances to ensure that all possible solutions have been considered. We were specifically requested to examine on-site disposal as a possible alternative. We will investigate this proposal to determine its feasibility. This action will be taken after consultation with the Sanitation Department of the Tillamook County Community Development Department.

During the testimony, Mr. Newkirk indicated that he had been told that the District could not do anything to address his problem unless the District was so directed by the Department of Environmental Quality. If this is your belief, please be advised that we disagree. The owner of a sewerage facility is responsible for the proper operation of its system. If the system fails to operate properly it is the owner's responsibility to correct the problem. In cases where the problem affects private property, such as that faced by Mr. Newkirk, resolution should be a private matter between the individual owner and the municipality. Such action should be initiated by the District without intervention by the Department.

The Department's authority for water quality issues is outlined in Oregon Revised Statutes (ORS) 468. A review of the statutes indicates that it is a violation of state law to place a pollutant in public waters or in a place where it is likely to enter public waters without a permit. The NPDES permit for the Twin Rocks Sewage Treatment Plant grants permission to discharge treated wastes to public waters, but specifically prohibits any other discharge. ORS 468 does not grant the Department the authority to enforce against a person for placing pollutants on private property unless the Department determines that the pollutants are likely to enter public waters.

In Mr. Newkirk's situation, it is not a violation of ORS 468 if sewage backs up into his house unless the sewage drains out of the house and onto the ground. Mr. Newkirk states that this has occurred. If sewage has been discharged onto the ground as a result of a failure of your sewerage facility, you would be in violation of state law.

We have been working with you to resolve problems noted at the Jetty pump station. Specific corrective measures have been required as a result of your report of a spill of raw sewage onto the ground in an area likely to enter public waters. It is especially critical that spills at or near the Jetty pump station (and Barview pump station as well) are prevented as this area is adjacent to Tillamook Bay. This is a sensitive area and the Department has a firm commitment to its protection from bacterial contamination arising from untreated sewage spills.

Your recent action to adjust the level inside the wet well of the Jetty pump station in order to allow a free flow of sewage may help to reduce the number of backup incidences. This is considered a good preventative measure and is encouraged. However, this act alone does not completely protect Mr. Newkirk's property and a final solution needs to be found.

In order to ensure that the Twin Rocks Board of Directors fully understand the requests made of the District, my staff will arrange a compliance meeting with the Board to discuss pertinent issues. The topics to be discussed will include the installation of a more reliable alarm system at the Jetty pump station, the permit requirement for prompt reporting of spills onto the ground, and proper maintenance of the pump station. Prior to that meeting, I suggest that the Board consider its options in order to make sure that sufficient funds are available to purchase required equipment.

Your current spirit of cooperation is appreciated. Based on past contacts, we would anticipate continuing to work with you in a positive manner. At the same time, I expect you to take prompt actions as necessary in order to prevent the discharge of untreated sewage where it is likely to enter public waters.

If you have any questions, please contact Laurie McCulloch in our Northwest Region at 229-5336. Our toll free, call back number is 1-800-452-4011.

Sincerely,

Fred Hansen
Director

cc: Environmental Quality Commission
Water Quality Division, DEQ
Regional Operations, DEQ
Northwest Region, DEQ
Mr. Gary Newkirk

(5) The order shall be affirmed or reversed by the commission after hearing. A copy of the commission's decision setting forth findings of fact and conclusions shall be sent by registered or certified mail to the petitioner or served personally upon him. An appeal from such decision may be made as provided in ORS 183.480 relating to a contested case. [1973 c.835 §211; 1975 c.167 §3]

454.640 County enforcement of standards. (1) In order to protect the health, safety and welfare of its citizens, a county may enforce, consistent with state enforcement, standards for subsurface sewage disposal systems, alternative sewage disposal systems and nonwater-carried sewage disposal facilities established in ORS 454.605 to 454.745 or in rules of the Environmental Quality Commission.

(2) Nothing in this section is intended to prohibit contractual arrangements between a county and the Department of Environmental Quality under ORS 454.725. [1961 c.147 §2]

454.645 Enforcement when health hazard exists. (1) Whenever a subsurface sewage disposal system, alternative sewage disposal system or a nonwater-carried sewage disposal facility or part thereof presents or threatens to present a public health hazard creating an emergency requiring immediate action to protect the public health, safety and welfare, the Department of Environmental Quality may institute an action. The action may be commenced without the necessity of prior administrative procedures, or at any time during such administrative proceedings, if such proceedings have been commenced. The action shall be in the name of the State of Oregon and may petition for a mandatory injunction compelling the person or governmental unit in control of the system or facility to cease and desist operation or to make such improvements or corrections as are necessary to remove the public health hazard or threat thereof.

(2) Cases filed under provisions of this section or any appeal therefrom shall be given preference on the docket over all other civil cases except those given an equal preference by statute.

(3) Nothing in this section is intended to prevent the maintenance of actions for legal or equitable remedies relating to private or public nuisances or for recovery of damages brought by private persons or by the state on relation of any person. [1973 c.835 §212; 1975 c.167 §4; 1979 c.284 §148]

454.655 Permit required for construction; application; time limit; special application procedure for septic tank installation on parcel of 10 acres or more. (1) Except as otherwise provided in ORS 454.675, without first obtaining a permit from the Department of Environmental Quality, no person shall construct or install a subsurface sewage disposal system, alternative sewage disposal system or part thereof. However, a person may undertake emergency repairs of a subsurface or alternative sewage disposal system without first obtaining a permit if the person obtains a permit within three days after the emergency repairs are begun.

(2) A permit required by subsection (1) of this section shall be issued only to a person licensed under ORS 454.695, or to an owner or contract purchaser in possession of the land. However, a permit issued to an owner or contract purchaser carries the condition that the owner or purchaser or regular employes or a person licensed under ORS 454.695 perform all labor in connection with the construction of the subsurface or alternative sewage disposal system.

(3) The applications for a permit required by this section must be accompanied by the nonrefundable permit fee prescribed in ORS 454.745.

(4) After receipt of an application and permit fee, subject to ORS 454.685, the department shall issue a permit if it finds that the proposed construction will be in accordance with the rules of the Environmental Quality Commission. No permit shall be issued if a community or area-wide sewerage system is available which will satisfactorily accommodate the proposed sewage discharge.

(5)(a) Unless weather conditions or distance and unavailability of transportation prevent the issuance of a permit within 20 days of the receipt of the application and permit fee by the department, the department shall issue or deny the permit within 20 days after such date. If such conditions prevent issuance or denial within 20 days, the department shall notify the applicant in writing of the reason for the delay and shall issue or deny the permit within 60 days after such notification.

(b) If within 20 days of the date of the application the department fails to issue or deny the permit or to give notice of conditions preventing such issuance or denial, the permit shall be considered to have been issued.

(c) If within 60 days of the date of the notification referred to in paragraph (a) of this subsection, the department fails to issue or deny the permit, the permit shall be considered to have been issued.

