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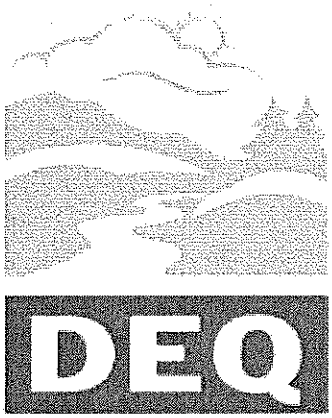
4/29/1988

OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS



State of Oregon
Department of Environmental Quality

OREGON ENVIRONMENTAL QUALITY COMMISSION MEETING

April 29, 1988
Jackson County Courthouse
10 S. Oakdale
Medford, Oregon

AGENDA

9:30 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 March 11, 1988, EQC Meeting.

B. Monthly Activity Report for February 1988.

C. Tax Credits

9:35 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. No staff report assigned.

E. Request for Authorization to Conduct Public Hearings on Proposed Rules for Certifying Sewage Works Operators.

F. Request for Authorization to Hold a Public Hearing on the FY89 Construction Grants Priority List and Management System.

G. Request for Authorization to Conduct Public Hearings on a Proposed New Solid Waste Rule Regarding Financial Assurance at Regional Landfills, OAR 340-61-029.

H. Request for Authorization to Conduct a Public Hearing on Proposed New Rules Relating to the Opportunity to Recycle Yard Debris.

I. Request for Authorization to Conduct Public Hearings on Proposed New Administrative Rules for the Waste Tire Program, OAR 340-62; Permit Procedures and Standards for Waste Tire Storage Sites and Waste Tire Carriers.

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.

*J. Proposed Adoption of Amendments to Rules of Practice and Procedure, OAR Chapter 340, Division 11.

*K. Proposed Adoption of Revisions to New Source Review Rules (OAR 340-20-220 through 260) and Prevention of Significant Deterioration Rules (OAR 340-31-100 through 130).

*L. Proposed Adoption of Rules to Amend Ambient Air Standards (OAR 340-31-005 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.

*M. Proposed Adoption of Revisions to the State Implementation Plan to include Commitments for PM_{10} Group II Areas.

*N. Proposed Adoption of Rules Relating to Asbestos Control (OAR 340-33) and Amendments to the Hazardous Air Contaminant Rules for Asbestos (OAR 340-340-25-450 through 465).

*O. Proposed Adoption of Amendments to the Hazardous Waste Fee Rules, OAR Chapter 340, Divisions 102 and 105.

P. Informational Report: Review of FY89 State/EPA Agreement and Opportunity for Public Comment.

Q. Request for Issuance of an Environmental Quality Commission Order for the City of Brookings, Oregon.

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 9:30 a.m. to avoid missing any item of interest.

The Commission will have breakfast **(8:00) at Elmer's Pancake and Steak House, 2000 Biddle Road, Medford.** Agenda items may be discussed at breakfast. The Commission will also have lunch at the DEQ offices.

The next Commission meeting will be June 3, 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.

MINUTES ARE NOT FINAL UNTIL APPROVED BY THE EQC

ENVIRONMENTAL QUALITY COMMISSION

Minutes of the One Hundred Eighty-Sixth Meeting
March 11, 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

Commission Members Absent:

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

Groundwater Resources Management Program: Director Hansen indicated that although a number of agencies in state government are involved in groundwater, no coordinated comprehensive groundwater management program currently exists. Director Hansen introduced Neil Mullane who described the Department's groundwater management program.

Mr. Mullane provided a brief review of the Department's past groundwater activities and the development of the general

groundwater protection policy adopted by the Environmental Quality Commission in 1981. He noted that federal programs such as the Resource Conservation and Recovery Act (RCRA) and Superfund have helped to identify numerous groundwater problems. As a result, a more comprehensive statewide groundwater management program must be developed. A grant has been received from the U. S. Environmental Protection Agency to assist the Water Quality Division and other agencies to develop a broader based groundwater management program for the state.

The Commission asked Mr. Mullane about the involvement of the Water Resources Commission and whether the Department may suggest a need to consolidate parts of agencies to deal with groundwater management. Director Hansen and Mr. Mullane responded that the Water Resources Commission is looking to the Department to provide groundwater information for their statewide water resources program. Director Hansen added that consolidation is unlikely unless a natural resources agency is formed. Until a consolidation occurs, current agency groundwater activities will continue. Commissioner Denecke requested that the report entitled, "Assessment of Oregon's Groundwater for Agricultural Chemicals," be sent to each of the commissioners.

Salt Caves: Director Hansen advised the Commission on the status of the City of Klamath Falls' revised application for Section 401 Certification of the Salt Caves Hydroelectric Project. Two public hearings are scheduled for March 29: one to be held in Klamath Falls and the other in Portland. Written comments will be received through April 11, 1988. Director Hansen indicated the Department expects to complete action on the application within the 90-day time period established in EQC rules; however, if significant new information is received at the public hearing, analysis of that information may slow the application review.

McInnis Enterprises: McInnis Enterprises is proposing a settlement of proceedings initiated by the Department. Stephen Sanders, Assistant Attorney General, provided the Commission with the details of the proposed settlement. McInnis Enterprises would be on probation for a three-year period. Any future violations by the company would trigger a stipulation to past violations and their license would be revoked. Additionally, unauthorized pumping would immediately cause suspension of their license. McInnis will pay the civil penalties in quarterly installments over a two-year period. It was noted that the Director has the authority to settle the case, but wanted to give the Commission opportunity to comment. The Commission expressed no objections to the Director proceeding with settlement of the case.

Proposed Medford Meeting:

Carolyn Young told the Commission about some of the topics that will be discussed at the April 28 public forum. Those topics include woodstoves and pulp and paper mills. Since Klamath Falls residents may attend the public forum, it is possible there will be an attempt to discuss Salt Caves. Chairman Petersen noted that discussion of Salt Caves would be inappropriate since their revised application is pending before the Department. Department staff propose to brief the Commission on the background of the area problem and the current status of activities prior to the public forum. Ms. Young also discussed the proposed format of the public forum meeting.

FORMAL MEETING

CONSENT ITEMS:

Agenda Item A: Minutes of the January 22, 1988, EQC Meeting.

> **Action:** It was MOVED by Commissioner Hutchison, seconded by Commissioner Brill, and passed unanimously that the minutes of the January 22, 1988, meeting be approved.

Agenda Item B: Monthly Activity Reports for December 1987 and January 1988.

Commissioner Hutchison asked about the air contaminant discharge permit (ACDP) modification issued to Bergsoe. Lloyd Kostow, Air Quality Division, said the existing ACDP for Bergsoe had been modified so that the facility could be started during the clean-up process, if necessary.

> **Action:** It was MOVED by Commissioner Denecke, seconded by Commissioner Hutchison, and passed unanimously that the December 1987 and January 1988 Monthly Activity Reports be approved.

Agenda Item C: Tax Credits.

Chairman Petersen asked about the drop box facilities proposed for certification. Robert Brown, Hazardous and Solid Waste Division, explained that the drop box was specially constructed with compartments to receive different types of glass. The glass is then transported to Owens-Illinois for recycling. Senate Bill 405

provides the opportunity to recycle, and the facility is used as a dedicated recycling depot. Commission Hutchison asked about what would happen if the drop boxes were no longer used to collect recyclables. Mr. Brown indicated that if the facility is converted to another purpose, it would no longer be eligible for tax credit and the certificate would be revoked.

Action: It was MOVED by Commissioner Hutchison, seconded by Commissioner Brill and passed unanimously that the tax credits listed in the Director's recommendation be approved.

Appl. No.	Applicant	Facility
T-2276	Fink Sanitary Service	2 Drop Boxes
T-2335	Newberg Garbage Service Inc.	Drop Box
T-2392	Gregory Affiliates, Inc.	Boiler, dutch oven and particulate collector
T-2400	International Paper Co.	Modifications to No. 3 recovery furnace air and liquor supply systems
T-2401	International Paper Co.	Modifications to caustic plant
T-2402	International Paper Co.	Non-condensible gas systems

PUBLIC FORUM

Jeanne Orcutt, Gresham, told the Commission she did not have enough time to review the Department's response to her January EQC testimony. She indicated that many important issues appeared to have been glossed over by the Department. She further said the City of Portland has agreed to stop charging franchise fees to residents outside the City.

Chairman Petersen asked **Dick Nichols**, Water Quality Division Administrator, to investigate the concerns raised by Ms. Orcutt.

John Pointer, representing Citizens Concerned with Wastewater Management and United Citizens, spoke to the Commission about the City of Portland's sludge disposal program. He feels the sludge exceeds heavy metals standards and is toxic. Mr. Pointer said the Department should not rely on source self-monitoring and should allow concerned citizens to perform monitoring activities and investigations. Chairman Petersen responded that the Department will continue to perform their own investigations.

HEARING AUTHORIZATIONS:

Agenda Item D: Request for Authorization to Conduct a Public Hearing on Amendments to Procedures for Issuance, Denial, Modification and Revocation of Permits (OAR 340-14-005 through 050), New Source Review, Procedural Requirements (OAR 340-20-230), and Issuance of NPDES Permits (OAR 340-45-035).

This agenda item requests hearing authorization on proposed amendments to Commission rules on general permitting procedures. The Department proposed to add the requirement that a public hearing will be held on proposed permit actions if ten individuals or an organization(s) representing at least ten persons submit written hearing requests.

The proposed amendments clarify that New Source Air Contaminant Discharge Permits and National Pollutant Discharge Elimination System (NPDES) permits are subject to this new requirement. Resource Conservation and Recovery Act (RCRA) and Underground Storage Tank (UST) permits are exempted. The Department proposed to amend the time frame for issuance of temporary permits from 45 days after notification that an application is complete to 45 days after closing the hearings record or public comment period.

Chairman Petersen asked whether the Entek settlement agreement locked the Commission into any particular course of action. Director Hansen said the settlement agreement was only binding upon the Department and not the Commission. Chairman Petersen then asked if any attempt had been made to evaluate the costs of the proposed rule which requires public hearings on permit applications when ten or more people request a hearing. Director Hansen responded that under the new rule, the cost of public hearings should not be any different since the new rules simply codify the operating policy the Department has always followed. In response to Chairman Petersen's concern that this rule change could be too burdensome to industry, Director Hansen replied that the Department can implement the process without placing undue burden upon permit applicants.

> **Director's Recommendation:** Based on the report summation, the Director recommended the Commission authorize a public hearing to take testimony on the proposed rule changes to procedures for issuance, denial, modification and revocation of permits (OAR 340-14-005) and related amendments to rules on issuance of New Source Air Contaminant Discharge Permits (OAR 340-20-230) and issuance of NPDES permits (OAR 340-45-035).

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

Agenda Item E: Request for Authorization to Hold Hearings on Proposed Amendments to Rules Contained in OAR 340-41-445, Water Quality Standards not to be Exceeded, Willamette Basin.

This agenda item requests authorization for public hearings on the proposed rule to establish phosphorus and ammonia standards for the Tualatin River. These proposals were developed in response to the Northwest Environmental Defense Center (NEDC)/U. S. Environmental Protection Agency (EPA) lawsuit settlement that required the development of Total Maximum Daily Loads (TMDL) on the Tualatin River. The TMDLs were developed to address water quality standards violations for dissolved oxygen (DO) and nuisance algal growth.

The proposed rules were developed after an intensive water quality investigation of the Tualatin River by the Department, Lake Oswego Corporation and the Unified Sewerage Agency (USA). The proposed rules were also developed with the assistance of a citizen and technical advisory committee.

Gary Ott, Tigard, told the Commission he was a user of the Tualatin River and a rate payer to the Unified Sewerage Agency. He expressed the view that the effect of establishing a TMDL on water quality in the Tualatin River should be quantitatively described so that individuals know what they are paying for. He said the recreational benefits achieved by the TMDLs need to be clarified. Additionally, the frequency and extent of the algal blooms needs to be quantified, and associated environmental costs, such as energy costs, need to be evaluated. Mr. Ott said that removal of the Lake Oswego Diversion Dam may have a positive benefit to water quality and should not have been eliminated from consideration. His greatest concern was that there is no assurance that significant investments will result in desired water quality improvement.

Jack Churchill, NEDC and a Lake Oswego resident, said a letter, which he provided to the EQC and is made a part of this record, from the General Accounting Office (GAO) study on the effectiveness of the Clean Water Act in the Tualatin Basin indicated that $100 million has been misspent in Washington County. Further, he said, as goes the Tualatin, so goes water quality in Oregon. Mr. Churchill felt the EQC needs to take action on the agenda item rather than by inaction trigger automatic abdication of water quality management in the Tualatin to EPA.

Ted Kreedon, resident and Mayor of Rivergrove, spoke to the Commission about several concerns. He felt the cost figures for options to meet the proposed TMDLs provided by consultant to USA are biased, and that the Department by citing these figures in their report have endorsed the figures. Also, by using the biased figures, USA and Washington County were attempting to intimidate and threaten individuals who are attempting to clean up the Tualatin River. Mayor Kreedon said alternative means to cleaning up the river, such as wetlands, may cost much less. The Department should retain a competent engineering firm to evaluate the cost associated with wetland alternatives.

Director's Recommendation: Based on the report summation, the Director recommended the Commission to proceed to public hearing to take testimony on the proposals to add a phosphorus standard and an ammonia standard to the rules establishing water quality standards for the Tualatin River and establish definitions for TMDL, WLA and LA.

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

Agenda Item F: Request for Authorization to Conduct a Public Hearing on Proposed Amendments to the Hazardous Waste Management Rules, OAR Chapter 340, Divisions 100, 102 and 104.

This agenda item requests authorization to conduct a public hearing on proposed amendments to the Department's hazardous waste management rules. The Department is proposing the adoption, by reference, of a group of new federal regulations. This action is necessary if the Department is to maintain authorization from EPA to management a state-operated hazardous waste program.

The Department is also proposing the repeal of an existing state rule concerning the closure of surface impoundments, which is more stringent than one of new Federal rules. Additionally, the Department proposes to expand the reporting requirements for hazardous waste generators and hazardous waste management facilities.

Commissioner Hutchison asked how the Federal rule concerning waste minimization, which the Department proposes to adopt, relates to the Oregon Student Public Interest Research Group's (OSPIRG) proposed waste reduction legislation, and whether adoption of the Federal rule would prevent the state from implementing OSPIRG's proposal. Director Hansen responded that the Federal rule simply requires hazardous waste generators to certify on their shipping

manifests they are making a good-faith effort to reduce wastes. There are no specific waste reduction standards or requirements.

In contrast, the OSPIRG proposal is a comprehensive program that includes a poison tax on hazardous materials, an independent certification program for people who would oversee and evaluate waste minimization programs, and the eventual ban on the use or sale of certain toxic materials in the state. Adoption of the Federal rule would not prevent the state in any way from implementing the OSPIRG proposal. Director Hansen also noted the Federal rule was already in effect, and the proposed rules simply allow DEQ to enforce the federal rules.

Director's Recommendation: Based upon the report summation, the Director recommended the Commission authorize the Department to conduct a public hearing, to take testimony on these proposed amendments to the hazardous waste management rules, OAR Chapter 340, Divisions 100, 102 and 104.

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

Agenda Item G: Request for Authorization to Conduct a Public Hearing on Proposed Amendments to the Solid Waste Fee Schedule, OAR Chapter 340, 61-120.

This agenda item requests authorization to conduct a public hearing on proposed amendments to the Solid Waste Fee Schedule. The Department's 1987-89 legislatively approved budget anticipates a fee increase of 20 percent for solid waste and recycling fees. The increase is to fund program maintenance, not expansion.

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 solid waste fee schedules in OAR 340-61-120.

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

Agenda Item H: Appeal of Hearings Officer's Decision in DEQ vs. Merit USA, Inc.

Merit USA, Inc., has appealed the decision of the Hearing Officer finding the company liable for civil penalties totaling $2,000. The Department has cross-appealed seeking review of the Hearings Officer's decision reducing the civil penalty imposed by the Department from $3,500 to $2,000. Merit USA (respondent) filed briefs, presented argument, and appeared by its attorney, **Orrin R. Onken**; the Department also filed briefs, presented argument, and appeared by **Arnold B. Silver**, Assistant Attorney General.

Mr. Onken indicated the issues before the commission have been extensively briefed and that decision of the Hearings Officer was not well received. He summarized the respondent's position by questioning whether DEQ was pursuing the correct party (a bankrupt company). DEQ employees observed Merit employees cleaning up the oil. There was no testing of the oil or investigation of other sources of the oil. The Hearings Officer improperly determined the oil belonged to Merit. The Hearings Officer improperly put the burden on Merit to prove its case. The Hearings Officer found no act or omission or negligence on the part of Merit. However, the Department said the respondent does not have to be negligent, just that the oil in the water must be the respondent's. Merit maintains there was no proof the respondent caused or permitted or even controlled the oil that went into the water. The Hearings Officer found no negligence or breach of duty causing the oil to go into the waters and, therefore, cannot support a penalty based on a finding of negligence. Finally, the Department said the Hearings Officer cannot reduce the fine. Merit argues the Hearings Officer is a designee of the Commission and is empowered to set a fine after the hearing and did so.

Mr. Silver summarized arguments by saying the Department recognizes there were no eye witnesses to the oil spill. However, circumstances indicate there was responsibility. On or about March 10, 1987, approximately 200 gallons of oil was spilled into the waters of the state from property (oil recovery and processing facility) owned by the respondent. The respondent claimed the spilled oil came from under tires on neighboring property and did not come from his oil recovery pond. DEQ investigators found the spilled oil to be consistent with waste recovery. Merit employees were engaged in clean-up when Department investigators arrived. Mr. Briggs, company president, estimated clean-up costs of $6,000 to $10,000. Although he claimed the oil came from the neighbor's property, he did not intend to sue his neighbor for recovery of the clean-up cost. Department investigators were informed by an individual, referred to as a shareholder, a partner, or an employee, that the oil pond overflowed due to rain. Later, this statement was recanted.

Investigation showed a straight line of oil leading from the oil recovery pond to public waters. The Hearings Officer found the Department's conclusions to be more logical and credible than the conclusions presented by the respondent. Department does not claim the spill was intentional, rather the pond overflowed into public waters and Merit is responsible for cleaning up.

Commissioner Hutchison asked about the issue of strict liability versus negligence. Mr. Silver responded the statute cited does not require negligence or an intentional act to occur for the property owner to be responsible. Another statute, the strict liability statute, also applies.

Mr. Onken responded there was nothing in the record to indicate the treatment pond overflowed or that the Hearings Officer found the pond had overflowed. He also noted the rule authorizing the penalty specifically refers to negligent action.

The Commission elected to then hear the arguments on the cross-appeal before making a decision on the appeal.