(6) Upon request of any person, the department may issue a report, described in ORS 454.755 (1), of evaluation of site suitability for

ALBRIGHT & KITTELL, P.C.
Attorneys at Law

CHRISTOPHER M. KITTELL
LOIS A. ALBRIGHT

January 20, 1988

2302 First Street
P.O. Box 939
TILLAMOOK, OREGON 97141
Telephone (503) 842-6633

Fred Hansen, Director
Department of Environmental Quality
811 SW Sixth Street
Portland, OR 97204-1334

Dept. of Environmental Quality
RECEIVED
JAN 31 1988
NORTHWEST REGION

Re: WQ - Twin Rocks STP
File No. 90578
Tillamook County

Dear Mr. Hansen:

Please be advised that I am the attorney for Twin Rocks Sanitary District. I am in receipt of your January 7, 1988 letter which relates to Mr. Newkirk. I take great exception to what is outlined in your letter as it is my understanding that Mr. Newkirk appeared before the Environmental Quality Commission. However, there has been no presentation by the District regarding the events surrounding Mr. Newkirk's problems. As you are aware, the matter is currently under litigation under Tillamook County Case No. 87-2029. We are still in the preliminary stages of the pleadings and have not yet had a trial date set. Please be advised that the District's position regarding Mr. Newkirk's problems are as follows:

1. Mr. Newkirk has a 4½ foot fall from the elevation of his first floor to the District's lines. The District's engineer informs us that there should be plenty of gravity so that there should be no back-up of sewage in Mr. Newkirk's property. The District believes that it is entirely possible that Mr. Newkirk kept his old drainage pipe from the house to his old septic tank and connected the septic tank to the sewer. This matter is one of the items that will have to be determined prior to the time of trial. If this is the case, then Mr. Newkirk is responsible for instituting appropriate piping to give himself the elevation drop so that there would be no back-up of sewage.

2. Mr. Newkirk has repeatedly refused all offers of the District to attempt to resolve his problem. Finally the District installed a check-valve over the objections of Mr. Newkirk in an attempt to at least help the situation. The District has made offers since the very beginning of the installation of the sewer system of putting a lift station in at Mr. Newkirk's residence for which Mr. Newkirk would be responsible for maintaining the electrical and maintenance costs. Mr. Newkirk has repeatedly refused these offers. Apparently be prefers to sue for damages rather than resolving the problem.

3. We believe that a number of Mr. Newkirk's back-ups into his residence are the result of having stuffed debris, either by himself or his renters, into the sewage pipes. We have as evidence a large matting of toweling material, much like paper towels, which was stuck in the check-valve in the 1985 sewer back-up incident. The only way this material would be caught in the check-valve, keeping it open, is if it was initiated from Mr. Newkirk's residence.

I believe that the District is doing everything in its power to resolve this problem. However, as Mr. Newkirk is the owner of the property, there is only so much we can do without his cooperation. I am becoming increasingly resentful that Mr. Newkirk seems to be trying his case before the Environmental Quality Commission and through the Department of Environmental Quality rather than through the courts. Mr. Newkirk has made a previous claim for damages against the District for back-up of sewage which was denied by the insurance carrier. We believe that the District will win in this lawsuit and feel that any attempt by Mr. Newkirk to bring pressure to bear on the District by the Department of Environmental Quality is unjustified.

Please be advised that Mr. Newkirk's representation to the Commission that "the District could not do anything to address his problem unless the District was so directed by the Department of Environmental Quality" is a patently false statement. This is not the first time that Mr. Newkirk has made misrepresentations regarding the

District's position in this case. If you have any questions regarding the District's position regarding Mr. Newkirk and his problems, please forward those inquiries to this office. Quite frankly, the District is getting very tired of trying this case other than through the appropriate channels of the Court.

Sincerely,

ALBRIGHT AND KITTELL, P.C.

Lois A. Albright

LA/jgm
cc: Environmental Quality Commission
Water Quality Division
The Regional Operations NW Region
Twin Rocks Sanitary District

CERTIFICATE OF SERVICE

I hereby certify that on January 19th, 1988, I made service of the foregoing Motion for Order to Set Hearing upon the parties hereto by mailing, regular mail, postage prepaid, a true, exact and full copy thereof to:

Jess Glaeser
Attorney at Law
Hoffman, Matasar & Glaeser
1020 SW Taylor, Ste 330
Portland, OR 97205

Janet Hoffman
Attorney at Law
Hoffman, Matasar & Glaeser
1020 SW Taylor, Ste 330
Portland, OR 97205

Mark Blackman
Attorney at Law
Ransom, Blackman & Simpson
330 American Bank Building
621 SW Morrison Street
Portland, OR 97205

Elizabeth Normand
Hearings Officer
Department of Environmental Quality
811 SW Sixth
Portland, OR 97204

Stephen E.A. Sanders # 85321
Assistant Attorney General
Department of Justice
Of Attorneys for DEQ

1 - CERTIFICATE OF SERVICE
SEAS:tla/011988/4503G

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

In the Matter of the License Revocation and Civil Penalty of McInnis Enterprises, Inc., Nos. 56-WQ-NWR-83-79 and 59-GG-NWR-83-33290P-5, and the Civil Penalty of Stephen James McInnis, No. 56-WQ-NWR-83-79 and Robert Leo Churnside, No. 56-SQ-NWR-83-79.	MOTION FOR ORDER TO SET HEARING

The Department of Environmental Quality (DEQ) seeks an order of the Environmental Quality Commission (EQC) directing the hearings officer to set these matters for hearing. DEQ originally asked the hearings officer to set these matters for hearing June 26, 1986 and asked for a reconsideration of the hearings officer's denial on July 3, 1986.

DEQ seeks this order because so much time has elapsed since the date of the violations DEQ alleges as the basis of the civil penalties and revocation action (on and before August 5, 1983).

The hearings officer denied DEQ's request on the basis of concerns expressed by McInnis that proceeding on the civil enforcement before resolution of the related criminal cases would raise constitutional issues.

Stephen E.A. Sanders

Stephen E.A. Sanders # 85321
Assistant Attorney General
Department of Justice
Of Attorneys for DEQ
100 Justice Building
Salem, OR 97310
Telephone: (503) 378-4620

DEPARTMENT OF JUSTICE
JUSTICE BUILDING
SALEM, OREGON 97310
PHONE 378-4400

STOEL RIVES BOLEY
JONES & GREY

ATTORNEYS AT LAW
SUITE 2300
STANDARD INSURANCE CENTER
900 SW FIFTH AVENUE
PORTLAND, OREGON 97204-1268

Telephone (503) 224-3380
Telecopier (503) 220-2480
Cable Lawport
Telex 703455
Writer's Direct Dial Number

(503) 294-9213

cc sent to EQC

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
JAN 19 1988
OFFICE OF THE DIRECTOR

January 18, 1988

James E. Petersen, Esq.
Chairman
Environmental Quality Commission
811 SW Sixth Avenue
Portland, Oregon 97204

Dear Chairman Petersen:

Re: Proposed Adoption of Underground Storage Tank Rules

As chair of the Department of Environmental Quality's Advisory Committee on Underground Storage Tanks, I urge the Environmental Quality Commission to adopt proposed rules OAR 340-150-010 through 340-150-150 and OAR 340-012-067, substantially in the form submitted to you by the Director for consideration at your January 22, 1988 meeting.

With one exception, the Advisory Committee supports these proposed rules, and respectfully submits that they represent a well-reasoned and workable first step towards an environmentally sound and economically feasible underground storage tank program for the State of Oregon.

The exception to which I alluded - and of which the Department is aware - relates to the term of permits to be issued under these proposed rules. While the Advisory Committee has no objection to the issuance of indeterminate term permits, we recommend that the Department be given flexible authority to (i) issue interim permits for existing tanks and new tanks installed in the early days of the program, and (ii) summarily modify such interim permits as may be necessary or appropriate when the Federal Environmental Protection Agency underground storage tank standards are promulgated and your Commission adopts state standards to comply with the federal mandate.

I would also like to take this opportunity to commend the members of my Advisory Committee and the DEQ staff for their diligent, objective and always positive approach to this difficult task. They deserve the thanks of your Commission and the people of Oregon.

Very truly yours,

Richard D. Bach

RDBS1:pk

cc: Mr. Fred Hansen, Director, Department of Environmental Quality
Mr. Larry Frost

ALBRIGHT & KITTELL, P.C.

Attorneys at Law

CHRISTOPHER M. KITTELL
LOIS A. ALBRIGHT

January 20, 1988

2302 First Street
P.O. Box 939
TILLAMOOK, OREGON 97141
Telephone (503) 842-6633

Fred Hansen, Director
Department of Environmental Quality
811 SW Sixth Street
Portland, OR 97204-1334

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
JAN 21 1988
OFFICE OF THE DIRECTOR

Re: WQ - Twin Rocks STP
File No. 90578
Tillamook County

Dear Mr. Hansen:

Please be advised that I am the attorney for Twin Rocks Sanitary District. I am in receipt of your January 7, 1988 letter which relates to Mr. Newkirk. I take great exception to what is outlined in your letter as it is my understanding that Mr. Newkirk appeared before the Environmental Quality Commission. However, there has been no presentation by the District regarding the events surrounding Mr. Newkirk's problems. As you are aware, the matter is currently under litigation under Tillamook County Case No. 87-2029. We are still in the preliminary stages of the pleadings and have not yet had a trial date set. Please be advised that the District's position regarding Mr. Newkirk's problems are as follows:

1. Mr. Newkirk has a 4½ foot fall from the elevation of his first floor to the District's lines. The District's engineer informs us that there should be plenty of gravity so that there should be no back-up of sewage in Mr. Newkirk's property. The District believes that it is entirely possible that Mr. Newkirk kept his old drainage pipe from the house to his old septic tank and connected the septic tank to the sewer. This matter is one of the items that will have to be determined prior to the time of trial. If this is the case, then Mr. Newkirk is responsible for instituting appropriate piping to give himself the elevation drop so that there would be no back-up of sewage.

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3. We believe that a number of Mr. Newkirk's back-ups into his residence are the result of having stuffed debris, either by himself or his renters, into the sewage pipes. We have as evidence a large matting of toweling material, much like paper towels, which was stuck in the check-valve in the 1985 sewer back-up incident. The only way this material would be caught in the check-valve, keeping it open, is if it was initiated from Mr. Newkirk's residence.

I believe that the District is doing everything in its power to resolve this problem. However, as Mr. Newkirk is the owner of the property, there is only so much we can do without his cooperation. I am becoming increasingly resentful that Mr. Newkirk seems to be trying his case before the Environmental Quality Commission and through the Department of Environmental Quality rather than through the courts. Mr. Newkirk has made a previous claim for damages against the District for back-up of sewage which was denied by the insurance carrier. We believe that the District will win in this lawsuit and feel that any attempt by Mr. Newkirk to bring pressure to bear on the District by the Department of Environmental Quality is unjustified.

Please be advised that Mr. Newkirk's representation to the Commission that "the District could not do anything to address his problem unless the District was so directed by the Department of Environmental Quality" is a patently false statement. This is not the first time that Mr. Newkirk has made misrepresentations regarding the

District's position in this case. If you have any questions regarding the District's position regarding Mr. Newkirk and his problems, please forward those inquiries to this office. Quite frankly, the District is getting very tired of trying this case other than through the appropriate channels of the Court.

Sincerely,

ALBRIGHT AND KITTELL, P.C.

Lois A. Albright

LA/jgm
cc: Environmental Quality Commission
Water Quality Division
The Regional Operations NW Region
Twin Rocks Sanitary District

NEIL GOLDSCHMIDT
GOVERNOR

Department of Environmental Quality

811 SW SIXTH AVENUE, PORTLAND, OREGON 97204-1334 PHONE (503) 229-5696

January 7, 1988

TWIN ROCKS SANITARY DISTRICT
P.O. Box 69
Rockaway, OR 97136

RE: WQ - Twin Rocks STP
File No. 90578
Tillamook County

Dear Board Members:

Mr. Gary Newkirk presented testimony during the public forum session of the December 11, 1987, Environmental Quality Commission meeting. Mr. Newkirk related his views of the situation regarding sewage backups into his house in Barview.

The Commission was sympathetic to Mr. Newkirk's problems and has requested that the Department review certain circumstances to ensure that all possible solutions have been considered. We were specifically requested to examine on-site disposal as a possible alternative. We will investigate this proposal to determine its feasibility. This action will be taken after consultation with the Sanitation Department of the Tillamook County Community Development Department.

During the testimony, Mr. Newkirk indicated that he had been told that the District could not do anything to address his problem unless the District was so directed by the Department of Environmental Quality. If this is your belief, please be advised that we disagree. The owner of a sewerage facility is responsible for the proper operation of its system. If the system fails to operate properly it is the owner's responsibility to correct the problem. In cases where the problem affects private property, such as that faced by Mr. Newkirk, resolution should be a private matter between the individual owner and the municipality. Such action should be initiated by the District without intervention by the Department.

The Department's authority for water quality issues is outlined in Oregon Revised Statutes (ORS) 468. A review of the statutes indicates that it is a violation of state law to place a pollutant in public waters or in a place where it is likely to enter public waters without a permit. The NPDES permit for the Twin Rocks Sewage Treatment Plant grants permission to discharge treated wastes to public waters, but specifically prohibits any other discharge. ORS 468 does not grant the Department the authority to enforce against a person for placing pollutants on private property unless the Department determines that the pollutants are likely to enter public waters.

In Mr. Newkirk's situation, it is not a violation of ORS 468 if sewage backs up into his house unless the sewage drains out of the house and onto the ground. Mr. Newkirk states that this has occurred. If sewage has been discharged onto the ground as a result of a failure of your sewerage facility, you would be in violation of state law.

We have been working with you to resolve problems noted at the Jetty pump station. Specific corrective measures have been required as a result of your report of a spill of raw sewage onto the ground in an area likely to enter public waters. It is especially critical that spills at or near the Jetty pump station (and Barview pump station as well) are prevented as this area is adjacent to Tillamook Bay. This is a sensitive area and the Department has a firm commitment to its protection from bacterial contamination arising from untreated sewage spills.

Your recent action to adjust the level inside the wet well of the Jetty pump station in order to allow a free flow of sewage may help to reduce the number of backup incidences. This is considered a good preventative measure and is encouraged. However, this act alone does not completely protect Mr. Newkirk's property and a final solution needs to be found.