Mr. Silver characterized the cross-appeal as a policy issue and also a legal issue. The Director imposed a $3,500 penalty after considering mitigating and aggravating circumstances as required by Commission rules. No new mitigating factors were revealed at the hearing, and there was no failure of proof on the Director's part. The Hearings Officer considered the identical mitigating and aggravating factors and reduced the penalty to $2,000. The Hearings Officer's judgement was substituted for that of the Director's. The Department interprets past Commission policy direction to allow the Hearings Officer to mitigate the penalty only if the Department fails to prove the violation or if new information on mitigating factors is presented at the hearing. Therefore, the matter is brought to the Commission on cross-appeal.

Chairman Petersen noted Mr. Onken's earlier argument that the Hearings Officer is an extension of the Commission and empowered to reduce the penalty.

Commissioner Hutchison asked Kurt Burkholder to advise the Commission on the legal issues. Mr. Burkholder characterized the issues before the Commission as evidentiary issues. Mr. Burkholder discussed the appeal based on the claim the respondent did not release oil into the water and the cross-appeal about whether there was new information or lack of proof to justify lowering the penalty. Commission rules are either unclear or do not speak to the extent of the Hearings Officer's discretion; however, the Commission at this hearing does have discretion to look at the record, consider the mitigating and aggravating

factors, and determine whether the Director's initial assessment of penalty was appropriate. Mr. Burkholder also advised the Commission he agrees with the Department that this is a strict liability statute. The negligence criteria referred to by the respondent is simply a mitigating or aggravating factor the Director can take into account in determining the amount of the penalty.

Commissioner Hutchison indicated he was persuaded there were mitigating circumstances (including cost of clean up, steps taken to prevent spills, and the rain) the Commission should take into account when deciding the issue. He asked if there were aggravating factors that should be also considered. Mr. Silver noted prior violations as the primary aggravating factor.

Chairman Petersen then suggested the Commission first consider whether to affirm or reverse the Hearings Officer's Findings of Fact and Conclusions of Law as to the guilt of the respondent. He then suggested the Commission consider the issue of the penalty and the policy issue raised in the cross-appeal.

Action: Commissioner Hutchison MOVED that the Hearings Officer's Findings of Fact and Conclusions of Law be affirmed and that the penalty be set at $2,750. The motion died for lack of a second.

Commissioner Denecke MOVED that the Hearings Officer's decision be affirmed as far as liability (Findings of Fact and Conclusions of Law) was concerned. The motion was seconded by Commissioner Hutchison and carried unanimously.

The Commission then decided on the amount of penalty.

Action: Commissioner Denecke MOVED that the fine be set at $2,000 based on his understanding of mitigating and aggravating circumstances. The motion died for lack of a second.

Commissioner Hutchison MOVED that the penalty be set at $2,750. The motion died for lack of a second.

Commissioner Brill MOVED that the penalty be set at $1,000. The motion died for lack of a second.

Commissioner Hutchison noted that it is difficult to second guess either the Director or the Hearings Officer. He noted the Hearings Officer made very strong statements on mitigating factors. He also noted the company was bankrupt. Commissioner Hutchison then MOVED that the penalty be set at

$2,000. The motion was seconded by Commissioner Denecke, and passed with Chairman Petersen voting no.

The Commission then turned to the policy question about the Hearings Officer's authority. The Chairman reiterated the position of the Department that the Hearings Officer should not have the discretion to mitigate the penalty unless new evidence is introduced at the hearing.

Director Hansen advised the Commission they had previously authorized hearing on proposed revisions to the contested case procedural rules. The rules taken to hearing included proposed codification of the Department's understanding of past Commission policy direction: the Hearings Officer should give deference to the Director's determination and should not mitigate a penalty unless new information not previously considered by the Director is raised at the hearing. Those rules will be considered for adoption at the next EQC meeting.

Since the policy matter will be before the Commission at the next meeting, the Commission decided there was no need to take further action at this meeting on the policy issue.

Agenda Item I: Proposed Adoption of Increases to the On-Site Sewage Disposal Fee Schedule (OAR 340-71-140) and Modification to the Definition of "Repair" (OAR 340-71-100(3)).

This agenda item proposes adoption of increases to the On-Site Sewage Disposal Fee Schedule. Proposed increases will generate sufficient revenue, at present activity levels, to fund approximately 89 percent of program costs. Five septic tank pumpers responded unfavorably to the proposed fee increase for pumper truck inspections and the proposed fee increase from $25 to $95 was reduced to $35. One respondent spoke in favor of the proposed fee increases and asked the Department to consider an additional $25 inspection fee for certain systems. Based on testimony, modifications were made to the original fee schedule proposed to the Commission on December 11, 1987.

Commissioner Hutchison asked about the opposition to the fee increases. Dr. Robert Paeth, Water Quality Division, responded no opposition was received on the modified pumper truck inspection fee of $35.

Director's Recommendation: Based upon the report summation, the Director recommended the Commission adopt the proposed amendments to OAR Chapter 340, Division 71, as presented in Exhibit C of the staff report.

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

Agenda Item J: Request for Approval of Construction Schedule for Philomath Boulevard (Corvallis) Health Hazard Annexation Area (Phase I).

This agenda item seeks approval of documents prepared by the City of Corvallis as a result of a State Health Division's Order. The order stipulated that certain territory with failing septic tank systems is a health hazard. The EQC must determine the adequacy of the city's submittal to remove or alleviate the dangerous conditions.

Director's Recommendation: Based on the report summation, the Director recommended the Commission approve the proposal of the City of Corvallis and certify approval to the City.

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

Agenda Item K: Proposed Issuance of Joint Permit for the Storage, Treatment and Disposal of Hazardous Waste to Chem-Security Systems, Inc., Star Route, Arlington, Oregon 97812 (Permit No. ORD 089452353).

This agenda item proposes issuance of a permit to Chem-Security Systems to operate a facility for the storage, treatment and disposal of hazardous wastes. The permit is proposed to be issued jointly by the Commission, the Department and EPA and is in response to a permit application initially made by Chem-Security in November 1983 and revised thereafter. Currently, Chem-Security is operating under a 1980 state license and federal interim status standards. To afford Chem-Security the opportunity to a contested case appeal of the permit, it was necessary for the Environmental Quality Commission to also issue an order giving Chem-Security 20 days after permit issuance (until March 31) to do so.

The disposal facility is located in Gilliam County, approximately 12 road miles from Arlington. The site primarily serves the Pacific Northwest, Alaska and Hawaii, although hazardous wastes have occasionally been received from other Western states and foreign counties.

The draft permit and permit application were on public review for over 45 days and public comments are contained in the staff report.

No testimony was taken. Director Hansen summarized the main issues associated with the permit issuance as follows:

a. Site Ownership -- Following passage of legislation which eliminated the requirement that a hazardous waste disposal site be state owned, the Department is proposing to deed property, previously deeded to the state, back to CSSI.

b. Prior Approval of Wastes -- The proposed permit eliminates the past requirement that the Department approve each waste proposed to be received at the site. This is replaced with provisions in the permit setting forth wastes which may be accepted at the site. Director Hansen stated this change is being recommended based on the understanding that CSSI will not begin to receive wastes from areas not in their current service area.

c. Modification of Language -- Kurt Burkholder described proposed language modifications being requested by EPA. The modification corrected wording of one of the permit conditions dealing with monitoring wells.

In response to questions from the Commission about liability, Kurt Burkholder responded there is no statute of limitations on liability. Federal Law considers the site operator and the land owner to be responsible for any problems. The state cannot escape any liability for disposal at the site when the land is state owned. The extent of liability is left to a future determination.

Commissioner Hutchison asked what steps are being taken to prevent off-site contamination. Director Hansen and Fred Bromfeld, Hazardous and Solid Waste Division, cited the need for double-lining of trenches, the use of various dust suppressing methods and techniques for reducing volatile organic emissions.

Director's Recommendation: Based on the report summation, the Director recommended the Commission:

1. Join the Department and EPA in issuing a permit to store, treat and dispose of hazardous waste to Chem-Security Systems, Inc.

2. Issue the order proposed by legal counsel to provide CSSI the opportunity for a contested case appeal within 20 days of issuance of the permit.

The Director also recommended the permit amendment proposed by EPA be approved.

The Chairman called a brief recess during which time a deed was signed to transfer the state's interest in the CSSI site back to CSSI. The meeting was then reconvened.

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

There was no further business and the regular meeting adjourned at 12:05 a.m.

The next Environmental Quality Commission meeting will be held in Medford on Friday, April 29, 1988.

LUNCHEON MEETING

During lunch, the Commission received briefings on the following:

United Chrome: Tom Miller, Remedial Project Manager, presented a slide presentation on the clean up of the United Chrome Products Superfund site located in Corvallis, Oregon. Mr. Miller provided background information about the site, discussed the nature and extent of the contamination and summarized the remedial action being taken. A handout was prepared to supplement the presentation and is made a part of this record.

Solid Waste: Steve Greenwood, Solid Waste Section Manager, briefed the Commission on the status of solid waste proposals for the Portland Metropolitan Area. The METRO Executive Officer has recommended approval of a contract with Oregon Waste Systems for disposal at their Arlington site. Council action was expected within two weeks. DEQ issuance of the permit for the site could occur in several weeks. Inclinometers have been installed at the Bacona Road site. Other work at the site (which can be completed rapidly) has been delayed pending the METRO decision. METRO is seeking private proposals for a transfer depot in the Portland area. Finally, since special wastes (ash, liquids, asbestos, demolition materials) will not be taken by Oregon Waste Systems, METRO still must develop options for such wastes.

Youth Involvement/DEQ: Donny Adair, Personnel Manager, spoke to the Commission about how the Department is becoming involved in

youth programs. The Department is determining what kinds of opportunities can be provided, reviewing budgets for available resources, investigating the possibility of youth involvement on advisory committees and developing internships and paid-work experiences for after school and summer employment.

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, April 29, 1988, EQC Meeting

February 1988 Activity Report

Discussion

Attached are the February, 1988 Program Activity Reports.

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

Water Quality and Hazardous 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 plans and permit actions;

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

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

Recommendation

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

Fred Hansen

MD26

DEPARTMENT OF ENVIRONMENTAL QUALITY

Monthly Activity Report

February 1988

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DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

February 1988 (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	57	6	66	0	0	10
Small Gasoline Storage Tanks Vapor Controls							
Total	6	57	6	66	0	0	10
Water							
Municipal	12	68	8	104	0	0	27
Industrial	5	41	0	38	0	0	10
Total	17	109	8	142	0	0	37
Solid Waste							
Gen. Refuse		22		7	0	2	31
Demolition		2			0	2	1
Industrial		5	1	7	0	1	10
Sludge		2					3
Total	0	31	1	14	0	5	45
GRAND TOTAL	23	197	15	222	0	5	92

MP1402 (4/14/88)

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
15 0025	TIMBER PRODUCTS COMPANY	JACKSON	02/04/88	COMPLETED-APRVD	02/23/88
15 0205	WESTERN VENEER & SLICING	JACKSON	01/19/88	COMPLETED-APRVD	02/05/88
15 0206	WOODCHUCK WOOD PRODUCTS	JACKSON	01/20/88	COMPLETED-APRVD	02/18/88
22 0143	DURAFLAKE CO	LINN	01/08/88	COMPLETED-APRVD	02/19/88
22 6024	ENTEK MANUFACTURING INC.	LINN	01/28/88	COMPLETED-APRVD	02/16/88
26 2909	PORT OF PORTLAND	MULTNOMAH	02/16/88	COMPLETED-APRVD	03/01/88

TOTAL NUMBER QUICK LOOK REPORT LINES 6

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division (Reporting Unit)

February 1988 (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	3	17	0	24	12		
Existing	1	14	0	14	9		
Renewals	7	48	2	47	49		
Modifications	6	49	2	52	28		
Total	17	128	4	137	98	1398	1422
Indirect Sources							
New	1	8	1	10	3		
Existing	0	0	0	0	0		
Renewals	0	0	0	0	0		
Modifications	1	5	1	3	1		
Total	2	13	2	13	4	281	284
GRAND TOTALS	19	141	6	150	102	1679	1706

Number of Pending Permits	Comments
14	To be reviewed by Northwest Region
11	To be reviewed by Willamette Valley Region
8	To be reviewed by Southwest Region
4	To be reviewed by Central Region
0	To be reviewed by Eastern Region
9	To be reviewed by Program Operations Section
33	Awaiting Public Notice
19	Awaiting end of 30-day Public Notice Period
98	

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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 7085	PACIFIC HARDWOODS CO	BENTON	05/22/87	PERMIT ISSUED	02/24/88	RNW
10 0056	BOHEMIA, INC.	DOUGLAS	02/08/88	PERMIT ISSUED	02/24/88	MOD
24 4980	BROOKMAN CAST INDUSTRIES	MARION	12/08/87	PERMIT ISSUED	02/24/88	RNW
26 2931	GRAPHIC ARTS CENTER INC	MULTNOMAH	00/00/00	PERMIT ISSUED	02/24/88	MOD

TOTAL NUMBER QUICK LOOK REPORT LINES 4

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division (Reporting Unit) — February 1988 (Month and Year)

PERMIT ACTIONS COMPLETED

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Indirect Sources			
Jackson	Medford Commercial Center 510 Spaces File No. 15-8713	Feb. 5, 1988	Final Permit Issued
Washington	Lincoln IV 929 Spaces (Modification) File No. 34-8019	Feb. 18, 1988	Final Permit Addendum No. 2 Issued

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AK338

DEPARTMENT OF ENVIRONMENTAL QUALITY
MONTHLY ACTIVITY REPORT

Water Quality Division (Reporting Unit) — February 1988 (Month and Year)

PLAN ACTIONS COMPLETED - 8

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
MUNICIPAL WASTE SOURCES - 8			
Morrow	Irrigon Collection & Treatment (Final Plans)	2-11-88	Verbal Comments to Engineers & Mayor
Jackson	Drifters Mobile Home Park Bottomless Sand Filter	2-12-88	Final Comments to Engineer
Lane	Emporium Recirculating Gravel Filter 12,200 gpd	2-2-88	Provisional Approval
Lincoln	Beachside State Park Replacement Pump Station	3-3-88	Comments to Engineer
Columbia	PGE Trojan STP Expansion Engineering Report	3-7-88	Report Accepted 3-8-88 (EQC Action Projected 4-29-88)
Multnomah	Gresham Mid-County Interceptor Final Plan Revisions	3-8-88	Final Revisions Accepted (Verbal Approval to Advertise)
Coos	Coos Bay STP No. 1 Contracts 1 & 3 Final Revisions to Plans and Specs	2-29-88	Revisions Accepted (Award of Bid Authorized 3-1-88)
Wallowa	Joseph STP Expansion & Wallowa Lake Sewer System	2-24-88	Verbal Comments To Engineer

WC3075

SUMMRY-F

Summary of Actions Taken
On Water Permit Applications in FEB 88

15 MAR 88

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		3	18			3	2		21	2	6	17				
RW										1								
RWO	6			44	19		1	2		23	19		68	33				
MW				2									3					
MWO	1			1						20	2		3	1				
Total	8	1		50	37		1	5	2	44	42	2	80	51		222	189	31
Industrial																		
NEW		2	1	1	9	20		1		1	8	19	3	16	7			
RW																		
RWO	2	2		19	17		2	1	1	11	10	3	22	22				
MW				1	1								2	1				
MWO		1	3	5	3	4		1	1	7	4	2	1	2	1			
Total	2	5	4	26	30	24	2	3	2	19	22	24	28	41	8	162	134	392
Agricultural																		
NEW						1			133			514						
RW																		
RWO				1	1							1	1	1				
MW																		
MWO																		
Total				1	1	1			133			515	1	1		2	12	569
Grand Total	10	6	4	77	68	25	3	8	137	63	64	541	109	93	8	386	335	992

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 29-FEB-88.

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	RWO	OR003162-3	42201/B	BOHEMIA INC.	GARDINER	DOUGLAS/SWR	08-FEB-88	31-DEC-90
General: Log Ponds										
IND	400	GEN04	MWO	OR003245-0	103488/A	STIMSON LUMBER COMPANY	OREGON CITY	WASHINGTON/NWR	04-FEB-88	31-DEC-90
General: Confined Animal Feeding										
AGR	800	GEN08	NEW		103553/A	LOCKMEAD FARMS, INC.	JUNCTION CITY	LANE/WVR	05-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103572/A	KRANTZ, J. MICHAEL	COQUILLE	COOS/SWR	16-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103572/A	KRANTZ, J. MICHAEL	COQUILLE	COOS/SWR	16-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103573/A	HANCOCK, WAYNE	TILLAMOOK	TILLAMOOK/NWR	16-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103573/A	HANCOCK, WAYNE	TILLAMOOK	TILLAMOOK/NWR	16-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103600/A	ABPLANALP DAIRY	TILLAMOOK	TILLAMOOK/NWR	22-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103605/A	HARRIS, HOWARD & BETTY	LYONS	LINN/WVR	22-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103607/A	GREEN MOUNTAIN DAIRY	LEBANON	LINN/WVR	22-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103608/A	WOLFER, KENNETH L.	VALE	MALHEUR/ER	22-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103606/A	HODGDON, ED	BEAVER	TILLAMOOK/NWR	22-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103604/A	LEWIS, RON	CLOVERDALE	TILLAMOOK/NWR	22-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103602/A	DW DAIRIES	VALE	MALHEUR/ER	22-FEB-88	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		103603/A	CHAFFEY & SONS, INC.	AURORA	MARION/WVR	22-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103601/A	STADELMAN, FRED Y.	CORNELIUS	WASHINGTON/NWR	22-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103611/A	RIVERBEND RANCH	SCIO	LINN/WVR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103614/A	BULLOCKS DAIRY, INC.	CLOVERDALE	TILLAMOOK/NWR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103619/A	WILLOW VALLEY DAIRY	LANGLOIS	CURRY/SWR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103629/A	STUBER, GENE & IRIS	ROSEBURG	DOUGLAS/SWR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103632/A	HESSE, PAUL B.	JEFFERSON	MARION/WVR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103624/A	VAN DAM, JOHANNES D.	TURNER	MARION/WVR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103626/A	JOHNSON, RAY AND REED	MOLALLA	CLACKAMAS/NWR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103633/A	HURLIMAN, TONY AND MARGARET	CLOVERDALE	TILLAMOOK/NWR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103638/A	KALSCH, MARK	HILLSBORO	WASHINGTON/NWR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103640/A	WERNER, BILL AND CARRIE	TILLAMOOK	TILLAMOOK/NWR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103642/A	PLAINVIEW DAIRY	SHEDD	LINN/WVR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103644/A	CLATSOP COLLEGE FARM	ASTORIA	CLATSOP/NWR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103646/A	WILLAVAL DAIRY FARM	HALSEY	LINN/WVR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103648/A	MURPHY, ROBB B.	PRINEVILLE	CROOK/CR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103650/A	PETTY, GEORGE	TILLAMOOK	TILLAMOOK/NWR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103652/A	MACHADO'S DAIRY, INC.	BEAVER	TILLAMOOK/NWR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103654/A	TANKSLEY, PAUL A.	DALLAS	POLK/WVR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103656/A	EGGER ENTERPRISES	HILLSBORO	WASHINGTON/NWR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103658/A	MORGAN, L. CARL	GRANTS PASS	JOSEPHINE/SWR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103659/A	HAWKINS, HASKELL	JEFFERSON	MARION/WVR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103661/A	DAUGHERTY, JERRY L.	BANDON	COOS/SWR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103663/A	ZEHNER DAIRY	LEBANON	LINN/WVR	23-FEB-88	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		103665/A	AR DAIRY	SHERIDAN	YAMHILL/WVR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103666/A	ALBERTSON'S FARM	DAYTON	YAMHILL/WVR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103664/A	TIMM, DEBORAH L.	CANBY	CLACKAMAS/NWR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103662/A	BERRY, JAMES	COQUILLE	COOS/SWR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103660/A	VANLOON DAIRY	JEFFERSON	MARION/WVR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103658/A	MORGAN, L. CARL	GRANTS PASS	JOSEPHINE/SWR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103657/A	SILVER DOME FARM	ALBANY	LINN/WVR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103655/A	HOLT, WILLIAM	TILLAMOOK	TILLAMOOK/NWR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103653/A	HASTINGS, LAWRENCE	MERRILL	KLAMATH/CR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103651/A	SCHULTHIES, VAUGHN	NYSSA	MALHEUR/ER	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103649/A	CROSOLI, GEORGE	BEAVERCREEK	CLACKAMAS/NWR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103647/A	MISTVALE FARM INC.	TILLAMOOK	TILLAMOOK/NWR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103645/A	PETERSEN, JOHN A.	RICHLAND	BAKER/ER	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103643/A	KEN-WALL FARMS, INC	GRANTS PASS	JOSEPHINE/SWR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103641/A	GRABELLI, DON	LEBANON	LINN/WVR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103639/A	SAKRAIDA DAIRY	WILLIAMS	JOSEPHINE/SWR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103637/A	JENSEN, PETER	HALSEY	LINN/WVR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103630/A	LANDOLT, LARRY	TILLAMOOK	TILLAMOOK/NWR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103625/A	MEDINA, PAUL J.	CENTRAL POINT	JACKSON/SWR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103635/A	RIEGER, JOHN	TILLAMOOK	TILLAMOOK/NWR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103636/A	WALKING J CATTLE	MURPHY	JOSEPHINE/SWR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103634/A	BILLANJO DAIRY	EAGLE POINT	JACKSON/SWR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103631/A	BONANZA VIEW DAIRY	BONANZA	JOSEPHINE/SWR	23-FEB-88	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		103628/A	TILLA-BAY FARMS, INC.	TILLAMOOK	TILLAMOOK/NWR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103616/A	FEGUNDES, JOE AND LAURA	GRAND RONDE	POLK/WVR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103623/A	KENNINGTON FARMS	ONTARIO	MALHEUR/ER	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103617/A	WASENAAR, MIKE	STAYTON	MARION/WVR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103618/A	BURK DAIRY	REDMOND	DESCHUTES/CR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103609/A	MEADOWCREST FARMS	PORTLAND	MULTNOMAH/NWR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103620/A	CARROLL, PAUL E.	TURNER	MARION/WVR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103621/A	VEEMAN, PETE	ST. PAUL	MARION/WVR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103622/A	WINTERCREEK VEAL	JEFFERSON	MARION/WVR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103575/A	GANTENBEIN, HENRY C.	GRESHAM	MULTNOMAH/NWR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103574/A	VAN DYKE DAIRY FARMS	SALEM	MARION/WVR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103613/A	WANZO, MARY L.	REDMOND	DESCHUTES/CR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103610/B	SOUZA, LARRY AND ANN	HILLSBORO	WASHINGTON/NWR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103615/A	HOBSON, ALLEN	CORVALLIS	BENTON/WVR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103612/A	FINCH, RON	EAGLE POINT	JACKSON/SWR	23-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103667/A	MILK-E-WAY DAIRY	COQUILLE	COOS/SWR	24-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103698/A	VANDEHEY, HERMAN	BANKS	WASHINGTON/NWR	24-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103699/A	FRITZ, JAY R./JOAN M.	LEBANON	LINN/WVR	24-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103700/A	MATWICH, MICHAEL C./BRENDA S.	KLAMATH FALLS	KLAMATH/CR	24-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		36630/A	HANSELL BROTHERS INC.	HERMISTON	UMATILLA/ER	24-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103702/A	DUYCK, RALPH	FOREST GROVE	WASHINGTON/NWR	24-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103703/A	WEST, DWIGHT	MCMINNVILLE	YAMHILL/WVR	24-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103706/A	CRANE, DOUG	COQUILLE	COOS/SWR	24-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103707/A	WONDERHAER DAIRY	DAYTON	YAMHILL/WVR	24-FEB-88	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		103708/A	KUENZI, RAYMOND J.	SILVERTON	MARION/WVR	24-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103705/A	BIERMA, HESSEL	WOODBURN	MARION/WVR	24-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103701/A	CHATELAIN'S FARMASEA, INC.	CLOVERDALE	TILLAMOOK/NWR	24-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103674/A	PIERCE, MAX AND DOROTHY J.	PLEASANT HILL	LANE/WVR	24-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103680/A	EAGLE VALLEY AG INC	RICHLAND	BAKER/ER	24-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103683/A	C. J. DAIRY	COOS BAY	COOS/SWR	24-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103686/A	GANN, HENRY	HEBO	TILLAMOOK/NWR	24-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103687/A	ATKINSON JERSEYS	CLOVERDALE	TILLAMOOK/NWR	24-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103688/A	MORRIS BROS. FARM INC.	YAMHILL	YAMHILL/WVR	24-FEB-88	31-JUL-92
	800	GEN08	NEW		103689/B	HILLALEA DAIRY	TILLAMOOK	TILLAMOOK/NWR	24-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103690/A	ABBOTT, GARY J.	TILLAMOOK	TILLAMOOK/NWR	24-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103691/A	MCMAHON, RAY	TILLAMOOK	TILLAMOOK/NWR	24-FEB-88	31-JUL-92
	800	GEN08	NEW		103693/B	VERMILYEA, SAM	TILLAMOOK	TILLAMOOK/NWR	24-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103694/A	CATTANACH, DONALD L.	DALLAS	POLK/WVR	24-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103697/A	NAGELY, MARVIN	GASTON	WASHINGTON/NWR	24-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103692/A	ROHNE'S LONG ISLAND DAIRY	ASTORIA	CLATSOP/NWR	24-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103681/A	JOHN COELHO & SONS	WOODBURN	MARION/WVR	24-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103675/A	WELTY, ROGER R.	GERVAIS	MARION/WVR	24-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103676/A	MCCAULEY, ALLEN K.	VALE	MALHEUR/ER	24-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103678/A	VOLBEDA DAIRY INC.	ALBANY	LINN/WVR	24-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103679/A	ASHTON, ANGIE	GRAND RONDE	POLK/WVR	24-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103671/A	FAESSLER, CHARLES	SILVERTON	MARION/WVR	24-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103673/A	DEVRIES, CHRIS	TURNER	MARION/WVR	24-FEB-88	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		103672/A	WACHLIN FARMS II	SHERWOOD	WASHINGTON/NWR	24-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103670/A	ERWIN, RICHARD A.	MYRTLE POINT	COOS/SWR	24-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103724/A	GUTZLER, NORMAN	MAUPIN	WASCO/CR	25-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103730/A	KASER, RAYMOND	MOLALLA	CLACKAMAS/NWR	25-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103715/A	ANDERSON, EDWIN A.	ASTORIA	CLATSOP/NWR	25-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103716/A	VANDEHEY, WALT	CORNELIUS	WASHINGTON/NWR	25-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103718/A	MORRISON, TOM	TILLAMOOK	TILLAMOOK/NWR	25-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103719/A	VANDERSTELT, DARWIN	EUGENE	LANE/WVR	25-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103720/A	BENNETT, BETTY	RICHLAND	BAKER/ER	25-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103721/A	FIVE STAR PIG FACTORY	SCIO	LINN/WVR	25-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103723/A	BAIR FARMS	KLAMATH FALLS	KLAMATH/CR	25-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103684/A	ROBERTS, DAREN V.	AUMSVILLE	MARION/WVR	25-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103685/A	SCOLERI, WALTER	COQUILLE	COOS/SWR	25-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103695/A	ORMINK	MT. AGNEL	MARION/WVR	25-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103696/A	HILLCREST DAIRY	COTTAGE GROVE	LANE/WVR	25-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103704/A	BROWN, CLINTON	SHEDD	LINN/WVR	25-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103682/A	BENNETT, NORMAN	NYSSA	MALHEUR/ER	25-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103717/A	BISHOP, BOYD	GLENDALE	DOUGLAS/SWR	25-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103731/A	HURLIMAN, GLEN	CLOVERDALE	TILLAMOOK/NWR	25-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103732/A	KUENZI, JAMES G.	SILVERTON	MARION/WVR	25-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103709/A	DOUBLE L FARM	BONANZA	KLAMATH/CR	25-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103711/A	WISMER, ROBERT	GASTON	WASHINGTON/NWR	25-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103712/A	WYANT, RICHARD S./BLANCHE J.	ASHLAND	JACKSON/SWR	25-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103713/A	PUGH CENTURY DAIRY FARMS	SHEDD	LINN/WVR	25-FEB-88	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		103726/A	DRAHN, RONALD/ERMA	CORVALLIS	BENTON/WVR	25-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103729/A	MANNING, GARRY W.	CLOVERDALE	TILLAMOOK/NWR	25-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103728/A	BURNS, RANDY	WALLOWA	WALLOWA/ER	25-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103727/A	BRINKMONN, DAVID H.	AMITY	YAMHILL/WVR	25-FEB-88	31-JUL-92
AGR	800	GEN08	NEW		103725/A	WAIT, ROBERT/ELDON	ASTORIA	CLATSOP/NWR	25-FEB-88	31-JUL-92
NPDES										
IND	100424	NPDES	RWO	OR002190-3	96122/A	WESTERN PULP PRODUCTS CO.	CORVALLIS	BENTON/WVR	02-FEB-88	31-JAN-93
DOM	100429	NPDES	RWO	OR002015-0	90750/A	UNIFIED SEWERAGE AGENCY OF WASHINGTON COUNTY	GASTON	WASHINGTON/NWR	23-FEB-88	28-FEB-93
IND	100432	NPDES	RWO	OR002174-1	97070/A	WILLAMETTE INDUSTRIES, INC.	FOSTER	LINN/WVR	28-FEB-88	30-NOV-92
WPCF										
DOM	100422	WPCF	RWO		36144/A	BATES, HAROLD W.	LEBANON	LINN/WVR	02-FEB-88	01-JAN-93
IND	100423	WPCF	MWO		81035/A	SHINY ROCK MINING CORPORATION		MARION/WVR	02-FEB-88	31-JAN-93
DOM	100425	WPCF	NEW		102774/A	WI-NE-MA CHRISTIAN CAMP, INCORPORATED	CLOVERDALE	TILLAMOOK/NWR	02-FEB-88	31-OCT-92
DOM	100426	WPCF	NEW		102919/A	SHANIKO HOTEL PROPERTIES LIMITED PARTERSHIP	SHANIKO	WASCO/CR	16-FEB-88	30-NOV-92
DOM	100427	WPCF	NEW		103158/A	MULTNOMAH COUNTY HOUSING OPPORTUNITIES PROGRAM LTD.	PORTLAND	MULTNOMAH/NWR	16-FEB-88	30-NOV-92
IND	100428	WPCF	NEW		102895/A	MILLER, WALTER D. AND PATRICIA R.	SALEM	MARION/WVR	18-FEB-88	31-JAN-93
DOM	100430	WPCF	RWO		52294/A	LYNNBROOK, INC.	EUGENE	LANE/WVR	23-FEB-88	31-JAN-93

CAT	PERMIT NUMBER	TYPE	SUB-TYPE	OR NUMBER	FACILITY	FACILITY NAME	CITY	COUNTY/REGION	DATE ISSUED	DATE EXPIRES
IND	100431	WPCF	RWO		62259/A	NORTHWEST ORGANIC PRODUCTS, INC.	AURORA	MARION/WVR	28-FEB-88	31-JAN-93

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Solid Waste Division (Reporting Unit) — February 1988 (Month and Year)

PLAN ACTIONS COMPLETED

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Coos	Weyerhaeuser, North Bend	2/04/88	Plan approved.

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Hazardous and Solid Waste Division (Reporting Unit) — February 1988 (Month and Year)

PLAN ACTIONS PENDING - 45

County	Name of Facility	Date Plans Rec'd.	Date of Last Action	Type of Action and Status	Location
Municipal Waste Sources - 31					
Malheur	Brogan-Jamieson	6/29/84	--	(R) Holding	HQ
Malheur	Adrian	11/7/85	7/10/86	(C) Add'l. info. rec'd.	HQ
Jackson	Ashland	12/6/85	12/6/85	(R) Plan received	HQ
Baker	Haines	12/13/85	12/13/85	(R) Plan received	HQ
Deschutes	Knott Pit Landfill	8/20/86	8/20/86	(R) Plan received	HQ
Deschutes	Fryrear Landfill	8/20/86	8/20/86	(R) Plan received	HQ
Deschutes	Negus Landfill	8/20/86	8/20/86	(R) Plan received	HQ
Umatilla	Umatilla Tribal SW Service	8/25/86	8/25/86	(R) Plan received	HQ
Yamhill	River Bend	11/14/86	11/14/86	(R) Plan received	HQ
Douglas	Lemolo T.S.	12/10/86	12/10/86	(R) Plan received	HQ
Multnomah	St. Johns Lndfl.	12/17/86	10/28/87	(C) Add'l. info. requested.	HQ
Marion	Ogden Martin Brooks ERF	3/24/87	3/24/87	(N) As-built plans rec'd.	HQ
Douglas	Reedsport Lndfl.	5/7/87	5/7/87	(R) Plan received	HQ
Benton	Coffin Butte	6/1/87	6/1/87	(R) Plan received	HQ
Malheur	Harper TS	6/22/87	6/22/87	(N) Plan received	HQ
Malheur	Willowcreek Lndfl.	6/22/87	6/22/87	(C) Plan received	HQ

SC2104.A (C) = Closure plan; (N) = New source plans

County	Name of Facility	Date Plans Rec'd.	Date of Last Action	Type of Action and Status	Location
Klamath	Klamath Falls Landfill	7/6/87	7/6/87	(R) Plan received	HQ
Wasco	Northern Wasco Transfer	7/24/87	7/24/87	(N) Plan received	HQ
Jackson	South Stage	7/29/87	7/29/87	(R) Plan received	HQ
Malheur	Harper Landfill	8/17/87	8/17/87	(C) Plan received	HQ
Gilliam	Waste Mgmt, Inc.	8/31/87	12/22/87	(N) Supplemental plan received.	HQ
Lane	Short Mountain Landfill	9/16/87	9/16/87	(R) Revised operational plan	HQ
Morrow	Tidewater Barge Lines (Finley Butte Lndfl.)	10/15/87	10/15/87	(N) Plan received	HQ
Umatilla	City of Milton-Freewater	11/19/87	11/19/87	(N) Plan received (groundwater study)	HQ
Marion	Ogden-Martin (metal rec.)	11/20/87	11/20/87	(N) Plan received	HQ
Marion	Browns Island Landfill	11/20/87	11/20/87	(C) Plan received (groundwater study)	HQ
Harney	Burns-Hines	12/16/87	12/16/87	(R) Plan received	HQ
Marion	Woodburn TS	1/5/88	1/5/88	(N) Revised plan rec'd.	HQ
Lincoln	Agate Beach Balefill	1/6/88	1/6/88	(R) Revised operational plan received	HQ
Jackson	Dry Creek Landfill	1/15/88	1/15/88	(R) Groundwater report received	HQ
Washington	Hillsboro TS	1/15/88	1/15/88	(N) Plans received	HQ
<u>Demolition Waste Sources</u> - 1					
Washington	Hillsboro Landfill	1/29/88	1/29/88	(N) Expansion plans received	

(C) = Closure plan; (N) = New source plans

County	Name of Facility	Date Plans Rec'd.	Date of Last Action	Type of Action and Status	Location
Industrial Waste Sources - 10					
Douglas	I.P., Gardiner	2/20/86	12/9/86	(N) Add'l. info. received	HQ
Klamath	Weyerhaeuser, Klamath Falls	3/24/86	11/25/86	(N) Add'l. info. requested	HQ
Multnomah	Penwalt Corp.	4/2/86	7/14/86	(N) Add'l. info. requested	HQ
Linn	Willamette Industries, Inc. Lime Rejects Site Closure	7/3/86	7/3/86	(C) Plan received	HQ
Douglas	Roseburg Forest Products Co. (Riddle)	7/22/86	12/22/86	(R) Add'l. info. rec'd.	HQ
Coos	Rogge Lumber	7/28/86	6/18/87	(C) Additional info. submitted to revise previous application.	HQ
Douglas	Roseburg Forest Products Co. (Dixonville)	3/23/87	3/23/87	(R) Operational plan	HQ
Douglas	Louisiana-Pacific Round Prarie	9/30/87	9/30/87	(R) Operational plan	HQ
Clatsop	Nygard Logging	11/17/87	11/17/87	(N) Plan received	HQ
Linn	James River, Lebanon	1/22/88	1/22/88	(C) Groundwater report received.	
Sewage Sludge Sources - 3					
Coos	Beaver Hill Lagoons	11/21/86	12/26/86	(N) Add'l. info. rec'd.	HQ
Coos	Hempstead Sludge Lagoons	9/14/87	9/14/87	(C) Plan received	HQ
Clackamas	Cascade-Phillips Corp. (septage)	11/12/87	11/12/87	(N) Plan received	HQ

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Hazardous and Solid Waste Division (Reporting Unit) — February 1988 (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	0	30	45
TSD	4*	15	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	1	3	0	4	4
Disposal	0	1	2	1	2	3

*One Closure inspection included.