In order to ensure that the Twin Rocks Board of Directors fully understand the requests made of the District, my staff will arrange a compliance meeting with the Board to discuss pertinent issues. The topics to be discussed will include the installation of a more reliable alarm system at the Jetty pump station, the permit requirement for prompt reporting of spills onto the ground, and proper maintenance of the pump station. Prior to that meeting, I suggest that the Board consider its options in order to make sure that sufficient funds are available to purchase required equipment.

Your current spirit of cooperation is appreciated. Based on past contacts, we would anticipate continuing to work with you in a positive manner. At the same time, I expect you to take prompt actions as necessary in order to prevent the discharge of untreated sewage where it is likely to enter public waters.

If you have any questions, please contact Laurie McCulloch in our Northwest Region at 229-5336. Our toll free, call back number is 1-800-452-4011.

Sincerely,

Fred Hansen
Director

cc: Environmental Quality Commission
Water Quality Division, DEQ
Regional Operations, DEQ
Northwest Region, DEQ
Mr. Gary Newkirk

CITY OF
PORTLAND, OREGON
BUREAU OF ENVIRONMENTAL SERVICES

Bob Koch, Commissioner
John Lang, Administrator
1120 S.W. 5th Ave.
Portland, Oregon 97204-1972

December 28, 1987

TO: Bureau of Environmental Services' Citizens' Advisory Committee Members

FROM: Bob Rieck

SUBJECT: Franchise Fee and Overhead Payments to the General Fund

In your November meeting you indicated you would like to review franchise fees paid by the Bureau to the General Fund at your January meeting. In addition to franchise fees, I recall there was interest in looking at other payments the Bureau makes to the City's General and Transportation Funds. In preparation for the January meeting I have included for your review the following information concerning all payments made by the Bureau to both the General and Transportation Funds.

FRANCHISE FEES

Direct Payments

Paid directly to the General Fund on 7% of FY 88 User Fee Revenue From in-City property	$1,760,000

Taxes & business reduction but not for property owners

Indirect Payments

Paid indirectly to the General Fund via Bureau payments to other public utilities. These payments are difficult to estimate because of the lack of information on how utilities spread these fees to their customers. Based on a 5% rate for these utilities and the Bureau's estimated FY 88 utility payments of $1,862,365 the maximum fees the Bureau could indirectly pay are $93,000.	$ 93,000
TOTAL	$1,853,000

OVERHEAD CHARGES

Direct Charges

Direct charges for overhead are paid by each fund that the Bureau manages. The charges are based on a proportional allocation of services provided centrally to all bureaus. Examples of these central services or activities include: City Council, Auditor, Attorney, and Treasurer.	$1,158,109

Indirect Charges

Some City bureaus pass on these charges when providing a direct service to BES as they represent a cost of business to that bureau.	$ 34,291
TOTAL	$1,192,400

DIRECT SERVICES

The Bureau receives direct services from the General/Transportation Funds. These services are generally required at the discretion of the Bureau. For FY 88 the Bureau requested and receives services from the General and Transportation funds in the following amounts:

General Fund. Including Computer Services, Fiscal Administration, Parks, Intergovernmental Affairs, etc.	$ 349,907
Transportation Fund. Primarily for sewer maintenance, engineering design and survey services.	$6,338,119
TOTAL	$6,688,026

In preparation for the January meeting, I have asked Sue Klobertanz and Ron Bergman, both of the City's Office of Fiscal Administration, to attend and discuss the City's overhead charges and franchise fee. I look forward to seeing you there.

RWR:al
313:memo(cac)

Can create new funds by adding new customers.

cc: John Lang
Sue Klobertanz
Ron Bergman

OBS	AN	SR	CN	M1	M2	MC	MS	MZ
1	0740030037	G	OREGON STEEL MILLS .	PO BOX 2760		PORTLAND	OR	972080000
2	0770092032	G	UNION OIL OF CALIFORNIA .	CHEMICAL DIVISION	P O BOX 03193	PORTLAND	OR	972030000
3	0770096034	G	H B FULLER CO	14025 N RIVERGATE BL		PORTLAND	OR	972036597
4	0770110039	G	BEALL TRANSLINER INC .	9200 N RAMSEY BD		PORTLAND	OR	972036599
5	3880440118	H	RICHARD OLSEN	6503 SE 52ND AVE		PORTLAND	OR	972060000
6	3930058048	H	KWANG LEE	7134 SE DUKE ST		PORTLAND	OR	972060000
7	4020252031	H	GORDON R KEMPTON	6928 N SWIFT ST		PORTLAND	OR	972031365
8	4060318034	B	F H ORCHARD	9644 SE CLATSOP ST		PORTLAND	OR	972666454
9	4060320032	B	JOHN ALMETER	9634 SE CLATSOP ST		PORTLAND	OR	972666454
10	4060326045	B	NORMAN HANSON	9622 SE CLATSOP S		PORTLAND	OR	972667346
11	4070068030	B	ROBERT L MORRIS	EILEEN R MORRIS	9005 SE 92ND AVE	PORTLAND	OR	972666424
12	4070114053	B	MIKE TRELLA	9100 SE 92ND AVE		PORTLAND	OR	972666425
13	4070118059	B	JOHN RUPERT	JULIE GERE	9035 SE 92ND AVE	PORTLAND	OR	972666424
14	4100168041	B	DOUGLAS CARTER	CAROL CARTER	6928 SE BARB WELCH R	PORTLAND	OR	972360000
15	4130360033	H	W W HAWKINS	% HAWKINS MACHINERY	7812 SE HARNEY ST	PORTLAND	OR	972068543
16	4160040031	G	WAVERLY COUNTRY CLUB .	1100 SE WAVERLY DR		PORTLAND	OR	972227499
17	4190070036	G	EXCELLO PRODUCTS INC .	8710 SE 76TH DR		PORTLAND	OR	972069298
18	4510326006	B	GRAHAM BARBEY	316 NW HILLTIP RD		PORTLAND	OR	972100000
19	4750198048	B	V ROBERT ERICKSON	11831A SW RIVERWOOD		PORTLAND	OR	972190000
20	4750250034	B	RALPH N OSVOLD	12720 SW FIELDING RD		LAKE OSWEGO	OR	970341138
21	4750252032	B	DR DONALD D FISHER	12740SW FIELDNG RD		LAKE OSWEGO	OR	970341138
22	4750254030	B	MR LARRY A STEWARD	12750 SW FIELDING RD		LAKE OSWEGO	OR	970341138
23	4750256034	B	R L THORNTON	12760 SW FIELDING RD		LAKE OSWEGO	OR	970341138
24	4750258032	B	CHAS E TONTZ	12765SW FIELDING RD		LAKE OSWEGO	OR	970341136
25	4750260030	B	S EDWARD BYE	12850 SW FIELDING RD		LAKE OSWEGO	OR	970342410
26	4750262038	B	LACY ZENNER	13915 SW AZALEA CT		BEAVERTON	OR	970050000
27	4750264036	B	MR E W HAGGERTY	12950 SW FIELDING RD		LAKE OSWEGO	OR	970342411
28	4750266034	B	SARAH J RIMKEIT	13050 SW FIELDING RD		LAKE OSWEGO	OR	970342413
29	4750268032	B	DAVID H WILEY	13060 SW FIELDING RD		LAKE OSWEGO	OR	970342413
30	4750270030	B	MR EARL L CALDWELL	13070SW FIELDNG RD		LAKE OSWEGO	OR	970342413
31	4750272034	B	HERBERT LUNDY	13150 SW FIELDING		LAKE OSWEGO	OR	970342415
32	4750273511	B	ROBIN EKHOLM	THOMAS W PINNEY	13200 SW FIELDING RD	LAKE OSWEGO	OR	970340000
33	4750274045	B	BERRY SCHLESINGER	13250 SW FIELDING RD		PORTLAND	OR	970340000
34	4750276030	B	GEORGE JONES	13460 SW FIELDING RD		LAKE OSWEGO	OR	970342421
35	4750277006	B	JACK PRICE	13490 SW FIELDING RD		LAKE OSWEGO	OR	970340000
36	4750278038	B	ALICE VANLEUNEN	PO BOX 408	13607 SW FIELDING RD	LAKE OSWEGO	OR	970342424
37	4750280036	B	VERN DUTT	13254 SW FIELDING RD		LAKE OSWEGO	OR	970342417
38	4750282034	B	JAMES R COWLES	13372 SW FIELDING RO		LAKE OSWEGO	OR	970342419
39	4750284041	B	JOHN MEYER	MAJA MEYER	13382 SW FIELDING RD	LAKE OSWEGO	OR	970342419
40	4750286030	B	DONALD G WILSON	13392 SW FIELDING RD		LAKE OSWEGO	OR	970342419
41	4750288034	B	ROSCOE E WATTS	13348 SW FIELDING RO		LAKE OSWEGO	OR	970342419
42	4750290032	B	BABS WEBSTER	13430 SW FIELDING RD		LAKE OSWEGO	OR	970342421
43	4750292030	B	MARY LOU RAFFETY	13530 SW FIELDING RD		LAKE OSWEGO	OR	970342423
44	4750294038	B	JOYCE WARD	13640 SW FIELDING RO		LAKE OSWEGO	OR	970342425
45	4750295004	B	KATHLEEN RYAN	13078 SW FIELDING RD		LAKE OSWEGO	OR	970342413
46	4750296036	B	LILA MORRIS	13750 SW RIVERSIDE D		LAKE OSWEGO	OR	970342455
47	4750298034	B	HENRY LAUN	14052 SW STAMPHER RD		LAKE OSWEGO	OR	970342463
48	4750300031	B	LAKE OSWEGO DEV CO .	ROBERT L JARVIS	14110 SW STAMPHER RD	LAKE OSWEGO	OR	970342449
49	4750302039	B	DEREK S LIPMAN, MD	252 SW STAMPHER RD		LAKE OSWEGO	OR	970342443
50	4750316031	B	CHARLES GROSS	DEBORAH GROSS	13851 SW STAMPHER RD	LAKE OSWEGO	OR	970342462
51	4850200038	B	PHILIP F PARSHLEY	2294 SW HUMPHREY PK		PORTLAND	OR	972212330
52	4850202036	B	CALVIN T TANABE	2270 SW HUMPHREY PK		PORTLAND	OR	972212330
53	4850204034	B	DANIEL DEVINE	2276 SW HUMPHREY PK		PORTLAND	OR	972212330
54	4850206032	B	WILLIAM F SCHULTE	PO BOX 25525		PORTLAND	OR	972250525
55	4850208030	B	DAVID A HOLLAND	2260 SW HUMPHREY PK		PORTLAND	OR	972212330
56	4850210034	B	ROBERT J SMITH	2256 SW HUMPHREY PK		PORTLAND	OR	972212330

OBS	AN	SR	CN	M1	M2	MC	MS	MZ
57	4850212032	B	STEVE LIPPMAN	2246 SW HUMPHREY PK		PORTLAND	OR	972212330
58	4850214030	B	GEORGE H FREUND	2237 SW HUMPHREY PK		PORTLAND	OR	972212329
59	4850218045	B	LINDA NIEDERMEYER	2245 SW HUMPHREY PK		PORTLAND	OR	972210000
60	4850238032	B	MRS A B GRAHAM	2289 SW HUMPHREY PAR		PORTLAND	OR	972212329
61	4850240030	B	NOLAN BORGENSGARD	2297 SW HUMPHREY PK		PORTLAND	OR	972212329
62	4850244032	B	MORTON G ELEFF	4527 SW HUMPHREY CT		PORTLAND	OR	972210000
63	4850246043	B	ESTHER E O'GRADY	GERALD WYGANT	4520 SW HUMPHREY CT	PORTLAND	OR	972212323
64	4850248038	B	MICHAEL SWINK	4530 SW HUMPHREY CT		PORTLAND	OR	972212323
65	4850250036	B	DR JOHN BARTELS	4500 SW HUMPHREY CT		PORTLAND	OR	972212323
66	4850252034	B	JOHN T VAN HOUTON	4616 SW HUMPHREY CT		PORTLAND	OR	972212325
67	4850256030	B	JOSEPH FYHR JR	4708 SW HUMPHREY CT		PORTLAND	OR	972212327
68	4850258034	B	JOHN C HESSEL	2337 SW 47TH PL		PORTLAND	OR	972212301
69	4850260032	B	A D SCHINNERER	4723 SW HUMPHREY CT		PORTLAND	OR	972212326
70	4850262030	B	DANIEL J SEIFER	4627 SW HUMPHREY CT		PORTLAND	OR	972212324
71	4850263006	B	JOHN C DERVILLE, JR	4615 SW HUMPHREY CT		PORTLAND	OR	972210000
72	4850264038	B	DR FRANK PARKER	2288 SW HUMPHREY PK		PORTLAND	OR	972212330
73	4850266045	B	DON DAVIS	2257 SW HUMPHREY PK		PORTLAND	OR	972210000
74	4850268034	B	LINDA FREEDMAN	RAE LUDWIG	4925 SW HUMPHREY P C	PORTLAND	OR	972212341
75	4850270032	B	CHARLES HELTZEL	5025 SW HUMPHREY PK		PORTLAND	OR	972212310
76	4850272030	B	MARK FRASER	5023 SW HUMPHREY PK		PORTLAND	OR	972212343
77	4850274034	B	JACK H GOETZE	5011 SW HUMPHREY PK		PORTLAND	OR	972212343
78	4850276054	B	H F ADAMS	5019 SW HUMPHREY PK		PORTLAND	OR	972212310
79	4850278030	B	ARNOLD BRANDT	5020 SW HUMPHREY PK		PORTLAND	OR	972212344
80	4850280038	B	RICHARD COLE	4920 SW HUMPHREY PK		PORTLAND	OR	972212342
81	4850286032	B	CLAIR UELTSCHI	2314 SW 47 PL		PORTLAND	OR	972212302
82	4850288030	B	DR MATTHEW PROPHET	5005 SW HUMPHREY RD		PORTLAND	OR	972212310
83	4850292032	B	LOUIS A LEONARD	910 SW 18TH AVE		PORTLAND	OR	972051795
84	4850296038	B	ARTHUR L ECKHARDT	5003 SW HUMPHREY PAR		PORTLAND	OR	972212343
85	4850300033	B	EUGENE BLANK	4940 SW HUMPHREY PK		PORTLAND	OR	972212342
86	4850302044	B	DAVID WRAY	4925 SW HUMPHREY P R		PORTLAND	OR	972210000
87	4850306037	B	HAROLD R BLAIR, MD	4910 SW HUMPHREY PAR		PORTLAND	OR	972212342
88	4850310033	B	DOUGLAS HAMILTON	4825 SW HUMPHREY PK		PORTLAND	OR	972212339
89	4850312053	B	WILLIAM R HADEN	4707 SW HUMPHREY P R		PORTLAND	OR	972210000
90	4850314035	B	WILLIAM J COLLINS	4850 SW HUMPHREY PK		PORTLAND	OR	972212340
91	4850316033	B	M E BONIME	4901 SW HUMPHREY PK		PORTLAND	OR	972212341
92	4850318031	B	WILLIAM A POTTER	4831 SW HUMPHREY PK		PORTLAND	OR	972212339
93	4850320039	B	GERRY SEELY	4937 SW HUMPHREY PAR		PORTLAND	OR	972212341
94	4850326033	B	PETER F OPTON	4820 SW HUMPHREY PK		PORTLAND	OR	972212340
95	4850328031	B	DONALD D CAMPBELL	4814 SW HUMPHREY PK		PORTLAND	OR	972212340
96	4850330035	B	RICHARD P SAVINAR	4817 SW HUMPHREY P C		PORTLAND	OR	972212339
97	4850332033	B	ANTHONY E CATALAN	4808 SW HUMPHREY P C		PORTLAND	OR	972212340
98	4850334044	B	ELLEN K HALL	5021 SW MAPLE LANE		PORTLAND	OR	972212310
99	4850476036	B	PETTER MOE	4440 SW HILLSIDE DR		PORTLAND	OR	972213137
100	4850478034	B	WILLIAM L FLETCHER	4466 SW HILLSIDE DR		PORTLAND	OR	972213137
101	4850484034	B	RICHARD T LEONARD	4571 SW HILLSIDE DR		PORTLAND	OR	972213138
102	4850516002	B	RONALD E PRINDLE	4969 SW HUMPHREY P C		PORTLAND	OR	972210000
103	4850518000	B	J A HORSLEY	5002 SW HUMPHREY P R		PORTLAND	OR	972210000
104	4850534000	B	ROBERT E GLASGOW	4711 SW HUMPHREY P R		PORTLAND	OR	972210000
105	4850536008	B	KATHLEEN KIPP	4745 SW HUMPHREY PK		PORTLAND	OR	972210000
106	4850540004	B	N E HARRIS	4913 SW HUMPHREY P R		PORTLAND	OR	972210000
107	4850542002	B	NANCY J LEE	4933 SW HUMPHREY P R		PORTLAND	OR	972210000
108	4850544019	B	MICHAEL MATTHEWS	5009 SW HUMPHREY P R		PORTLAND	OR	972210000
109	4860002035	B	PEARL ATKINSON	4621 SW PATTON RD		PORTLAND	OR	972213146
110	4860004046	B	PEARL ATKINS	4637 SW PATTON RD		PORTLAND	OR	972213146
111	4860006031	B	RAYMOND E TRAYLE	4703 SW PATTON RD		PORTLAND	OR	972213148
112	4860008039	B	HELEN T KREPS	4719 SW PATTON RD		PORTLAND	OR	972213148