SB5285.A
MAR.2 (3/88)

DATE	WASTE TYPE	SOURCE	DISPOSE ANNUALLY
16-FEB-88	SOIL,DEBRIS CONTAMINATED/FUNGICIDE	RCRA SPILL CLEANUP	5.50 CUBIC YARDS

1 Request(s) approved for generators in Idaho

11-FEB-88	PENTACHLOROPHENOL CONTAMINATED DIRT	WOOD PRESERVING	0.81 CUBIC YARDS

1 Request(s) approved for generators in Montana

08-FEB-88	PCB CONTAMINATED SOLIDS	PCB REMOVAL & CLEANUP ACTIVITY	0.54 CUBIC YARDS
08-FEB-88	PCB CONTAMINATED SOIL	PCB REMOVAL & CLEANUP ACTIVITY	4.32 CUBIC YARDS
08-FEB-88	WASTE STRIPPER	SIC UNKNOWN	0.54 CUBIC YARDS
08-FEB-88	CHROMATED POLYSTYRENE RESIN	OTHER CHEMICAL PREPARATIONS	8.10 CUBIC YARDS
08-FEB-88	PCB CONTAMINATED SOLIDS	PCB REMOVAL & CLEANUP ACTIVITY	2.00 CUBIC YARDS
11-FEB-88	PCB CONTAMINATED SOILS	PCB REMOVAL & CLEANUP ACTIVITY	21.00 CUBIC YARDS
11-FEB-88	GREEN SODIUM HYDOXIDE	OTHER CHEMICAL PREPARATIONS	13.50 CUBIC YARDS
11-FEB-88	DEAD STOCK PRODUCT 186 CHEMAX	OTHER CHEMICAL PREPARATIONS	2.70 CUBIC YARDS
16-FEB-88	CONTAMINATED SOIL/DEBRIS WITH ACID	RCRA SPILL CLEANUP	40.00 CUBIC YARDS
16-FEB-88	NON-PCB ELECTRICAL EQUIPMENT	PCB REMOVAL & CLEANUP ACTIVITY	35.00 CUBIC YARDS
23-FEB-88	CAUSTIC BASE CLEANER-COMM PROD	SHIP BUILDING & REPAIRING	0.27 CUBIC YARDS
23-FEB-88	PCB EQUIPMENT	PCB REMOVAL & CLEANUP ACTIVITY	0.27 CUBIC YARDS

12 Request(s) approved for generators in Oregon

08-FEB-88	MOCA DEBRIS	SHIP BUILDING & REPAIRING	0.54 CUBIC YARDS
08-FEB-88	CARBON FILTER	AIRCRAFT PARTS	0.81 CUBIC YARDS

DATE	WASTE TYPE	SOURCE	DISPOSE ANNUALLY
08-FEB-88	ACIDIC CARBON SOLIDS	SEMICONDUCTORS	1.89 CUBIC YARDS
11-FEB-88	DEMOLITION WASTE	PLASTICS MATERIALS, SYNTHETICS	22.00 CUBIC YARDS
11-FEB-88	MAGNESIUM CHIPS	AIRCRAFT	27.00 CUBIC YARDS
11-FEB-88	PCB CONTAMINATED SOLIDS	PCB REMOVAL & CLEANUP ACTIVITY	1300.00 CUBIC YARDS
11-FEB-88	STILL BOTTOMS/SOLVENT RECLAIM	MILLWORK	3.00 CUBIC YARDS
11-FEB-88	BRICK LINING/LEAD OXIDE MORTAR	PULP MILLS	30.00 CUBIC YARDS
16-FEB-88	THIOUREA (HYDRAZINE CARBO)	HW TREAT/STORE/DISPOSE FCLTY	6.75 CUBIC YARDS
16-FEB-88	LAB PACK - POISON B	ELEMENTARY & SECONDARY SCHOOLS	0.27 CUBIC YARDS
16-FEB-88	LAB PACK - FLAMMABLE LIQUID	ELEMENTARY & SECONDARY SCHOOLS	0.27 CUBIC YARDS
16-FEB-88	CERAMIC FILTER CAKE	SEMICONDUCTORS	120.00 CUBIC YARDS
16-FEB-88	METHYLISOBUTYL KETONE/AQUA MIX	COMMERCIAL TESTING LABS	0.10 CUBIC YARDS
23-FEB-88	DRIED PAINT OVERSPRAY	MILLWORK	1.00 CUBIC YARDS

14 Request(s) approved for generators in Washington

28 Requests granted - Grand Total

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Hazardous and Solid Waste Division (Reporting Unit) — February 1988 (Month and Year)

SUMMARY OF SOLID WASTE PERMIT ACTIONS

	Permit Actions Received		Permit Actions Completed		Permit Actions Pending	Sites Under Permits	Sites Reqr'g Permits
	Month	FY	Month	FY			
General Refuse							
New	-	4	-	1	5		
Closures	-	1	-	-	5		
Renewals	-	5	-	3	17		
Modifications	-	12	-	11	-		
Total	0	22	0	15	27	178	178
Demolition							
New	-	1	-	1	-		
Closures	-	-	-	-	-		
Renewals	1	1	1	2	1		
Modifications	-	2	-	1	1		
Total	1	4	1	4	2	11	11
Industrial							
New	1	8	1	8	6		
Closures	-	-	-	-	1		
Renewals	-	2	2	2	4		
Modifications	2	11	2	11	-		
Total	3	21	5	21	11	105	105
Sludge Disposal							
New	-	1	-	-	2		
Closures	-	1	-	-	1		
Renewals	-	-	-	-	-		
Modifications	-	6	-	6	-		
Total	0	8	0	6	3	17	17
Total Solid Waste	4	55	6	46	43	311	311

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

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Hazardous and Solid Waste Division (Reporting Unit) — February 1988 (Month and Year)

PERMIT ACTIONS COMPLETED

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Marion	Marion County	1/19/88	Letter authorization renewed (not logged in January).
Columbia	Boise Cascade, St. Helens	2/2/88	Permit renewed.
Tillamook	Port of Tillamook/ Tillamook Lumber	2/12/88	Permit amended.
Linn	Lebanon Plywood, Inc.	2/18/88	Permit renewed.
Yamhill	The Delphian School	2/24/88	Letter authorization issued.
Washington	CT and H Co.	2/29/88	Letter authorization revoked.

MAR.6 (5/79) SB7335.6

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Hazardous and Solid Waste Division (Reporting Unit) — February 1988 (Month and Year)

PERMIT ACTIONS PENDING - 43

County	Name of Facility	Date Appl. Rec'd.	Date of Last Action	Type of Action and Status	Location
Municipal Waste Sources - 27					
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 Lndfl.	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	1/7/88	(R) Draft received	HQ
Deschutes	Negus Landfill	2/4/87	11/16/87	(R) Applicant review	HQ
Douglas	Reedsport Lndfl.	5/7/87	1/11/88	(R) Draft received	HQ
Malheur	Harper Transfer	6/22/87	6/22/87	(N) Application filed	RO
Malheur	Willowcreek Lndfl.	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	Oregon Waste Sys., Inc. Gilliam Cnty Lndfl.	8/31/87	1/22/88	(N) Applicant review	HQ
Grant	Hendrix Landfill	9/17/87	9/17/87	(R) Application filed	RO
Lane	Florence Landfill	9/21/87	1/12/88	(R) Draft received	HQ
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
Curry	Port Orford Lndfl.	12/14/87	12/14/87	(R) Application filed	RO
Washington	Hillsboro TS	1/15/88	1/15/88	(N) Application received	
Demolition Waste Sources - 2					
Coos	Bracelin/Yeager (Joe Ney)	3/28/86	9/2/86	(R) Draft received	HQ
Washington	Hillsboro Lndfl.	1/29/88	1/29/88	(M) Application received	
Industrial Waste Sources - 11					
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

County	Name of Facility	Date Appl. Rec'd.	Date of Last Action	Type of Action and Status	Location
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
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
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 (Reporting Unit) — February, 1988 (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	8	73	9	99	220	221
Airports			1	10	2	2

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Noise Control Program (Reporting Unit) — February, 1988 (Month and Year)

FINAL NOISE CONTROL ACTIONS

County	Name of Source and Location	Date	Action
Multnomah	Alpenrose Dairy, Portland	2/88	In compliance
Multnomah	Carnation Dairies, Portland	2/88	In compliance
Washington	Best Mix Concrete Company, Hillsboro	2/88	In compliance
Washington	D & W Plastics, Inc., Portland	2/88	In compliance
Washington	Peerless Corporation, Tualatin	2/88	In compliance
Washington	Vanaken Rock Products, Banks	2/88	In compliance
Jackson	Southern Pacific Railroad, "A" Street, Ashland	2/88	In compliance
Jackson	Southern Pacific Railroad, North Medford	2/88	In compliance
Malheur	Earl Bartron (Trucking), Nyssa	2/88	In compliance
Josephine	Gentry Airport, North of Grants Pass	2/88	Boundary approved

CIVIL PENALTY ASSESSMENTS

DEPARTMENT OF ENVIRONMENTAL QUALITY
1988

CIVIL PENALTIES ASSESSED DURING MONTH OF FEBRUARY, 1988:

Name and Location of Violation	Case No. & Type of Violation	Date Issued	Amount	Status
Curtis Zelmer dba/River-Gate Auto Wrecking Portland, Oregon	AQOB-NWR-88-03 Open burned commercial waste and prohibited materials (automobile parts and tires).	2/16/88	$1,000	Contested on 3/2/88.
Harold J. Susbauer Portland, Oregon	AQOB-NWR-88-20 Open burned yard debris without a hardship permit.	2/16/88	$100	Paid 2/24/88.
Robert Westlund General Contractor, Inc. Sherwood, Oregon	AQOB-NWR-88-09 Open burned construction and commercial waste.	2/16/88	$250	Paid 2/16/88.
Ivan Nisly Independence, Oregon	AQOB-NWR-88-18 Open burned prohibited materials (tires).	2/16/88	$500	Submitted letter on 2/24/88 requesting Dept. forgive penalty.
Billy W. Jones Robert Ladake dba/Emerald Right of Way Coos Bay, Oregon	AQOB-NWR-88-17 Open burned demolition waste.	2/18/88	$500	Awaiting response to notice.

GB7386

February, 1988
DEQ/EQC Contested Case Log

ACTIONS	LAST MONTH	PRESENT
Preliminary Issues	1	0
Discovery	0	0
Settlement Action	4	5
Hearing to be scheduled	1	1
Department reviewing penalty	0	0
Hearing scheduled	4	3
HO's Decision Due	0	1
Briefing	0	0
Inactive	4	4
SUBTOTAL of cases before hearings officer.	14	14
HO's Decision Out/Option for EQC Appeal	0	0
Appealed to EQC	2	1
EQC Appeal Complete/Option for Court Review	2	2
Court Review Option Taken	0	0
Case Closed	1	2
TOTAL Cases	19	19

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

February 1988
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.
NULF, DOUG	01/10/86	01/13/86	05/05/86	Dept	01-AQFB-85-02 $500 Civil Penalty	EQC reduced penalty to $100, 12-11-87. DOJ to draft final order.
~~RICHARD KIRKHAM dba, WINDY OAKS RANCH~~	~~01/07/87~~	~~03/04/87~~		~~Resp~~	~~1-AQ-FB-86-08 $680 civil penalty~~	~~EQC dismissed penalty.~~

February 1988
DEQ/EQC Contested Case Log

Pet/Resp Name	Hrng Rqst	Hrng Rfrrl	Hrng Date	Resp Code	Case Type & No.	Case Status
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. EQC to review at 3-11-88 meeting.
~~PACIFIC COATINGS, INC.~~	~~07/09/87~~	~~07/10/87~~			~~5-AQ-NWR-87-40~~ ~~$500 civil penalty (odor)~~	~~Hearing request withdrawn. Penalty paid.~~
THE WESTERN COMPLIANCE SERVICES, INC.	09/11/87	09/15/87		Prtys	7-HW-NWR-87-48 RCRA & PCB violations	Preliminary issues. Settlement action.
ROGER DEJAGER	10/13/87		03/18/88	Prtys	8-WQ-WVR-87-68	Hearing scheduled. $1000 Civil Penalty
CITY OF KLAMATH FALLS			05/03/88		1-P-WQ-88 Salt Caves	Motion for order suspending hearing.
Container-Care Portland	01/25/88	01/27/88	05/13/88		6-HW-NWR-87-83	Hearing scheduled.
Richard Doeflor	01/08/88	01/11/88	_____		4-AQ-FB-87-05	Hearing to be rescheduled.
Joe L. Heitzman	12/28/87	12/31/87	02/19/88		2-AQ-FB-87-09	H.O.'s decision due.
Joe & Louise Wheeler	12/30/87	01/04/88			3-AQ-FB-87-07	Settlement action.
James, Andy	01/08/88	01/08/88			5-HW-WVR-87-74	Settlement action.
McCloskey Corp.	02/01/88	02/02/88			7-HW-NWR-87-98	Settlement action.

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 C, April 29, 1988, EQC Meeting

TAX CREDIT APPLICATIONS

Director's Recommendation

It is recommended that the Commission take the following action:

1. Issue tax credit certificate for pollution control facility:

Appl. No.	Applicant	Facility

NOTE: There are no new tax credit certificates to be issued.

2. Revoke Pollution Control Facility Certificate number 1833, held by Smurfit Newsprint Corporation, and reissue to Stimson Lumber Company.

Fred Hansen for Lydia Taylor

C. Nuttall:p
(503) 229-6484
April 8, 1988
MP1438

Proposed April 29, 1988 Totals:

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

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

Air Quality	$ 5,583,042
Water Quality	-0-
Hazardous/Solid Waste	5,750,184
Noise	-0-
	$ 5,750,184

MP1438

State of Oregon

Department of Environmental Quality

REISSUANCE OF POLLUTION CONTROL FACILITY CERTIFICATION

1. Certificate issued to :

Publishers Paper Company
Molalla Division
4000 Kruse Way Place
Lake Oswego, OR 97034

The certificate was issued for an anti-stain chemical spill control facility consisting of a concrete drip pad, sump pump and metal building enclosure.

2. Summation:

In January of 1986, the EQC issued pollution control facility Certificate 1833 to Publishers Paper Company. Publishers Paper sold to Smurfit Newsprint Corporation and the certificate was reissued in that name in October 1986.

Smurfit sold the division associated with certificate 1833 to RSG Forest Products in December 1986. RSG requested that the unused portion of the Tax Credit be reassigned to Sanders Wood Products dba RSG Forest Products.

Sanders Wood Products sold its facility to Stimson Lumber Company in August of 1987. They now request that the tax credit associated with this sale be reissued to Stimson Lumber Company.

3. Director's Recommendation:

It is recommended that Certificate Number 1833 be revoked and reissued to Stimson Lumber Company; the certificate to be valid only for the time remaining from the date of the first issuance.

C. Nuttall
229-6484
April 6,1988

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Cert. No. 1833
Date First Issued 1/31/86
Date Reissued 10/24/86
Appl. No. T-1772

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To:	Location of Pollution Control Facility:
Smurfit Newsprint Corporation 4000 Kruse Way Place Lake Oswego, OR 97034	Washington Street-Hwy 213 Oregon City, Oregon
As: ☐ Lessee ☒ Owner	

Description of Pollution Control Facility:

Antistain chemical spill control facility consisting of a concrete drip pad, sump pump and metal building enclosure

Type of Pollution Control Facility: ☐ Air ☐ Noise ☒ Water ☐ Solid Waste ☐ Hazardous Waste ☐ Used Oil

Date Pollution Control Facility was completed: July 31, 1984 Placed into operation: July 31, 1984

Actual Cost of Pollution Control Facility: $50,220

Percent of actual cost properly allocable to pollution control:

100 percent

Based upon the information contained in the application referenced above, the Environmental Quality Commission certifies that the facility described herein was erected, constructed or installed in accordance with the requirements of ORS 468.175 and subsection (1) of ORS 468.165, and is designed for, and is being operated or will operate to a substantial extent for the purpose of preventing, controlling or reducing air, water or noise pollution or solid waste, hazardous wastes or used oil, and that it is necessary to satisfy the intents and purposes of ORS Chapters 454, 459, 467 and 468 and rules adopted thereunder.

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

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

NOTE — The facility described herein is not eligible to receive tax credit certification as an Energy Conservation Facility under the provisions of Chapter 512, Oregon Law 1979, if the person issued the Certificate elects to take the tax credit relief under ORS 316.097 or 317.072.

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

Signed James E. Petersen

Title James E. Petersen, Chairman

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

DEQ-TC/6a 9/82

SP=970631-340

Certificate No. 1833

Date of Issue 1/31/86

Application No. T-1772

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To:	Location of Pollution Control Facility:
Publishers Paper Co. Clackamas Division 4000 Kruse Way Place Lake Oswego, OR 97034	Washington Street-Hwy 213 Oregon City, Oregon
As: ☐ Lessee ☒ Owner	

Description of Pollution Control Facility:

antistain chemical spill control facility consisting of a concrete drip pad, sump pump and metal building enclosure

Type of Pollution Control Facility: ☐ Air ☐ Noise ☒ Water ☐ Solid Waste ☐ Hazardous Waste ☐ Used Oil

Date Pollution Control Facility was completed: July 31, 1984 Placed into operation: July 31, 1984

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2. The Department of Environmental Quality shall be immediately notified of any proposed change in use or method of operation of the facility and if, for any reason, the facility ceases to operate for its intended pollution control purpose.
3. Any reports or monitoring data requested by the Department of Environmental Quality shall be promptly provided.

NOTE — The facility described herein is not eligible to receive tax credit certification as an Energy Conservation Facility under the provisions of Chapter 512, Oregon Law 1979, if the person issued the Certificate elects to take the tax credit relief under ORS 316.097 or 317.072.

Signed James E. Petersen

Title James E. Petersen, Chairman

Approved by the Environmental Quality Commission on the 31st day of January, 1986.

Sent 3/28

March 25, 1988

Stimson Lumber Company
Executive Offices
520 Southwest Yamhill Street, Suite 308
Portland, OR 97204

Re: Transfer of Tax Credit for pollution control facility

Dear Mr. Schroeder:

Your letter dated January 29,1988 requests transfer of a pollution control tax credit certificate. It gives a certificate amount of $50,220 and certificate number of 1772.

The appropriate certificate number associated with the $50,220 facility is 1883.

Please notify us by April 8, 1988 if this is not the facility you are referring to in your letter, or we will assume that certificate 1883 is the one you want transferred.

Thank you.

Sincerely,

Christie Nuttall

cn\

3/29 Kurt Ruttum called. Confirms that certificate #1883 covering the $50,220 facility is the cert. they are requesting for ~~transfer~~ reissuance. cn

Stimson Lumber Company

Executive Offices / 520 Southwest Yamhill Street / Suite 308 / Portland, Oregon 97204

January 29, 1988

Ms. Lydia Taylor
Oregon Department of
Environmental Quality
811 S.W. 6th Avenue
Portland, OR 97204

Re: Stimson Lumber Company; Polution Control Facility Tax Credit Transfer

Dear Ms. Taylor:

Stimson Lumber Company ("Stimson") recently purchased a sawmill located at 1795 Washington Street, Oregon City, Oregon. Publisher's Paper Company, a prior owner of the mill, had been issued Oregon Pollution Control Facility Tax Credit Certificate No. T1772 on January 31, 1986 in the amount of $50,220 for a pollution control facility located at the mill. The pollution control facility is an automatic lumber dipping system for sap stain control. The pollution control facility is being used by Stimson.