OBS	AN	SR	CN	M1	M2	MC	MS	MZ
113	4860010040	B	GARY HIRSCHKRON	3332 SW 48TH AVE		PORTLAND	OR	972210000
114	4860012035	B	SCOTT P CRESS	3230 SW 48TH AVE		PORTLAND	OR	972212210
115	4860013001	B	JAMES B JEDDELOH	3246 SW 48TH AVE		PORTLAND	OR	972212210
116	4860026037	B	LLOYD BABLER JR	PO BOX 11269		PORTLAND	OR	972110269
117	4860028035	B	JOHN SELLING	3730 SW SHATTUCK RD		PORTLAND	OR	972213008
118	4860030033	B	H L NEWMARK	4646 SW DOWNSVIEW CT		PORTLAND	OR	972210000
119	4860032031	B	DR E MURPHY	4600 SW DOWNS VIEW C		PORTLAND	OR	972213003
120	4860034035	B	JANICE G LANGLEY	4538 SW DOWNSVIEW CT		PORTLAND	OR	972210000
121	4860035014	B	JAN KETCHEL	4515 SW DOWNS VIEW C		PORTLAND	OR	972210000
122	4860036033	B	LLOYD B ROSENFELD	4500 SW DOWNSVIEW CT		PORTLAND	OR	972210000
123	4860038031	B	ROBERT E ERICKSON	4625 SW DOWNSVIEW CT		PORTLAND	OR	972210000
124	4860040039	B	HENRY V FORD	3444 SW SHATTUCK RD		PORTLAND	OR	972210000
125	4860042059	B	MR PATERSON	4726 SW PATTON RD		PORTLAND	OR	972213149
126	4860044035	B	HENRY LEE	MARILYN SLOTFELDT	4520 SW PATTON RD	PORTLAND	OR	972213145
127	4860046033	B	STANTON L ABRAMS	4616 SW PATTON RD		PORTLAND	OR	972213147
128	4860198056	B	PAT IMESON	4400 SW HILLSIDE DR		PORTLAND	OR	972210000
129	5030352034	B	A TORRES	6500 SW HAMILTON ST		PORTLAND	OR	972251917
130	5030376032	B	DR JAN J MULLER	6500 SW HAMILTON WAY		PORTLAND	OR	972251917
131	5030378030	B	LEIGH H KELSEY	6501 SW HAMILTON WY		PORTLAND	OR	972251916
132	5030380041	B	G W ADAMS	6555 SW HAMILTON WAY		PORTLAND	OR	972250000
133	5030438037	B	C E CRAWFORD	NORMAN CRAWFORD	6445 SW SEYMOUR ST	PORTLAND	OR	972211143
134	5030441010	B	CHERI J ROSS	6520 SW SEYMOUR ST		PORTLAND	OR	972251947
135	5030442055	B	PHILIP J RENGEL	7885 SW 184TH AVE		ALOHA	OR	970075702
136	5030444031	B	S HASMAN	4370 SW SCHOLLS FERR		PORTLAND	OR	972250000
137	5080008049	H	ROGER J NEU INVEST .	C/O CAREFREE PROP	8867 SW BVTN HLS HWY	PORTLAND	OR	972252433
138	5080010081	B	RICHARD HERVEY	5203 SW 65TH AVE		PORTLAND	OR	972210000
139	5080014030	B	R C STENNETT	5215 SW 65TH AVE		PORTLAND	OR	972211174
140	5470238040	B	SUSAN WALSH	CLAUDIA JOHNSON	11744 SW BOONES FY R	PORTLAND	OR	972190000
141	5610098033	G	RIVER VIEW MANOR .	2133 SE MADISON		PORTLAND	OR	972143730
142	5650178032	G	RALEIGH CONVALESCENT .	C/O BEVERLY ENT 583	3280 VIRGINIA BEACH	VIRGINIA BCH	VA	234682583
143	6035362004	B	LESTA MADDOCK	3919 NE 102ND AVE		PORTLAND	OR	972200000
144	6035436003	B	PATRICIA A MCKICHAN	10135 NE BEECH ST		PORTLAND	OR	972200000
145	6165130005	B	JORETTA BAILEY	15733 NE SCHUYLER ST		PORTLAND	OR	972300000
146	6165132003	B	GEORGE MANGOLD	15723 NE SCHUYLER ST		PORTLAND	OR	972300000
147	6165134001	B	WALTER JIRENEC	DOLLY JIRENEC	15711 NE SCHUYLER ST	PORTLAND	OR	972300000
148	6165136005	B	GEORGE GULA	DOROTHY GULA	16025 NE SACRAMENTO	PORTLAND	OR	972300000
149	6165138003	B	JOHN BECKER	MILDRED BECKER	15813 NE SACRAMENTO	PORTLAND	OR	972300000
150	6165140001	B	DAVID NICHOLLS	FRANCES NICHOLLS	15807 NE SACRAMENTO	PORTLAND	OR	972300000
151	6165142009	B	MARK ANDERSON	KATHRYN ANDERSON	16129 NE RUSSELL ST	PORTLAND	OR	972300000
152	6165144010	B	WILLIAM M BITNEY	16117 NE RUSSELL ST		PORTLAND	OR	972300000
153	6165146005	B	AIRVARS SAUKANTS	JOYCE SAUKANTS	16049 NE RUSSELL ST	PORTLAND	OR	972300000
154	6165148003	B	JEFFEREY VON AHN	CAROLYN BELL	16039 NE RUSSELL ST	PORTLAND	OR	972300000
155	6165150001	B	MICHAEL DONALDSON	SHARON DONALDSON	16028 NE RUSSELL ST	PORTLAND	OR	972300000
156	6165152018	B	ROBERT M WALLACE	16021 NE RUSSELL ST		PORTLAND	OR	972300000
157	6165154025	B	KAREN GURLEY	16009 NE RUSSELL ST		PORTLAND	OR	972300000
158	6165156014	B	JAMES MANUEL	16000 NE RUSSELL ST		PORTLAND	OR	972300000
159	6165158009	B	KHEM KHUTH	SOREAP KHUTH	15947 NE RUSSELL ST	PORTLAND	OR	972300000
160	6165160007	B	MICHAEL SCOTT	15943 NE RUSSELL ST		PORTLAND	OR	972300000
161	6165162005	B	MICHAEL SMAIL	15931 NE RUSSELL ST		PORTLAND	OR	972300000
162	6165164003	B	FRANK ADAMS	15930 NE RUSSELL ST		PORTLAND	OR	972300000
163	6165166001	B	HAROLD DAVIS	LENORE DAVIS	15928 NE RUSSELL ST	PORTLAND	OR	972300000
164	6165168018	B	WILLIAM ROBERTS	15926 NE RUSSELL ST		PORTLAND	OR	972300000
165	6165170003	B	ROBERT CLARE JR	15924 NE RUSSELL ST		PORTLAND	OR	972300000
166	6165172014	B	STEPHEN D HARPHAM	MARIKO HARPHAM	15920 NE RUSSEL ST	PORTLAND	OR	972300000
167	6165174009	B	LESLIE STOUT	15919 NE RUSSELL ST		PORTLAND	OR	972300000
168	6165176010	B	JAMES EUGENE BLACKBURN	SANDRA BLACKBURN	15912 NE RUSSELL ST	PORTLAND	OR	972300000