Enclosed as proof of the sale of the mill is a copy of the Sawmill Assets Purchase and Sale Agreement executed between Stimson and Sanders Wood Products, Inc.

Please take the necessary action to transfer the remaining tax credits evidenced by Tax Certificate No. T1772 from Publisher's Paper Company to Stimson. If you have any questions regarding this matter, please telephone Kurt Ruttum directly at 221-1440.

Very truly yours,

Darrell H. Schroeder
President

DHS/njj

Enc.

RSG
FOREST PRODUCTS, INC.
MOLALLA DIVISION
28890 Hwy. 213
P.O. Box 169
Molalla, OR 97038
Phone: (503) 829-7200

March 15, 1988

Ms. Sherry Chew
Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, Oregon 97204

Dear Ms. Chew:

Sanders Wood Products, Inc. sold its Oregon City lumber manufacturing division to Stimson Lumber Company on August 21, 1987. After tax year 1987, Sanders will not claim the pollution control tax credit associated with this mill after this date. Such credits were assigned to Sanders from RSG Forest Products, Inc. Stimson presumably will request reassignment of the credit to them.

Tax credit certification information is given below.

Division	Facility	Certif. No./Date	Certified Cost
Clackamas	Dip Tank	1772/1-31-86	$ 50,220

Please call if you have questions.

SANDERS WOOD PRODUCTS, INC.
dba RSG FOREST PRODUCTS

Mitch Karp

NEIL GOLDSCHMIDT
GOVERNOR

Department of Environmental Quality

1244 WALNUT STREET, SUITE E, EUGENE, OREGON 97403 PHONE (503) 686-7837

April 20, 1988

Steve Glaser
P. O. Box 257alley Road
Tangent,Oregon 97389

Dear Steve,

Your "Request of Preliminary Certification for Tax Credit" for the Rears straw stacker, propane flamer, and the associated tractor as an alternative to grass seed field burning has been approved.

Enclosed is a "Notice of Approved Construction Completion " form. When construction is finished, complete the form and send it to me. Upon its receipt, I will send you the final tax certification form for completion.

Sincerely,

Brian Finneran

Brian Finneran
Manager
Field Burning Program

BF:ka

Enclosure

cc: DEQ-MSD

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 E, April 29, 1988 EQC Meeting

Request for Authorization to Conduct Public Hearings on Proposed Rules for Certifying Sewage Treatment Works Operators.

Background and Problem Statement

The 1987 Oregon Legislature enacted ORS 448.405 to 448.494 concerning certification of water and sewage treatment works system operators (Attachment A). The purpose of the legislation is to help protect public health and Oregon's water quality resources through proper operation and maintenance of water and sewage treatment works systems by establishing requirements for certification of persons who supervise the operation of these systems. A voluntary certification program has been in existence since the 1950s and currently over 500 operators are certified. Until this legislation was enacted owners of sewage treatment works systems were not required to have a certified operator supervising the operation of their systems.

The statute requires that the Environmental Quality Commission (EQC) adopt rules by September 1988 for classifying sewage treatment works systems, certifying sewage treatment works system operator personnel and establishing fees, subject to the review of the Emergency Board, to administer the program (Attachment B). Specifically the law requires all owners of sewage treatment works to have their system supervised by a certified operator. No sewage treatment works shall be allowed to be operated unless the operator is certified or the sewage treatment works is supervised by an operator who is certified. The certification of the operator supervising the sewage treatment works must correspond to (be equal to or higher than) the classification of the sewage treatment works. Sewage treatment works under 75,000 gallons per day flow are exempt from the provisions that a system be supervised by a certified operator if the owner has contracted with a

certified operator to provide part-time supervision in accordance with Commission rules. The statute covers any sewage treatment works system whether public or private, used or intended for use by the public or private persons.

The Department of Environmental Quality has developed proposed rules and a fee schedule with public participation and involvement of an Advisory Committee as directed by the Legislature. A description of the draft rule development process and the recommendations of the Advisory Committee are presented in Attachment C.

Oregon Administrative Rules contain the authority for the Commission to adopt rules under OAR 340-11-010 et seq. ORS 448 requires the Commission to adopt rules for certifying sewage works system operators and establish fees to recover expenses associated with implementing the sewage treatment system personnel certification program.

Alternatives and Evaluation

1. Propose rules for public hearing that coincide directly with the existing voluntary certification program.

A voluntary certification program existed under the administration of a non-profit corporation until January 1988. Temporary rules were adopted by the Commission to enable operators to renew their certification or become certified in the transition period until final rules are adopted by the EQC. The temporary rules substantially address the required elements of the statute, in so far as the voluntary program rules contain criteria for classifying treatment works, the qualifications for certifying operators and collection system personnel and fees for certifying and examining those wishing to become certified. The fee schedule was reviewed and accepted by the Emergency Board in January 1988. The temporary rules, however, do not address the statutory requirement that each sewage treatment system be supervised by a certified operator, or the alternative for sewage treatment system owners with systems less than 75,000 gallons per day flow to have their systems supervised by part-time certified operator. Additionally, the Sewage Treatment Works Certification Advisory Committee, in the process of assisting the Department in rule development, reviewed the temporary rules and recommended several significant changes, particularly to the minimum qualifications for operator grade levels. These recommendations are summarized in Attachment C.

2. Propose rules for public hearing that have been developed with the assistance of the Sewage Treatment Works Certification Advisory Committee, (Attachment B).

Department staff, with the assistance of a Sewage Works Advisory Committee reviewed Oregon's temporary sewage treatment works system operator certification rules, mandatory operator certification programs of other states, and solicited and received written and oral comments from cities and individuals in the process of guiding Department staff.

The Advisory Committee recommendations have been incorporated into the proposed rules for public hearing with one exception concerning who must be certified. This is addressed further below. The proposed rules address and include the following:

a. **Criteria for classifying sewage treatment works, both sewage treatment and sewage collection systems, into one of four classes each.** The four classes of treatment and collection systems, Classes I through IV, correspond to varying levels of size, type and complexity. Class I sewage treatment systems are the smallest and least complex and Class IV are the largest and most complex. Sewage treatment systems would be classified based on size, type and complexity according to the following criteria: a) design population or population equivalents, b) approved dry weather design flow, c) treatment system unit processes, d) permit effluent limitations, e) raw waste variation, and f) laboratory sampling and laboratory testing. Ranking of systems into one of the four classes would be based on total accumulated points for all of the criteria.

   The criterion for classifying sewage collection systems into Class I through IV is the approved dry weather design flow of the system; however, at the Director's discretion, the classification may be based on other complexity factors such as the number and type of pump stations. Class I sewage collection systems are the smallest and least complex and Class IV are the largest and most complex.

b. **Minimum qualifications for certifying persons in classifications and grade levels consistent with the classification of the sewage treatment works to be supervised.** Qualifications specify minimum education and experience and examination requirements for both sewage treatment and sewage collection system operators in Operator Grade Levels 1 through 4. Education, experience and examination requirements increase with higher grade levels and correspond to the classification of sewage treatment and sewage collection systems, Classes I through IV. In addition to Sewage Treatment System Operator Grade Levels 1 through 4; and Sewage Collection Operator, Grade Levels 1 through 4, a combination Water/Sewage Treatment Operator Grade Level 1 and a combination Sewage Treatment and Collection system Operator Grade 1 have been added to enable operators to renew their certificates in these classifications

and grade level with a single renewal fee. Within the Sewage Treatment Operator and Sewage Collection System Operator classifications, rules also allow issuance of Provisional Certificates to enable on-the-job training and experience for entry level personnel. Within the Grade Levels 3 and 4, the Advisory Committee also recommended that the "Direct Responsible charge" requirements of the voluntary program be deleted as an experience qualification. In addition, persons would not have to be certified sequentially from lower grades to become certified at higher grades.

c. **Provisions that allow sewage treatment works owners until July 1, 1989 to have their system supervised by a certified operator at the classification level of the system.** The statute specifies the Commission adopt rules to implement the program by September 27, 1988. The Advisory Committee recommended and Department staff support specifying the date in rule language by which owners must have their system supervised by an operator certified at the classification of the system or higher. Specifying a July 1, 1989 date will enable adequate opportunity for owners and supervisors to comply with these rules. This rule language is also specified for owners of systems less than 75,000 gallons per day who have an alternative to contract with a certified operator for part-time supervision of their system. Similarly, persons who are designated by the system owner to supervise their system must be certified by July 1, 1989.

d. **Provisions enabling the Director to issue certificates under this program to persons holding a current Oregon certificate under a voluntary program provided their certificates are issued or renewed before May 1, 1989.** The Director would issue certificates to persons at the same classification and grade as their voluntary certificate and the certificates would be valid until June 30, 1989. After this date persons must either renew their certificate or obtain a higher grade level certificate to hold a current certificate. These provisions are consistent with the statute which includes a Special Certification Provision, ORS 448.420 to certify persons who hold a current certificate issued under an Oregon voluntary certification program.

e. **Provisions enabling the Director to issue certificates to new applicants and those seeking to upgrade their certificate who meet the minimum education and experience qualifications and satisfactorily pass an examination at the grade level for which certification is sought.** Once issued, the certificate would be current for no longer than 2 years, but not less than the certification period remaining once certified.

f. **Provisions for the Department to schedule and administer examinations at least twice per calendar year.** The examinations would be scheduled with 60 days public notice, and at other times as appropriate at the discretion of the Department.

g. **Provisions enabling the Director to renew certificates, without examination.** After July 1, 1989, the renewal term would be every two years. For a certificate or renewal issued after July 1, 1989, the next and subsequent renewals of a certificate would be dependent upon the applicant demonstrating continued professional growth by obtaining two (2) Continuing Education Units (CEUs) within the term of the certificate or renewal. The continued education requirements is advocated by the Advisory Committee and supported by Department staff.

It would promote continued training and development of operators in a changing and advancing technological field. Persons who are certified in more than one area, i.e., sewage treatment systems and sewage collection systems, would only be required to obtain 2 CEU for one certification per renewal term. The two year term of the certificate and renewal is viewed to be reasonable, less costly than an annual renewal requirement and less burdensome to administer. Originally, the proposed fee schedule reviewed by the Legislature considered a one year certificate/renewal term. Between filing of the rules and May 1, 1989 the fees collected for renewals and new certification would be the same as proposed, but the certificates would be valid only until June 30, 1989. These fees would be used to help offset the cost of developing the program.

h. **Provisions enabling the Director to issue certificates, without examinations, to persons holding a current certificate issued in another state provided the minimum qualifications to obtain that certificate are substantially equivalent.** The applicant would be subject to the requirements of renewal, except for the application fee. These provisions are consistent with the statute which includes a Special Certification Provision, ORS 448.420 for reciprocity.

i. **A fee schedule for new certification or upgrade certification which includes an examination fee; certificate renewal; reinstatement of a lapsed certificate; and certificate through reciprocity.** The proposed fees are only slightly higher than the Pre-January 1988 Oregon Wastewater System Operators' Voluntary Certification Program fees (Attachment D). Presently the Department is receiving fees for administrating the EQC approved interim voluntary sewage works system operators certification program under this same fee schedule which was reviewed by the Legislative Emergency Board in January 1988.

Fees collected under the temporary rules and those collected to May 1, 1989 would be used to recover the cost of developing the program. Certificates and renewals issued to May 1, 1989 would be valid until July 1, 1989, after which a renewal must be obtained. The fees for certification and renewal after May 1, 1989 would be used to administer the certification program on an on-going basis. After May 1, 1989, a two year renewal period will begin. The two year renewal term is intended to reduce the cost of administrating the program, encourage the maximum participation of operators and provide a fee supported program as required by the Legislation. Whether or not the fees adequately cover expenses of developing and administering the program depends upon the number of persons seeking certification. The Department staff feel that reasonable fees will result in a sufficient number of operators participating in the program to generate sufficient revenues to administer the certification program.

j. **Provisions establishing an advisory committee to assist the Department in preparing examination and evaluating the needs of the certification program.** This provision in the rules would enable continued representation of the operators and owners in advising the Department on examination preparation and program needs.

k. **Provisions that enable variances to rules, refusal to issue and revocation of certificates; and penalties for violation of rules.** The statute specifies that variances to rules may be granted according to criteria developed by the Commission. The statute also specifies fines of not more than $500 per day of violation or imprisonment for not more than six months or both. Criteria for assessing penalties and the appeal process are identified in the proposed rules. The proposed rules also allow the Director to revoke a certificate if rules are violated or any person knowingly makes any false statement, representation or certification in any application, record, report plan or other document filed or required to be maintained under the certification statute or any rule adopted pursuant to the statute. The Director may reinstate a revoked certificate of a person after 24 months if, in the Director's judgement, it is appropriate to do so.

After the 1987 Oregon Legislature enacted ORS 448, the Department of Environmental Quality Director and Health Division Administrator selected individuals to serve on a Joint Water and Sewage Treatment Works Advisory Committee to assist the Department and Division develop rules. The Sewage Works Operator Advisory subcommittee has met eight times since November 1987. The subcommittee members represent all the areas of the State, all sizes of sewage treatment systems, collection systems statewide, various operator certification grade levels, small communities through a representative of the League of Oregon Cities, contract operations, private citizens, and the educational community.

The Advisory Committee reviewed existing certification programs, discussed appropriate alternatives to address various issues, and solicited and received comments from a wide range of operators and communities. The Joint Advisory Committee also has met twice to coordinate the development of rules between the Health Division and the Department. The rules proposed for public hearing substantially address the recommendation of the Advisory Committee with one exception.

Some members of the Advisory Committee preferred proposed rule language that would require the supervisor of the sewage treatment works system be certified at or higher than the classification of the system and that would require all sewage treatment works system operators be certified at some classification and grade. This issue arose because of statutory language which some interpret to mean that no one may perform the duties of an operator unless certified pursuant to the rules. If proposed rules did not specify these requirements, some Advisory Committee members recommended an alternative that the proposed rules require supervisors, shift supervisors and lead workers in remote sewage collection systems operations be certified. This was suggested so that sewage treatment works personnel are under the direct supervision of a certified operator at all times, unless the system is less than 75,000 gallons per day design flow.

Department staff attended several of the Legislative subcommittee hearings on the certification bill. Discussions included who must be certified and whether on-site supervision by a certified operator was intended by the draft legislation. During the legislative subcommittee hearings changes were made to some of the draft language (ORS 448.415) such that any sewage treatment works must be "supervised" rather than "operated" by an operator certified pursuant to the statute. However, the statutory language also specifies that "a person may not a) allow any sewage treatment works to be operated unless the operator is certified or the sewage treatment works is supervised by an operator certified under the provisions of ORS 448.410 to 448.430 and 448.992, b) perform the duties of an operator unless the person is certified under the provisions of ORS 448.410 to 448.30 and 448.992".

The Department conferred with the Department of Justice legal counsel concerning who must be certified. Legal counsel noted that the statute focuses on certification of persons qualified to supervise the operation of sewage treatment works and that rules could be developed to define the responsibilities of the supervisor. The statutory definition of "supervise" is to "operate" or to be responsible for the operation of a water (sic) system. The proposed rule definition of "supervisor" is the person vested with the authority for establishing and executing the specific practice and procedures for operating the sewage treatment works system in accordance with the policies of the owner and the permit conditions. The supervisor is not required to be on site at all times, but must be available to the owner and any other operators to respond to an emergency at the sewage treatment works system.

The proposed rules require each system be supervised by one or more certified operators. The rules give the responsibility to the sewage treatment system owner to designate the supervisor(s) to be certified. The definition of a supervisor is provided in the proposed rules. While

Department staff supports the concept of all operators being certified. Staff do not believe legislative intent was to require all operators be certified or that large systems be required to have more than one person certified to supervise the operation of the system.

Staff have discussed this issue and the Department's proposed rules which limit who must be certified with the Advisory Committee. The statute requires that the Department and Health Division report to the Legislature by January 1, 1989 on a summary of actions taken, an evaluation of the effectiveness of such actions and information and recommendations that the Division and Department consider appropriate. Thus, the staff have agreed to include the issue of who must be certified in the report prepared to the Legislature in December 1988.

In the meantime, language has been included in the preface of proposed rules which iterate that the certification program is available to all operators who meet the minimum qualifications in a given classification and grade and that all operators are encouraged to apply for certification in the highest classification and grade consistent with their qualification.

The public notice and schedule for public hearing to take testimony on the proposed rules are shown in Attachment E. Six hearings around the state are proposed. In summary, proposed rules would:

1. Establish criteria for classifying sewage treatment works.

2. Define qualifications for certifying persons by classification and grade.

3. Enable the director to issue a certificate to persons who hold a current certificate issued under an Oregon voluntary operator program without examination until May 1, 1989.

4. Enable the Director to issue certificates including renewal certificates, renewal of lapsed certificates and certification through reciprocity.

5. Define the requirement that by July 1, 1989 all sewage treatment systems owners must be supervised by an operator who holds a valid certificate of a grade level equal to or higher than the sewage treatment works classification. For systems under 75,000 gallons per day flow, owners may contract for part-time supervision of their system with a certified operator.

These rules would necessitate additional training of operators to renew their certificates in subsequent renewal periods after July 1, 1989 and may necessitate some operators receive additional training before they could become certified. The Provisional Certificate allows system owners to hire entry level personnel who have completed or are participating in a Department approved training program and pass an exam within 12 months even though they may lack the required level of experience to obtain their Grade Level 1 Operator certificate. The proposed minimum qualifications for certification remove a number of barriers to persons in becoming certified. Persons need not have "Direct Responsible Charge" experience, nor be certified at lower grade levels before becoming certified at higher grade levels. The certificate and renewal term of two (2) years reduces the cost to those needing to be certified after July 1, 1989.

Summation:

1. The 1987 Oregon Legislature enacted ORS 448 requiring the Environmental Quality Commission adopt rules by September 1988 to implement a program for certifying operators to supervise sewage works systems and to establish a schedule of fees to support the administration of the program.

2. The rule development process with the assistance of an Advisory Committee involved a review and evaluation of the voluntary certification program, the certification programs of other states, and appropriate requirements to comply with the legislation. The Advisory Committee solicited and received input from many operators and communities.

3. One alternative would be to adopt the voluntary certification rules presently being administrated by DEQ. This would result in rules that do not address the supervisory requirements of ORS 448, nor the recommendations of the Advisory Committee. Another alternative would be to adopt the proposed rules developed with the assistance of the Advisory Committee.

4. The Department of Environmental Quality has developed proposed rules to take to public hearing which substantially incorporate the recommendations of the Advisory Committee. The proposed rules address the statutory requirements of the Environmental Quality Commission. They are consistent with Legislative intent to help protect public health and Oregon's water resources through proper operation and maintenance of sewage treatment works systems by establishing requirements for personnel who supervise the operation of these systems (Attachment B).

Director's Recommendation.

The Director recommends that the Commission authorize public hearings to take testimony on the proposed rules, Attachment B.

Fred Hansen

Attachment A. ORS 448.105
Attachment B. Proposed Draft Rules
Attachment C. Recommendations of the Advisory Committee for Certifying Sewage Treatment Works Systems Operators
Attachment D. Comparison of Pre-January 1988 Voluntary Certification Fees and Proposed Fees
Attachment E. Public Hearing Notice
Attachment F. Need for Rulemaking

WC3159

Chapter 448

1987 REPLACEMENT PART

Swimming Facilities; Water and Sewage Systems

448.325 Injunction to enforce city ordinances. In cases of violation of any ordinance adopted under ORS 448.300 or 448.305 any city or any corporation owning a domestic water supply source or the community water supply system for the purpose of supplying any city or its inhabitants with water may have the nuisance enjoined by civil action in the circuit court of the proper county. The injunction may be perpetual. [Formerly 449.340]

(Water Pipes and Fittings)

448.330 Moratorium of pipe and fittings for potable water supply; acceptability criteria; exceptions. (1) The Assistant Director for Health may prohibit the sale of water pipe used to carry potable water and solders, fillers or brazing material used in making up joints and fittings in this state and the installation or use of water pipe used to carry potable water and solders, fillers or brazing material used in making up joints and fittings in any private or public potable water supply system or individual water user's lines until such time as the assistant director determines that adequate standards exist and are practiced in the manufacture of water pipe used to carry potable water and solders, fillers or brazing material used in making up joints and fittings to insure that the pipe and solder do not present a present or potential threat to the public health in this state.

(2) The Assistant Director for Health shall adopt, by rule, product acceptability criteria for water pipe used to carry potable water and solders, fillers or brazing material used in making up joints and fittings for water supply purposes which insure that the pipe and solder do not present a threat to the public health in this state. The Health Division shall be responsible for the monitoring of the sale and use of water pipe used to carry potable water and solders, fillers or brazing material used in making up joints and fittings for compliance with the product acceptability criteria. The Building Codes Agency shall cooperate with, and assist, the Health Division in its monitoring efforts.

(3) No water pipe used to carry potable water or solders, fillers or brazing material used in making up joints and fittings which does not conform to the product acceptability criteria adopted under subsection (2) of this section shall be sold in this state or installed in any part of any public or private potable water supply system or individual water user's lines.

(4) Notwithstanding subsection (1) or (3) of this section, the Assistant Director for Health may grant exemptions from any prohibition of the sale or use of water pipe used to carry potable water for the emergency repair or replacement of any existing part of a water supply system, or for the necessary use by a well driller in the installation of a well. The assistant director may require any person using water pipe used to carry potable water under this subsection to notify the Health Division of the date and location of that use. [1979 c.535 §1; 1987 c.414 §152]

OPERATOR CERTIFICATION FOR SEWAGE TREATMENT WORKS AND POTABLE WATER TREATMENT PLANTS

(Generally)

448.405 Definitions for ORS 448.405 to 448.470. As used in ORS 448.405 to 448.470:

(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) "Division" means the Health Division of the Department of Human Resources.

(5) "Operator" means a person responsible for the operation of a potable water treatment plant, water distribution system or sewage treatment works.

(6) "Person" means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, municipality or any other political subdivision of this state, any interstate body or any other legal entity.

(7) "Potable water treatment plant" means that portion of a water system that in some way alters the physical, chemical or bacteriological quality of the water being treated.

(8) "Sewage treatment works" means any structure, equipment or process required to collect, carry away and treat domestic waste and dispose of sewage as defined in ORS 454.010.

(9) "Supervise" means to operate or to be responsible for directing employes that are responsible for the operation of a water system.

(10) "Water distribution system" means that portion of the water system in which water is stored and conveyed from the potable water treatment plant or other supply point to the premises of a consumer.

(11) "Water system" includes sewage treatment works or potable water treatment plants and water distribution systems that have 15 or more service connections used by year-round residents or that regularly serve 25 or more year-round residents. [1987 c.635 §1]

Note: 448.405 to 448.470 and 448.992 and 448.994 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 448 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

448.407 Advisory committee to commission and division. To aid and advise the Environmental Quality Commission and Health Division in the adoption of rules under ORS 448.410 and 448.450, the Director of the Department of Environmental Quality and the Assistant Director for Health shall appoint an advisory committee. The members of the committee shall include but need not be limited to representatives of all types of water systems. [1987 c.635 §16]

Note: See note under 448.405.

448.409 Biennial report. On or before January 1, 1989, and biennially thereafter, the Department of Environmental Quality and Health Division shall develop and submit a joint report to the Legislative Assembly. The report shall include, but need not be limited to:

(1) A summary of actions taken under ORS 448.405 to 448.470, 448.992 and 448.994;

(2) An evaluation of the effectiveness of such actions; and

(3) Any information and recommendations, including legislative recommendations the department or the division considers appropriate. [1987 c.635 §17]

Note: See note under 448.405.

(Sewage Treatment Works)

448.410 Authority and duties of Environmental Quality Commission. (1) The commission shall:

(a) Adopt rules necessary to carry out the provisions of ORS 448.410 to 448.430 and 448.992.

(b) Classify all sewage treatment works. In classifying the sewage treatment works, the commission shall take into consideration size and type, character of wastewater to be treated and other physical conditions affecting the sewage treatment works and the skill, knowledge and experience required of an operator.

(c) Certify persons qualified to supervise the operation of sewage treatment works.

(d) Subject to the approval of the Joint Ways and Means Committee of the Legislative Assembly, or the Emergency Board if the legislature is not in session, establish a schedule of fees for certification under paragraph (c) of this subsection. The fees established under the schedule shall be sufficient to pay the costs incurred by the department in carrying out the provisions of ORS 448.410 to 448.430 and 448.992.

(2) The commission may grant a variance from the requirements of ORS 448.415, according to criteria established by rule by the commission.

(3) In adopting rules under this section, the commission shall consult with the Health Division in order to coordinate rules adopted under this section with rules adopted by the Health Division under ORS 448.450. [1987 c.635 §2]

Note: See note under 448.405.

448.415 Certification required for operators. (1) Except as provided in ORS 448.430, any sewage treatment works, whether publicly or privately owned, used or intended for use by the public or private persons must be supervised by an operator certified pursuant to ORS 448.410. The operator's certification must correspond to the classification of the sewage treatment works supervised by the operator.

(2) Except as provided in ORS 448.430, a person may not:

(a) Allow any sewage treatment works to be operated unless the operator is certified or the sewage treatment works is supervised by an operator certified under the provisions of ORS 448.410 to 448.430 and 448.992.

(b) Perform the duties of an operator unless the person is certified under the provisions of ORS 448.410 to 448.430 and 448.992. [1987 c.635 §§3, 4]

Note: See note under 448.405.

Note: Section 20, chapter 635, Oregon Laws 1987, provides:

Sec. 20. Sections 3, 4, 8, 10, 11 and 15 of this Act [448.415, 448.455, 448.992, 448.994] first become operative one year after [September 27, 1987,] the effective date of this Act. [1987 c.635 §20]

448.420 Special certification provisions. On and after September 27, 1987, an operator holding a current Oregon sewage treatment certification issued under a voluntary certification program shall be considered certified under the program established under ORS 448.410 at the same classification and grade. Certification of operators by any state that, as determined by the director, accepts certifications made under ORS 448.410 to 408.430 and 448.992,

shall be accorded reciprocal treatment and shall be recognized as valid and sufficient within the purview of ORS 448.410 to 448.430 and 448.992, if in the judgment of the director, the certification requirements of such state are substantially equivalent to the requirements of ORS 448.410 to 448.430 and 448.992 or any rule adopted under ORS 448.410 to 448.430 and 448.992. [1987 c.635 §5]

Note: See note under 448.405.

448.425 Deposit and use of fees. Any fees collected pursuant to the schedule adopted under ORS 448.410 shall be deposited in the General Fund of the State Treasury to the credit of the Department of Environmental Quality. Such fees are continuously appropriated to the department to pay the cost of administering the provisions of ORS 448.410 to 448.430 and 448.992. [1987 c.635 §6]

Note: See note under 448.405.

448.430 Certification exception. The requirements of ORS 448.415 shall not apply to:

(1) Any sewage treatment works with an approved design flow of less than 75,000 gallons a day, if the owner has contracted with a certified operator to provide part-time supervision as the commission by rule determines necessary; or

(2) A subsurface sewage disposal system as defined in ORS 454.605. [1987 c.635 §7]

Note: See note under 448.405.

(Potable Water Treatment Plants)

448.450 Authority and duties of Health Division. (1) The Health Division shall:

(a) Adopt rules necessary to carry out the provisions of ORS 448.450 to 448.470, 448.992 and 448.994.

(b) Classify all potable water treatment plants and water distribution systems actually used or intended for use by the public. In classifying the potable water treatment plants and water distribution systems, the division shall take into consideration size and type, character of water to be treated and other physical conditions affecting the treatment plants and distribution systems and the skill, knowledge and experience required of an operator.

(c) Certify persons qualified to supervise the operation of a potable water or a water distribution system.

(d) Subject to the approval of the Joint Ways and Means Committee of the Legislative Assembly, or the Emergency Board if the legislature is not in session, establish a schedule of fees for certification under paragraph (c) of this subsection. The fees established under the schedule shall be sufficient to pay the cost of the division in carrying out the provisions of ORS 448.450 to 448.470, 448.992 and 448.994.

(2) The division may grant a variance from the requirements of ORS 448.455 according to criteria established by rule by the division.

(3) In adopting rules under this section, the division shall consult with the Department of Environmental Quality in order to coordinate rules adopted under this section with rules adopted by the Environmental Quality Commission under ORS 448.410. [1987 c.635 §9]

Note: See note under 448.405.

448.455 Certification required for operators. Except as provided in ORS 448.470, any potable water treatment plant or water distribution system whether publicly or privately owned, used or intended for use by the public or private persons must be supervised by an operator certified pursuant to ORS 448.450. The operator's certification must correspond to the classification of the water treatment plant or distribution system supervised by the operator.

(2) Except as provided in ORS 448.470, a person may not:

(a) Allow any potable water treatment plant or water distribution system to be operated unless the operator is certified or the potable water treatment plant or water distribution system is supervised by an operator certified under the provisions of ORS 448.450 to 448.470, 448.992 and 448.994.

(b) Perform the duties of an operator unless the person is certified under the provisions of ORS 448.450 to 448.470, 448.992 and 448.994. [1987 c.635 §§10, 11]

Note: See notes under 448.405 and 448.415.

448.460 Special certification provisions. On and after September 27, 1987, an operator holding a current Oregon water treatment certification issued under a voluntary certification program shall be considered certified under the program established under ORS 448.450 at the same classification and grade. Certification of operators by any state that, as determined by the division, accepts certifications made under ORS 448.450 to 448.470, 448.992 and 448.994, shall be accorded reciprocal treatment and shall be recognized as valid and sufficient within the purview of ORS 448.450 to 448.470, 448.992 and 448.994, if in the judgment of the Assistant Director for Health, the certification requirements of such state are substantially equivalent to the requirements of ORS 448.450 to

448.470, 448.992 and 448.994 or any rule adopted under ORS 448.450 to 448.470, 448.992 and 448.994. [1987 c.635 §12]

Note: See note under 448.405.

448.465 Deposit of fees. Any fees collected pursuant to the schedule adopted under ORS 448.450 shall be deposited in the General Fund of the State Treasury to the credit of the Health Division. Such fees are continuously appropriated to the department to pay the cost of administering the provisions of ORS 448.450 to 448.470, 448.992 and 448.994. [1987 c.635 §13]

Note: See note under 448.405.

448.470 Certification exception. The requirements of ORS 448.455 shall not apply to a water system that has less than 300 service connections if the owner contracts with a certified operator to provide part-time supervision as the division by rule determines necessary. [1987 c.635 §14]

Note: See note under 448.405.

PENALTIES

448.990 Penalties for violation of swimming facility or water system requirements. (1) Violation of ORS 448.005 to 448.090 by any person, firm or corporation, whether acting as principal or agent, employer or employe, is punishable, upon conviction, by a fine of not less than $25 nor more than $500 or by imprisonment in the county jail not exceeding six months, or by both. Each day that the violation continues is a separate offense.

(2) Violation of any of the following is punishable as a Class A misdemeanor:

(a) Any rule of the Health Division adopted pursuant to ORS 448.115 to 448.330.

(b) Any order issued by the Health Division pursuant to ORS 448.175.

(c) ORS 448.265 or 448.315 (2)(a). [Amended by 1967 c.344 §8; subsections (2) to (5) enacted as 1973 c.835 §177; 1975 c.254 §18; part renumbered subsection (5) of 468.990; 1983 c.271 §4]

448.992 Sewage treatment works violation penalties. (1) Except as provided in subsection (2) of this section, any person who knowingly and wilfully violates ORS 448.415 (2) shall upon conviction be punished by a fine of not more than $500 per day of violation or imprisonment for not more than six months, or both.

(2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained under ORS 448.410 to 448.430, or by any rule adopted under ORS 448.410 to 448.430, shall upon conviction, be punished by a fine of not more than $500 or by imprisonment for not more than six months, or both. [1987 c.635 §8]

Note: See notes under 448.405 and 448.415.

448.994 Potable water treatment plant violation penalty. (1) Except as provided in subsection (2) of this section, any person who knowingly and wilfully violates ORS 448.455 (2) shall upon conviction be punished by a fine of not more than $500 per day of violation or imprisonment for not more than six months, or both.

(2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained under ORS 448.450 to 448.470 and 448.992, or by any rule adopted under ORS 448.450 to 448.470 and 448.992, shall upon conviction, be punished by a fine of not more than $500 or by imprisonment for not more than six months, or both. [1987 c.635 §15]

Note: See notes under 448.405 and 448.415.

PROPOSED

OREGON ADMINISTRATIVE RULES

DEPARTMENT OF ENVIRONMENTAL QUALITY

CHAPTER 340

DIVISION 49

REGULATIONS PERTAINING TO CERTIFICATION OF SEWAGE TREATMENT WORKS OPERATOR PERSONNEL

Preface

340-49-005 (1) The purpose of these rules is to help protect public health and the water resources of Oregon through proper operation and maintenance of sewage treatment works systems by establishing requirements regarding certification of sewage treatment works personnel. The principal objectives of the rules are to:

(a) Establish criteria for classifying sewage treatment works systems;

(b) Define the requirements of sewage treatment works system owners whose systems must be supervised by an operator who holds a valid certificate at a grade level equal to or greater than sewage treatment works classification.

(c) Define the minimum qualifications for certifying personnel who supervise the operation of sewage treatment works systems in accordance with sewage treatment works classifications;

(d) Define the requirements and fees for persons who apply for certification, and obtain certificates, including examination requirements, renewal certificates and certification through reciprocity.

(e) Establish criteria for variances from the rule requirements;

(f) Establish penalties for violations of these rules; and

(g) Assure a reservoir of qualified sewage treatment works operators that are certified to operate and maintain sewage treatment works systems in Oregon.

(2) Certification, under these regulations, is available to all operators who meet the minimum qualifications in a given classification and grade. All operators are encouraged to apply for certification in the highest classification and grade consistent with their qualifications.

Definitions

340-49-010 As used in these regulations unless otherwise required by context:

(1) "Approved Dry Weather Flow" means the average dry weather design capacity of the sewage treatment system as approved by the Department, or the population equivalent design of the system.

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

(3) "Continuing Education Unit (CEU)" means a nationally recognized unit of measurement for assigning credits for education or training that

provides the participant with advanced or post high school learning. One CEU is equivalent to 10 contact hours of lecture and training in an organized continuing education experience that is conducted, under responsible sponsorship, capable direction and qualified instruction. Forty-five CEU are equal to 1 year of post high school education (30 semester hours or 45 college quarter hours).

(4) "Contract Operations" means the sewage works system owner has a written contract with a sewage treatment systems operations company or individual for supervising the operation of the sewage works system in accordance with these rules.

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

(6) "Director" means the Director of the Department of Environmental Quality or any official designee of the Director.

(7) "Industrial Waste" means liquid wastes from an industrial or commercial process discharged into the sanitary sewer system for conveyance and treatment.

(8) "NPDES" permit means a waste discharge permit issued in accordance with requirements and procedures of the National Pollutant Discharge elimination system authorized by the Federal Act and OAR Chapter 340, Division 45.

(9) "Oral Examination" means an examination administered by the Department where the applicant verbally answers to written examination questions.

(10) "Population" means the design population of the sewage works system represented as the number of people or the population equivalent the system is designed to serve. Equivalent population ordinarily is determined based on 70 gallons per person per day approved dry weather design flow or 0.17 lbs BOD_5 per person per day whichever is greater.

(11) "Provisional Certificate" means a temporary certificate issued by the Department to a person meeting the requirements of OAR 340-49-030(1)(a)(A) and OAR 340-49-030(1)(a)(B).

(12) "Post High School Education" means education acquired through programs such as short schools, bonafide correspondence courses, trade schools, community colleges, colleges, formalized workshops, seminars, etc. for which continuing education credit or college credit is issued by the training sponsor. One year of post high school education is equal to 30 college semester hours, 45 college quarter hours, or 45 CEUs.

(13) "Sewage" means the water-carried human or animal waste, from residences, buildings, industrial establishments or other place, together with such groundwater infiltration and surface water as may be present. The admixture of domestic and industrial waste, or other byproducts, such as sludge, shall also be considered sewage.

(14) Sewage treatment works, as defined in ORS 454.010, means any structure, equipment or process treating and disposing of domestic waste and sludge including industrial waste discharged to sewage treatment works. Other common terms that means the same are wastewater treatment systems, sewage works, and sewage works systems.

(15) "Sewage Collection System" means the trunks, arterials, pumps, pump stations, piping and other appurtenances necessary to collect domestic and/or industrial liquid wastes from a community, individual, corporation or entity, which produces sewage or other liquid waste treatable in a community or private sewage treatment facility. Another common term that means the same is wastewater collection system.

(16) "Sewage Treatment System Operator" means any person engaged in the on-site, day-to-day operation of a sewage treatment works system. It is not intended that this title shall include city or county managers, engineers, directors of public works or equivalent, whose duties do not include the actual operation or on-site supervision of facilities and/or sewage treatment works operator personnel. Other common terms that mean the same are wastewater treatment works operator and wastewater collection system operator.