OBS	AN	SR	CN	M1	M2	MC	MS	MZ
169	6165178005	B	EARL GRIGGS	KIYO GRIGGS	15907 NE RUSSELL ST	PORTLAND	OR	972300000
170	6165180003	B	TERRY CROY	15904 NE RUSSELL ST		PORTLAND	OR	972300000
171	6165182032	B	LINDA A LYONS	15845 NE RUSSELL ST		PORTLAND	OR	972300000
172	6165184005	B	DAVID TOWNSEND JR	15838 NE RUSSELL ST		PORTLAND	OR	972300000
173	6165186003	B	DAVID N HEATON	15809 NE HANCOCK ST		PORTLAND	OR	972300000
174	6165188014	B	ROBERT JENSEN	SHEILA JENSEN	15741 NE HANCOCK ST	PORTLAND	OR	972300000
175	6165190009	B	THOMAS WAUGH	15729 NE HANCOCK ST		PORTLAND	OR	972300000
176	6165192007	B	VICTOR ERRICO	LINDA ERRICO	15726 NE HANCOCK ST	PORTLAND	OR	972330000
177	6165194005	B	DENNIS SCHIEDLER	KATHLEEN SCHIEDLER	15715 NE HANCOCK ST	PORTLAND	OR	972300000
178	6165196012	B	STERLING KECK	REGINA KECK	15714 NE HANCOCK ST	PORTLAND	OR	972300000
179	6165198001	D	WILLIAM GALLOWAY	HELEN GALLOWAY	16015 NE SISKIYOU ST	PORTLAND	OR	972300000
180	6165200008	D	MALCOLM IRVINE	JACKIE IRVINE	12515 NE ROSE PARKWY	PORTLAND	OR	972300000
181	6165202006	D	SYLVIA CULVER	PRINCETON PR MG #305	4850 SW SCHOLLS FY R	PORTLAND	OR	972250000
182	6165204004	D	THOMAS SEARS	SUITE 202	8401 NE HALSEY ST	PORTLAND	OR	972200000
183	6165206002	D	CHARLES HARRIS	DEBRA HARRIS	8315 SE STARK ST	PORTLAND	OR	972160000
184	6165208000	B	ROBIN FISHER	JANELLE FISHER	2525 NE 161ST AVE	PORTLAND	OR	972300000
185	6165210004	B	JOHN LESSARD	NANCY LESSARD	2511 NE 161ST AVE	PORTLAND	OR	972300000
186	6165212002	B	HAROLD HEIMARK	MARY HEIMARK	2443 NE 161ST AVE	PORTLAND	OR	972300000
187	6165214000	B	GERALD WELL	TONI WELL	2437 NE 161ST AVE	PORTLAND	OR	972300000
188	6165216008	B	FRANKLIN LEIN	2436 NE 161ST AVE		PORTLAND	OR	972300000
189	6165220013	B	LOMAS & NETTLETON	% KEELEY BORUM	P O BOX 227097	DALLAS	TX	752220000
190	6165222002	B	MOLLIE BUTLER	DEAN MALLOY	PO BOX 14204	PORTLAND	OR	972140000
191	6165224000	B	ARTHUR MAKINSTER	RANDY MAKINSTER	2546 NE 159TH AVE	PORTLAND	OR	972300000
192	6200050008	B	JACK CROUSER	INA CROUSER	3002 NE 122ND AVE	PORTLAND	OR	972200000
193	6200052006	B	MICHELE PIXLEY	2916 NE 122ND AVE		PORTLAND	OR	972300000
194	6200056002	B	WILFORD BOWKER	DONNA BOWKER	2734 NE 122ND AVE	PORTLAND	OR	972300000
195	6200058000	B	KENNETH ARMSTRONG	MARJORY ARMSTRONG	2845 NE 117TH AVE	PORTLAND	OR	972200000
196	6210030005	B	WAYNE SCHIEDLER	JO SCHIEDLER	15348 NE HALSEY ST	PORTLAND	OR	972300000
197	6210032003	B	GLENN JACKSON	BRENDA JACKSON	15346 NE HALSEY ST	PORTLAND	OR	972300000
198	6210034001	B	JIM GAYDEN	15342 NE HALSEY ST		PORTLAND	OR	972300000
199	6210036009	B	MARIEL COWLTHORP	15216 NE HALSEY ST		PORTLAND	OR	972300000
200	6210038007	B	PHYLLIS ANDERSON	15104 NE HALSEY ST		PORTLAND	OR	972300000
201	6220020002	B	WILLIAM VAN BUREN	3001 NE 148TH AVE		PORTLAND	OR	972300000
202	6220022000	B	LOUIS PERKINS	LORNA PERKINS	2507 NE 148TH AVE	PORTLAND	OR	972300000
203	6220024008	B	TOM TODA	MAMIE TODA	2405 NE 148TH AVE	PORTLAND	OR	972300000
204	6220026015	B	LLOYD EATON	2343 NE 148TH		PORTLAND	OR	972300000
205	6220028004	B	PAUL BERRY	COLLEEN BERRY	1715 NE 148TH AVE	PORTLAND	OR	972300000
206	6220030002	B	LARRY FINEGAN	PATRICIA FINEGAN	14749 NE SACRAMENTO	PORTLAND	OR	972300000
207	6220032019	B	DENNY DENTON	14735 NE SACRAMENTO		PORTLAND	OR	972300000
208	6220034004	B	ROBERT TORRES	14717 NE SACRAMENTO		PORTLAND	OR	972300000
209	6240090002	H	EARL CUMLEY	ELMA CUMLEY	8311 NE HASSALO ST	PORTLAND	OR	972200000
210	6240092013	H	K P AUTOMOTIVE	JOHN KIRKLAND	16116 NE HALSEY ST	PORTLAND	OR	972300000
211	6240094008	B	FORREST LEE	INEZ LEE	15816 NE HALSEY ST	PORTLAND	OR	972300000
212	6240096006	B	JAMES C BUTLER	C/O CULVER CO	8383 NE SANDY #430	PORTLAND	OR	972200000
213	6240098013	B	BEVERLY READ	JOYCE KALLENBACH	15528 NE HALSEY ST	PORTLAND	OR	972300000
214	6240100001	B	GARY DUNN	1818 NE 159TH AVE		PORTLAND	OR	972300000
215	6240102009	B	ROBERT BELLOWS	MAXINE BELLOWS	1747 NE 159TH AVE	PORTLAND	OR	972300000
216	6240104007	B	LEE WHITE	ANNETTE WHITE	1736 NE 159TH AVE	PORTLAND	OR	972300000
217	6240106005	B	JAN JOHANSEN	CAROLYN JOHANSEN	1833 NE 157TH AVE	PORTLAND	OR	972300000
218	6240108003	B	ROSS BURKE	1821 NE 157TH AVE		PORTLAND	OR	972300000
219	6240110001	B	DENNIS ALLEN	TANYA ALLEN	1818 NE 157TH AVE	PORTLAND	OR	972300000
220	6240112005	B	ROBERT HART	SUSAN HART	1801 NE 156TH AVE	PORTLAND	OR	972300000
221	6240114003	B	VICTOR HUDDLESTON	NORENE HUDDLESTON	1651 NE 156TH AVE	PORTLAND	OR	972300000
222	6240116014	B	WAYNE L BEBERNESS	LORRAINE BEBERNESS	1823 NE 155TH AVE	PORTLAND	OR	972300000
223	6240118009	B	CLIFFORD KRUM	ETHEL KRUM	1810 NE 155TH AVE	PORTLAND	OR	972300000