(17) "Supervise" means responsible for the technical operation of a sewage treatment works system performance which may affect the performance or the quality of the effluent produced by such works.

(18) Supervisor means the person vested with the authority for establishing and executing the specific practice and procedures for operating the sewage treatment works system in accordance with the policies of the owner of the system and the permit requirements. The supervisor may be employed part-time when acting as the supervising party in a contractual agreement for sewage works systems with an approved dry weather design flow of less than 75,000 gallons per day. The supervisor is not required to be on site at all times. The supervisor or part-time supervisor must be available to the system owner and to any other operator.

(19) "WPCF" permit means a Water Pollution Control Facilities permit to construct and operate a disposal system with no discharge to navigable waters. A WPCF permit is issued by the Department in accordance with the procedures of OAR Chapter 340, Division 14, and Division 45.

General Requirements

340-49-015 (1) After July 1, 1989, each owner of a sewage treatment works system with an approved dry weather design flow 75,000 gallons per day or greater shall have their system supervised by one or more operators who hold a valid certificate at a grade level equal to or greater than the sewage works system classification.

(2) After July 1, 1989, each owner of a sewage treatment works system with an approved dry weather design flow less than 75,000 gallons per day

shall either have their system supervised by one or more operators who hold a valid certificate at a grade level equal to or greater than the sewage treatment works system classification or contract for part-time supervision with an operator who holds a valid certificate at a grade level equal to or greater than the sewage treatment works system classification.

(3) After July 1, 1989, any person employed to supervise the operation of a sewage treatment works system shall be certified at a grade level equal to or greater than the system classification that person supervises.

(4) Owners of on-site sewage disposal systems permitted in accordance with ORS 454.605 are exempt from these requirements.

(5) By July 1, 1989, and in accordance with permit conditions thereafter, each owner of a sewage treatment works shall file with the Department the name of the operator designated the responsibility of supervising the operation of their sewage treatment works system in accordance with these rules. The sewage treatment works system owner may redesignate or replace the designated operator with another properly certified operator at any time and shall notify the Department in writing within 30 days of replacement or redesignation of the operator certified in accordance with these rules.

Classification of Sewage Treatment Works Systems

340-49-020 (1) All sewage treatment works shall be classified by the Department as a sewage treatment system and sewage collection system, as appropriate, in accordance with the following classification system:

(a) SEWAGE TREATMENT SYSTEMS

Class I	1-30 total points.
Class II	31-55 total points.
Class III	56-75 total points.
Class IV	76 or more points.

(b) SEWAGE COLLECTION SYSTEMS

Class I	1,500 or less design population
Class II	1,501 to 15,000 design population
Class III	15,001 to 50,000 design population
Class IV	50,001 or more design population

(2) Sewage treatment system classifications shall be derived by the total points assigned based on criteria shown in Table 1, OAR 340-49-025.

(3) If the complexity of a sewage treatment system is not reflected in Table 1--Criteria for Classifying Sewage Treatment Systems (OAR 340-49-025), the Director may establish a classification consistent with the intent of the classification system, upon written notice to the sewage treatment system owner.

(4) If deemed appropriate by the Director, sewage collection systems may be classified at a higher level based on the complexity of the system and/or the number of pump stations.

(5) The Director will advise sewage treatment works system owners covered by a WPCF or NPDES permit of the classification of their system(s).

(6) The Director may change the classification of a sewage treatment works system upon written notice to the system owner and shall give the owner a reasonable time to comply with the requirements of the new classification.

(7) The sewage system owner may submit a written request to appeal the classification of their system in accordance with OAR 340-49-075, variances.

Minimum Qualifications for Sewage Treatment Works Operator Certification, New Certificates and Certificate Upgrades.

340-49-030 (1) Four classifications are established as follows: Sewage Treatment System Operator, Grade Levels 1-4; and Provisional Sewage Treatment System Operator; Sewage Collection System Operator, Grade Levels 1-4, and Provisional Sewage Collection System Operator; Combination Sewage Treatment and Collection Systems Operator, Grade Level 1 and Sewage Treatment and Water Treatment Systems Operator Grade Level 1.

(a) **Sewage Treatment System Operator Levels.**

(A) Provisional Sewage Treatment System Operator. Persons may qualify for a Provisional Certificate to provide on-the-job training and experience to meet the Sewage Treatment System Operator Grade Level 1 qualifications if they have completed high school or equivalency, are participating in or have completed a Department approved training program and are supervised by a certified sewage treatment system operator. To retain the provisional certificate the person must satisfactorily pass a Sewage Treatment System Operator Grade Level 1 exam within 12 months.

(B) Grade Level 1 Sewage Treatment System Operator Certification Qualifications. Persons may qualify for this classification and grade level if they meet the following qualifications:

Education: Completion of high school or equivalency, and

Experience: Twelve (12) months experience at a Class I or higher Sewage Treatment Plant, and

Exam: Satisfactorily pass Sewage Treatment Plant Operator Grade Level 1 exam.

(C) Grade Level 2 Sewage Treatment System Operator Certification Qualifications. Persons may qualify for this classification and grade level if they meet the following qualifications:

Education: Completion of high school or equivalency, and

Experience: Three (3) years at a Class I or higher Sewage Treatment System, or

Two (2) years at a Class I or higher Sewage Treatment System and one (1) year of post high school education, and

Exam: Satisfactorily pass Sewage Treatment Operator Grade Level 2 examination.

(D) Grade Level 3 Sewage Treatment System Operator Certification Qualifications. Persons may qualify for Operator Grade Level 3 Certification if they meet the following qualifications:

Education: Completion of high school or equivalency, and

Experience: Eight (8) years experience, of which half must have been at a Class II or higher Sewage Treatment System, or

Five (5) years experience, of which half must have been at a Class II or higher Sewage Treatment System, and one year of post high school education, or

Four (4) years experience, of which half must have been at a Class II or higher Sewage Treatment System, and two years post high school education, or

Three (3) years experience, of which half must have been at a Class II or higher Sewage Treatment System, and three years of post high school education, and

Exam: Satisfactorily pass a Sewage Treatment Operator Grade Level 3 examination.

(E) Grade Level 4 Sewage Treatment System Operator Certification Qualifications. Persons may qualify for Operator Grade Level 4 Certification if they meet the following qualifications:

Education: Completion of high school or equivalency, and a minimum of one year post high school education and

Experience: Ten (10) years experience, of which half must have been at a Class III or higher Sewage Treatment System, or

Six (6) years experience, of which half must have been at a Class III or higher Sewage Treatment System, and two years of post high school education, or

Five (5) years experience, of which half must have been at a Class III or higher Sewage Treatment System, and three years of post high school education, or

Four (4) years experience, of which half must have been at a Class III or higher Sewage Treatment System, and four years post high school education, and

Exam: Satisfactorily pass a Sewage Treatment Operator Grade Level 4 examination.

(b) **Sewage Collection System Operator**

(A) Provisional Sewage Collection System Operator. Persons may qualify for a Provisional Certificate to obtain on-the-job training and experience to meet the Sewage Collection System Grade Level 1 qualifications, if they have completed high school or equivalency, are participating in or have completed a Department approved training program and, are supervised by a certified operator. To retain the provisional certificate the person must satisfactorily pass a Sewage Collection System Operator Grade Level 1 exam within 12 months.

(B) Grade Level 1 Sewage Collection System Operator Certification Qualifications. Persons may qualify for this classification and grade level if they meet the following qualifications:

Education: Completion of high school or equivalency, and

Experience: Twelve (12) months at a Class I or higher Sewage Collection System, and

Exam: Satisfactorily pass a Sewage Collection System Operator Grade Level 1 examination.

(C) Grade Level 2 Sewage Collection System Operator Certification Qualifications. Persons may qualify for this classification and grade level if they meet the following qualifications:

Education: Completion of high school education or equivalency, and

Experience: Three (3) years at a Class I or higher Sewage Collection System, or

Two (2) years at a Class I or higher Sewage Collection System, and one year of post high school education, and

Exam: Satisfactorily pass a Sewage Collection System Operator Grade Level 2 exam.

(D) Grade Level 3 Sewage Collection System Operator Certification Qualifications. Persons may qualify for this classification and grade level if they meet the following qualifications:

Education: Completion of high school education or equivalency, and

Experience: Eight years experience, of which half must have been, at a Class II or higher Sewage Collection System, or

Five (5) years experience, of which half must have been at a Class II or higher Sewage Collection System, and one year of post high school education, or

Four (4) years experience, of which half must have been at a Class II or higher Sewage Collection System, and two years post high school education, or

Three (3) years experience, of which half must have been at a Class II or higher Sewage Collection System, and three years of post high school education, and

Exam: Satisfactorily pass a Sewage Collection System Grade Operator Level 3 examination.

(E) Grade Level 4 Sewage Collection System Operator Certification Qualifications. Persons may qualify for this classification and grade level, if they meet the following qualifications:

Education: Completion of high school or equivalency, and

Experience: Ten (10) years experience, of which half must have been at a Class III or higher Sewage Collection System, or

Eight (8) years experience, of which half must have been at a Class III or higher Sewage Collection System, and one year of post high school education, or

Six (6) years experience, of which half must have been at a Class III or higher Sewage Collection System, and two years of post high school education, or

Five (5) years experience, of which half must have been at a Class III or higher Sewage Collection System, and three years of post high school education, or

Four (4) years experience, of which half must have been at a Class III or higher Sewage Collection System, and four years post high school education, and

Exam: Satisfactorily pass a Sewage Collection System Operator Grade Level 4 examination.

(c) **Sewage Treatment System and Water System Grade Level 1 Combination Certificate.** Persons may qualify at renewal for this certification classification provided they meet the minimum qualifications set forth in OAR 340-49-030(1)(a)(A) and OAR 333-61-260 for Sewage Treatment System and Water Treatment System Operator Grade Level 1.

(d) **Sewage Treatment System and Sewage Collection System Grade Level 1 Combination Certificate.** Persons may qualify at renewal for this certification classification provided they meet the minimum qualifications set forth in OAR 340-49-030(1)(a)(B) and 030(1)(b)(B) for Sewage Treatment System and Sewage Collection System Operator Grade Level 1.

(2) The Department shall give credit to meet experience qualifications set forth in OAR 340-49-030(1)(a) through 030(21)(c) for related experience up to 50 percent, but not to exceed 6 months of experience in the following areas:

Sewage treatment systems operations
Sewage collection systems operations and maintenance
Water treatment system operations
Water distribution system operations
Water treatment laboratory
Sewage treatment laboratory
Sewage treatment systems maintenance
Industrial waste treatment operations and maintenance.

(3) Education credit can be gained in programs such as short schools, bonafide correspondence courses, trades schools, community colleges, formalized workshops, seminars, and other training for which CEU is given by the training sponsor.

(4) The Department shall consider the relevance of the subject matter covered at seminars, workshops, conferences, and other training sessions when evaluating the education qualifications of an applicant for certification.

(5) The applicant for certification has the responsibility for providing experience and education records to the Department for screening and evaluating the applicant's qualifications.

Certification of Sewage Treatment Works Operators

340-49-035 (1) The Director shall issue certificates to persons holding a current voluntary Oregon sewage treatment operator or collection system certificate provided the certificate was issued or renewed before May 1, 1989. These certificates shall be issued for the same classification and grade as the certificate issued under the voluntary program and shall be valid until June 30, 1989.

(2) The Director shall issue certificates to persons meeting the education and experience qualifications set forth in OAR 340-49-030, and who satisfactorily pass the exam for the classification and grade level sought. Upon filing of these rules and until May 1, 1989 certificates issued shall be valid until June 30, 1989. Thereafter, issued certificates shall be valid for the term of the certificate.

(3) Each certificate issued shall designate the classification and grade.

Certificate and Renewal

340-49-040 (1) Upon filing of these rules, and until May 1, 1989, renewal certificates shall be valid until June 30, 1989.

(2) Beginning July 1, 1989 and thereafter, a certificate may be renewed for a two year term to those who submit a complete renewal application and payment of the fee required by OAR 340-49-065.

(3) The Department will send each certificate holder a renewal notice at least 60 days before the certificate lapses. Notice will be mailed to the last address of record. Failure to receive notice does not relieve the holder of responsibility to renew the certificate.

(4) For a certificate or renewal issued after May 1, 1989, the next and subsequent renewal of a certificate shall be based on demonstration of continued professional growth in the field. An operator shall submit satisfactory evidence of completion of approved training of a minimum of two (2) CEUs as a condition for renewal of the certificate. An

operator holding more than one certificate issued under these rules, need only complete the training required to satisfy renewal requirements for one of these certificates.

Reinstatement of Lapsed Certificates

340-49-045 (1) An operator who seeks renewal of a lapsed certificate may submit an application for renewal within 180 days after the certificate lapses. Upon receipt of application, including proof of compliance with OAR 340-49-040(4), and payment of the fee required by OAR 340-49-065, the Director will renew the certificate.

(2) The Department, at its discretion, may require re-examination of an operator whose renewal application is received more than 180 days after the certificate lapses.

Certificate and Reciprocity

OAR 340-49-050 (1) The Director may accord a person with a valid certificate in another state or province reciprocal treatment and issue a certificate without examination when, in the judgement of the Director, the certification requirements in the other state or province are substantially equivalent to the requirements set forth in these rules.

(2) When such reciprocity is granted, the person shall be subject to the same requirements of renewal as any other person initially certified by these rules.

Examinations

340-49-055 (1) Persons applying for a new certification or to be certified at a higher grade level must be examined, file a completed application and payment of the fee required by OAR 340-49-065 at least 30 days before the date set for an examination, and meet the education and experience qualifications for the classification and grade level sought.

(2) The Department will notify the applicant of eligibility for an examination.

(3) Persons accepted for examination shall be examined at the next scheduled examination date, unless the Department at its discretion, chooses to administer an exam at times in addition to the scheduled exams.

(4) A minimum score of 70 percent correct answers is required to satisfactorily pass an examination.

(5) Any person who fails an examination may repeat such examination at a later date upon submittal of a complete application and fee.

(6) Examination shall consist of material in content and level appropriate to each classification and grade level.

(7) Examinations shall be administered by the Department or its designee, at places and times scheduled by the Department, with 60 days public notice of the schedule. A minimum of two examinations shall be scheduled per calendar year.

(8) The Department, at its discretion, may administer written or oral examinations at times other than those scheduled.

(9) All examinations will be graded by the Department, or its designee, and the applicant shall be notified of grade attained and pass or fail. Examinations will not be returned to the applicant.

Certification Fees

340-49-060 (1) All persons applying for certification shall be subject to the fee schedule contained in OAR 340-49-065 (Table 2).

(2) Upon the Department receipt of an application and fee, the fee shall be non-refundable, unless no action has been taken on the application, the Department determines that no fee is required, or that the Department determines the wrong application has been filed.

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

Contracts for Part-Time Supervision

340-49-070 (1) When an owner enters into a contract for part-time supervision with a certified operator to comply with OAR 340-49-015 (2), the contract shall include the following:

(a) The parties involved, including names, addresses and phone number of each, and certification class and grade of the operator(s).

(b) The specific starting date and expiration date of the contract.

(c) The minimum number of visits to be made to the sewage treatment works system(s) by the contract supervisor.

(d) The duties and responsibilities of each party involved.

(2) The contract for supervision shall be sufficient such that the contracted certified operator shall be available on 24-hour call and able to respond on-site upon request.

(3) The Director may require changes to the contract if the sewage treatment system is in violation with the limitations of the permit.

(4) The owner of the sewage treatment works systems shall maintain the contract on file for Department review.

Variances

340-49-075 The Director may grant variances from these rules when it is demonstrated to the satisfaction of the Department that strict compliance with the rule would be highly burdensome or impractical due to special conditions or causes; and when the public or private interest in the granting of the variance is found by the Department to clearly outweigh the interest of the application of uniform rules.

Refusal and Revocation of Certificate and Appeal Process.

340-49-080 (1) The Director may refuse to issue or revoke the certificate of any person in accordance with the procedures set forth in OAR 340-11-097 et seq. Grounds for revocation of a certificate shall be:

(a) Obtaining a certificate by fraud, deceit, or misrepresentation, or

(b) Proven gross negligence, incompetence or misconduct in performance of duties as an operator, or

(c) Failure of the operator to comply with the lawful orders, rules or regulations of the Department, or

(d) False or fraudulent report or record by the operator regarding the operation or supervision of the treatment system.

(2) If the Director believes that good cause exists to suspend or revoke a person's certificate, the Director shall give notice to the person of opportunity for hearing in accordance with 340-11-100.

(3) The Director, after a period of twenty-four (24) months, may reinstate any person whose certificate has been revoked upon presentation of evidence satisfactory to the Director, which warrants such reinstatement. The Director may require re-examination as a condition of the certificate reinstatement.

Advisory Committee

340-49-085 (1) By October 31, 1988, the Department shall establish an Advisory Committee to:

(a) Assist in developing examinations.

(b) Evaluate the effectiveness of the program.

(c) Recommend needs of the program.

(2) Advisory Committee meetings shall be scheduled at least twice a year.

(3) The composition of the Committee shall include, at a minimum, representatives of operators, system owners, and the educational community.