Testimony by Jeanne Circuit
during the Public Forum
of the EQC Meeting on 1-22-88

During the 1987 legislative session, United Citizens introduced 10 bills that would provide meaningful financial relief to property owners faced with the sewer mandate. The chair of the House Intergovernmental Affairs Committee told United Citizens that they would get nothing from the legislature unless they sat down with Portland and Gresham and negotiated a mutually acceptable bill. After many hours of negotiations, the culmination of our efforts was HB-3101 which, I am sorry to say, provides very little financial relief for affected property owners.

Today, I wish to advise you that it appears Portland and Gresham are not living up to the letter of the law. House Bill 3101 requires that a municipality providing sewer service within the affected area shall approve and adopt a Safety Net Program. Although Portland has adopted a Safety Net Program, Gresham is dragging its feet. When I asked the City for a copy of its Safety Net Program, I was told that some changes

were being made and I could have a copy when it was finalized. Gresham is developing its Safety Net Program without any citizen participation whatsoever!

House Bill 3101 also requires a municipality providing sewer service in the affected area to establish a Citizens Sewer Advisory Committee to advise the E.O.C. and the local governing body on matters relating to implementation of the sewer mandate. The committee shall consist of persons directly affected by the mandate and shall represent a cross section of businesses, home-owners, renters and others affected by the order. Although Portland created a Citizens Sewer Advisory Committee prior to the passage of HB-3101, the composition does not comply with the law which requires that 1/3rd of the members of the committee shall be eligible for safety net benefits. Gresham has not complied with the law, and does not have a Citizens Sewer Advisory Committee. However, they contemplate establishing a 3 member committe. How can only 3 members be representative

of a cross section of businesses, homeowners, renters, and others such as institutions, churches, schools, mobile home owners, etc.?

The law further provides that a Citizens Sewer Advisory Committee shall submit its minutes and recommendations to the EQC.. Has the Portland Citizens Sewer Advisory Committee complied with this requirement of law?

I believe that Portland is in violation of another provision of the law. Before a property owner is required to pay for construction or connection to a sewer, the local governing body shall file with the E.Q.C. documentation that sewer connection and user charges are based on the cost of providing sewer service and that the existance of a city boundary shall not be used as a basis for imposing a differential sewer user rate or connection fee. Unless there are documented cost-causative factors to justify the differential. Portland is charging the same sewer user fee in the unincorporated area as it does within the city. However, the user

fee within the city limits includes the 7% franchise fee which the City cannot legally collect in the unincorporated area. Therefore, rate-payers in the unincorporated area are paying a higher user fee than property owners within the City. The amount equal to the 7% franchise fee which is collected in the unincorporated area is being diverted to the General Fund - just as if it was a franchise fee. The General Fund can be used for any purpose approved by the City Council. I am submitting a list I received from Portland of property owners in the unincorporated area who are paying the 7% that is being transferred to the General Fund. I am also submitting a memo dated 12-28-87 from Bob Rieck to the Bureau of Environmental Services Citizens' Advisory Committee members regarding franchise fees and over-head payments to the General Fund. I trust you will review this information and do whatever is within your power to correct this injustice and force Portland & Gresham to comply with the State law.

I have yet two additional concerns Although state law has removed the property owners right to remonstrate against sewers, Multnomah County has passed a resolution that would give it the right to remonstrate against assessments for sewering County properties. This in turn would increase the sewer costs to other property owners within the LID.

My second concern is that Portland is now giving rebates on connection charges back as far as 1984. The grants being received are for the affected area so why should property owners who connected prior to the sewer mandate receive a rebate.

Since you are the Board that mandated the Mid Multnomah County Sewer Project, I'm sure you will be interested in seeing that it is implemented in a fair and equitable manner.