TABLE 1

OAR 340-49-025

Criteria for Classifying Sewage Treatment Systems

(1) **Design Population or Population Equivalent**	Points
Less than 750	0.5 point
751 to 2000	1 point
2001 to 5000	1.5 points
5001 to 10,000	2 points
Greater than 10,000	3 points plus 1 point per 10,000

(2) **Approved Dry Weather Design Flow (MGD)**	
Less than 0.075	0.5 point
Greater than 0.075 to 0.1 MGD	1 point
Greater than 0.1 to 0.5 MGD	1.5 points
Greater than 0.5 to 1.0 MGD	2 points
Greater than 1.0 MGD	3 points plus, 1 point per 1 MGD

(3) **Unit Processes**

Pre-Treatment

Comminution	1 point
Grit Removal, Gravity	1 point
Grit Removal, Mechanical	2 points
Screen(s), Mechanical	1 point
Influent Pump Station	2 points
Flow Equalization Unit	1 point

Primary Treatment

Community Septic Tank(s)	2 points
Clarifier(s)	5 points
Flotation Clarifier(s)	7 points
Chemical Addition System	2 points
Imhoff Tank	3 points

Secondary Treatment

Low Rate Trickling Filter(s)	7 points
High Rate Trickling Filter(s)	10 points
Trickling Filter - Solids Contact System	12 points
Single mode activated sludge less	6 points

than 0.1 MGD		
Two or more modes activated sludge less than 0.1 MGD	8	points
Single mode activated sludge greater than 0.1 MGD	15	points
Two or more modes activated sludge greater than 0.1 MGD	10	points
Pure oxygen activated sludge	20	points
Activated Bio Filter Tower less than 0.1 MGD	6	points
Activated Bio Filter Tower greater than 0.1 MGD	12	points
Rotating Biological Contact 1 to 4 shafts	7	points
Rotating Biological Contact, 5 or more shafts	12	points
Stabilization Lagoons, 1 to 3 cells without aeration	5	points
Stabilization Lagoons, 2 or more cells with primary aeration	7	points
Stabilization Lagoons, 2 or more with full aeration	9	points
Recirculating gravel filter	7	points
Chemical Precipitation unit(s)	3	points
Gravity Filtration Unit(s)	2	points
Pressure Filtration Unit(s)	4	points
Nitrogen Removal, Mechanical or chemical system	4	points
Nitrogen Removal, Biological/anoxic system	2	points
Phosphorus Removal units	4	points
Effluent Microscreen(s)	2	points
Chemical Flocculation units	3	points
Anaerobic Primary Sludge Digester(s) without Mixing and Heating	5	points
Anaerobic Primary Sludge Digester(s) with Mixing and Heating	7	points
Anaerobic Primary and Secondary Sludge Digesters	10	points
Sludge Digester Gas reuse	3	points
Anaerobic Sludge Digester(s)	8	points
Sludge Storage Lagoon(s)	2	points
Sludge Lagoon(s) with aeration	3	points
Sludge Drying Bed(s)	1	point
Sludge Air or Gravity Thickening	3	points
Sludge Composting, in Vessel	12	points
Sludge Belt(s) or Vacuum Press(es)	5	points
Sludge Centrifuge(s)	5	points

Sludge Incineration	12	points
Sludge Chemical Addition Unit(s)	2	points
Non-Beneficial Sludge Disposal	1	point
Beneficial Sludge Utilization	3	points
Liquid chlorine disinfection	2	points
Gas chlorine disinfection	5	points
Dechlorination system	4	points
Other disinfection systems including ultraviolet and ozonation	5	points

(4) Effluent Permit Requirements

Minimum of secondary effluent limitations for BOD and Total Suspended solids	2	points
Minimum of 20 mg/l BOD and Total Suspended Solids	3	points
Minimum of 10 mg/l BOD and Total Suspended Solids	4	points
Minimum of 5 mg/l BOD and Total Suspended Solids	5	points
Effluent limitations for effluent oxygen	1	point

(5) Raw Waste Variation. Points in this category will be awarded only when conditions are extreme, to the extent that operation and handling procedure changes are needed to adequately treat the waste due to variation of raw waste.

Conveyance and Treatment of Industrial wastes covered by the national pretreatment program	4	points

(6) Sampling and Laboratory Testing

Samples for BOD, Total Suspended Solids performed by outside laboratory.	2	points
BOD, Total Suspended Solids performed at treatment plant.	4	points
Fecal Coliform analysis performed by outside laboratory.	1	points
Fecal Coliform analysis performed at treatment plant.	2	points
Nutrient, Heavy Metals, or Organics by	3	points

outside laboratory.

Nutrients, Heavy Metals and/or Organics performed at treatment plants.	5	points

TABLE 2

OAR 340-49-065

Fee Schedule for Sewage Treatment Works Systems Operator Certification.

Application Type	Proposed Fee
New Certification Includes examination	$ 50.00
Renewal Certification	$ 40.00
Certification to a higher grade Includes examination	$ 35.00
Certification through Reciprocity	$ 55.00
Reinstatement of Lapsed Certificate	$ 50.00

Persons applying for a Sewage Treatment and Water System Operator Grade Level 1 Combination Renewal Certificate (OAR 340-49-030(1)(c)) must only submit a single renewal fee.

Persons applying for a Sewage Treatment and Collection System Operator Grade Level 1 Combination Renewal Certificate (OAR 340-49-030(1)(d)) must only submit a single renewal fee.

Fees are non-refundable upon making application, except as provided in OAR 340-49-060(2).

WC3144

SEWAGE TREATMENT WORKS OPERATOR CERTIFICATION ADVISORY COMMITTEE RECOMMENDATIONS FOR PROPOSED DRAFT RULES.

An Advisory Committee for water and sewage treatment works systems operator certification was formed by the Department of Environmental Quality Director and the Health Division Administrator to assist the agencies in developing rules for a program to certify water distribution and treatment operators and sewage treatment works systems operators. The Joint Committee first met on November 24, 1987 and formed two subcommittees to address the development of rules.

The Sewage Works Operator Certification Advisory Subcommittee members are:

1. Ms. Chris Mack, Chairperson, representing sewage works personnel nd systems in Northwest Oregon.

2. Wayne McGehee, representing sewage treatment works personnel and systems in Mid and North Coast Oregon.

3. Bob Clausen, Oregon Community Colleges, representing the educational community.

4. Jean Chamberlain, Oregon Nurses Association, private citizen.

5. Don Caldwell, representing sewage treatment works operators and systems in Eastern Oregon.

6. Woodie Muirhead, representing sewage treatment works personnel and systems in Central and Southern Oregon.

7. Thom Day, representing Contract Operations.

8. Phil Fell, League of Oregon Cities, representing small communities statewide.

9. Mike Wolski, representing sewage collection system operators.

The Committee has met eight times since November 24, 1987. They solicited and received written and oral comments on issues and concerns of operators and small communities, invited and scheduled representatives of the PNPCA Oregon Region Sewage Works Operator Sections to submit comments from the areas in the state they represent, and reviewed rules from various certification programs of other states.

The agendas for the Advisory Committee meetings covered the issues of concerned individuals, the statutory requirements for rules to establish sewage works treatment system classification criteria, qualifications for certifying operators, and requirements of system owners. They were asked by the DEQ Director, Fred Hansen, to make suggestions on DEQ program requirements that are workable, equitable, address the requirements of the statute and are not burdensome to implement or costly to individuals and communities recommendations to the Department for rule development.

RECOMMENDATIONS FOR DRAFT RULES

The following summarizes the recommendations of the Advisory Committee for draft rules for public hearing and further comment:

Classification of Sewage Treatment Works

1. Use the four classifications of sewage treatment and sewage collection systems of the present voluntary operators certification program modified to reflect the following:

    a. Create seven criteria for classifying sewage treatment systems as follows: population or population equivalent, raw waste variation and unit processes, design flow, permit effluent limitations and sampling and laboratory testing.

    b. Modify the points for elements within each of these criteria to eliminate duplication.

    c. Establish four classes of sewage collection systems based on approved dry weather design flow and complexity such as the number and type of pump stations.

    d. Add language to enable the Director to change the classification of a system with proper notice to the sewage treatment works system owner.

Qualifications for Personnel to be Certified

1. Use the education and experience criteria of the present voluntary operators certification program, but change the requirements for education and experience in each grade level to reflect the qualifications they recommended area appropriate to supervise the four levels of systems. Have the certification grade level correspond to the classification level of the sewage treatment system.

2. Eliminate the "Direct Responsible Charge" requirements as an element of the experience requirements for Grade Levels 3 and 4.

3. Delete the condition of sequential certification to upgrade certification.

4. Add a provisional certification enabling entry level personnel to be certified without the required 12 months experience required of Grade Level 1. Add a combination water/sewage and a combination sewage/collection certification for Grade Level 1 to enable payment of a single fee upon renewal.

Who must be Certified?

This topic generated a lot of discussion. Some of the Committee members recommended that rules:

1. Require all operators be certified, or alternatively,

   Require supervisors, shift supervisors and lead workers be certified so that sewage works systems are always being operated under the supervision of a certified operator, or

   Require certified operator or part-time supervisor who is certified at the grade level corresponding to the system classification.

2. Allow additional time after September 1988 for sewage system personnel and owners to comply with these rules.

3. Request the Department seek council and review on who must be certified in accordance with ORS 448.

Fee Schedule

1. Use the fee schedule of the DEQ sewage treatment works temporary rules for new certification, renewals, examination, reciprocity and reinstatement lapses, but change the term of the certificates and renewals to two years.

2. Coordinate with the Health Division to provide for a combined water/sewage certification renewal for Grade Level 1 operators.

3. Provide for a combined sewage treatment/sewage collection certification renewal for Grade Level 1 Operators.

Renewal Certification Training Requirements

1. Require two CEUs within the two year renewal period for each level of certification.

2. Recommend the Department establish a list of approved training that qualifies for CEU credit and is available around the state.

Examination

Provide scheduled examinations at least two times a year around the state.

Reciprocity

Provide rules to allow reciprocity for qualified personnel certified in other state programs, voluntary and mandatory, provided these programs' requirements meet or exceed the requirements of the Oregon program.

Contract Operations

Allow the Department to establish the criteria for contract operations, but recommend that the contract operations personnel are responsible to and report to the sewage systems owners and not the Department.

Variances and Penalties

Provide rules for variances from rules, and penalties, including revocation of certificates, for violation of the rules.

Advisory Committee

Establish an advisory committee to assist the Department in preparing examinations, evaluating the needs of the certification program, and keeping the Department informed on any issues concerning the certification program.

WJ390

ATTACHMENT D

A Fee Comparison of The Pre-January 1988 Oregon Wastewater System Operators' Voluntary Certification Program and the Proposed Fee for the Sewage Treatment Works Operator Certification Program Administered by Department of Environmental Quality.

Comparison of Total Fees for Certification
for a Two Year Certification Term

Application Type	Pre-Jan. 22, 1988 Voluntary Program	Fees and Certification Term Proposed to be Effective After May 1, 1989
New Certification		
	$25.00	$50.00
	$15.00 (Renewal)	None (2nd yr of term)
TOTAL	$40.00	$50.00
Renewal of Certification		
	$15.00	$40.00
	$15.00 (Renewal)	None (2nd yr of term)
TOTAL	$30.00	$40.00
Examination to upgrade Certification	$25.00	$35.00
Reciprocity		
(Certification)	$35.00	$55.00
	$15.00 (Renewal)	None (2nd yr of term)
TOTAL	$50.00	$55.00
Reinstatement of Lapsed Certificate		
	$45.00	$50.00
	$15.00 (Renewal)	None (2nd yr of term)
TOTAL	$60.00	$50.00

All certificate and renewals issued between filing of these rules and before May 1, 1989 would be subject to the proposed fee and the certificate/renewal would be valid until July 1, 1989.

Certificates and renewals issued after May 1, 1989 would remain current for a two year term.

WC3160

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Proposed Rules for Certifying Sewage Treatment Works Operators

Notice Issued:
Hearing Dates: May 26 & 31, 1988
June 1 & 2, 1988
Comments Due: June 15, 1988

WHO IS AFFECTED: All Domestic Sewage Treatment and Collection Systems permitted under National Pollutant Discharge Elimination System (NPDES) permits and Water Pollution Control Facilities (WPCF) permits and the operating personnel supervising these facilities.

WHAT IS PROPOSED: Administrative rules for: 1) classifying both sewage treatment and sewage collection systems, 2) specifying the qualifications of persons to operate and supervise these systems, and 3) dates by which all sewage works systems must be supervised by an operator certified at a classification and grade appropriate for the size, type and complexity of the system.

WHAT ARE THE HIGHLIGHTS: ORS 448 requires that sewage treatment works in Oregon be supervised by a certified operator. The rules set criteria for classifying systems according to the size, difficulty of operations and other factors. The operator supervising a system must hold a certificate equal to the classification level of the system. The rules set the operator qualifications for each level of certification. The qualifications are a combination of experience and education and passing of a written examination. The rules also enable the Director of the Department of Environmental Quality to issue certificates, without examination, to those who hold a valid certificate issued or renewed before May 1, 1989. System owners must have their system supervised by a certified operator by July 1, 1989. Owners of systems less than 75,000 gallons per day may contract with a properly certified operator for part-time supervision.

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

11/1/86

FOR FURTHER INFORMATION:

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

WHAT ARE THE FISCAL AND ECONOMIC IMPACTS:

The proposed rules are consistent with ORS 448, requiring that the Environmental Quality Commission (EQC) adopt rules to certify operators of sewage systems. The program is to be fee supported. The fees for certification are not required to be paid by sewage system owners, although some communities do pay the fees for certifying operators. To minimize costs, the Department is proposing a two year certification term beginning July 1, 1989. The fees range from $30 to $55, depending upon the type of application needed for certification. A combination certificate at renewal for Grade Level 1 Water System and Sewage Treatment Operators and Grade Level 1 Sewage Treatment and Collection System Operators would be available to reduce the expenses of renewing separate certificates. The program may necessitate some operators receive more training depending on what they currently receive.

Currently training for continuing education unit credit is offered at several annual community college and operator sponsored workshops and by private contractors at costs ranging from $30 per session to about $200 per session. The Department has initiated a statewide evaluation to identify those parties who can bring needed training to communities to reduce costs of travel involved with most training currently available.

The Department has proposed that facility owners and personnel be allowed until July 1, 1989 to comply with the requirements of ORS 448. This will afford ample opportunity for their operators to become certified.

LAND USE CONSISTENCY:

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

HOW TO COMMENT:

Copies of the complete proposed rule package may be obtained from the the Water Quality Division in Portland (811 S.W. Sixth Avenue) or the Regional office nearest you, after May 6, 1988. For further information, contact Shirley Kengla at (503) 229-5766.

Public hearings will be held before a hearings officer, as follows:

1. Thursday, May 26, 1988

   Department of Environment Quality
   Fourth Floor Conference Room
   811 S.W. Sixth Avenue
   Portland, Oregon
   9:00 a.m. to 12:00 noon

2. Tuesday, May 31, 1988

   Linn County Armory
   Corner of Fourth and Lyons
   George Miller Room B 2
   Albany, Oregon
   6:00 p.m. to 9:00 p.m.

3. Wednesday, June 1, 1988

   Neighborhood Facility Building
   Lounge Room
   250 Hull Street
   Coos Bay, Oregon
   9:30 a.m. to 12:00 noon

4. Wednesday, June 1, 1988

   Medford City Hall
   Council Chambers
   811 W. 8th & Oak
   Medford, Oregon
   6:00 p.m. to 9:00 p.m.

5. Thursday, June 2, 1988

   State of Oregon Office Bldg.
   2150 N.E. Studio Road
   Bend, Oregon
   9:00 a.m. to 12:00 p.m.

6. Thursday, June 2, 1988

   LaGrande City Hall
   Council Chambers
   1000 Adams Avenue
   LaGrande, Oregon
   6:00 p.m. to 8:00 p.m.

Oral and written comments will be accepted at the public hearings. Written comments may be sent to the Department of Environmental Quality, Water Quality Division, 811 S.W. Sixth Avenue, Portland, Oregon 97204, but must be received by no later than June 15, 1988.

WHAT IS THE NEXT STEP:

After 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 Commission's deliberation should come in July as part of the agenda of a regularly scheduled Commission meeting.

WJ403

ATTACHMENT F

Agenda Item No. E, April 29, 1988 EQC Meeting

STATEMENT OF NEED FOR RULEMAKING

Pursuant to ORS 183.335 (1) to (4), this statement provides information on the Environmental Quality Commission's intended action to adopt rules.

(1) Legal Authority

Oregon Administrative Rules contain the authority for the Commission to adopt rules under OAR 340-11-052 pursuant to ORS 183.355 (1) to (4). ORS 448 requires the Commission to adopt rules for certifying sewage works operators and establishing fees to recover expenses associated with developing and implementing a certification program.

(2) Need for the Rule

The 1987 Oregon Legislature enacted ORS 448 concerning certification for water and sewage treatment works system operators. The statute requires that the Environmental Quality Commission (EQC) set criteria to classify sewage treatment works systems, fees subject to the review of the Emergency Board, and adopt rules for certifying sewage treatment works operators by September 1988. The Department of Environmental Quality developed proposed rules with public participation and involvement of an Advisory Committee, as directed by the Legislature.

(3) Principal Documents Relied Upon in this Rulemaking

The Principal Documents, reports or studies prepared by or relied upon by the Department are:

(a) ORS 448.405 et seq

(b) ORS 183.335 (1) to (4)

(4) Land Use Consistency

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

(5) Fiscal and Economic Impact

The proposed rules require the certification program be administered by the Department and be fee supported.

The rules have been developed to minimize financial impact on sewage treatment works owners and those operators who supervise these systems. These include:

1. Provisions to renew certificates for joint/combined water system and sewage treatment system operators certified at Grade Level 1 with a single renewal fee.

2. Provisions to renew certificates for joint/combined sewage treatment and sewage collection system operators certified at Grade Level 1 with a single renewal fee.

3. Rules which specify that after May 1, 1989 certificate and renewals will be issued for a two year term at the same fee schedule that was first proposed as an annual fee.

4. Provisions that allow owners of sewage works treatment system having a design flow less than 75,000 gallons per day to contract with a certified operator for part-time supervision of their system.

5. Rules which specify an effective date of July 1, 1989 by which sewage treatment systems owners must have a certified operator to allow sufficient time for owners to comply.

MMH:kjc
229-5370
WJ241
4/6/88

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, April 29, 1988 , EQC Meeting

Request for Authorization to Hold a Public Hearing on the FY89 Construction Grants Priority List and Management System

Background

The federal Clean Water Act requires each state to annually develop a management system and priority list for dispersing federal sewerage works construction grant funds. The procedure for establishing the list and system have been adopted by the Environmental Quality Commission as administrative rule (OAR Chapter 340, Division 53).

To disperse grant funds for FY89 the priority list and management system must be submitted to EPA Region 10 by Aug 31, 1988 and be approved by EPA prior to the start of the fiscal year (Oct. 1, 1988). To meet the above deadline the following schedule is proposed to comply with applicable federal rules and be consistent with the current agreement between DEQ and EPA.

May 15, 1988	--	Issue Notice of Public Hearing on priority list. (Federal rules require notice 45 days prior to hearing.)
May 16, 1988	--	Distribute EQC staff report and draft FY89 draft priority list. (Federal rules require distribution of materials 30 days before hearing.)
June 29, 1988	--	Hold public hearing.
July 1, 1988	--	Close hearing record.
August 19, 1988	--	EQC adoption of priority list. Submit adopted list to EPA for review by Aug. 31, 1988 and approval by Oct. 1, 1988.

The purpose of this agenda item is to request authorization to hold a public hearing on the construction grants FY89 priority list and proposed amendments to the administrative rules. The amendments would broaden eligibility for major sewer replacement and rehabilitation and remove from consideration funding for elimination of combined sewer overflows.

Agenda Item F
April 29, 1988

Proposed Priority List

A. Construction Grants Program Termination

The reauthorization of the Clean Water Act in 1987 phases out the construction grant program and establishes a State Revolving Fund (SRF). Federal funds will be used for capitalization of the SRF as follows: 1) In FY88 the state has the option of using up to 75 percent of allotted funds for capitalizing a SRF. 2) In FY89 and FY90 the state must use 50 percent of the allotted funds for capitalizing a SRF and can use a 100 percent of the funds for capitalization. 3) During the FY91-94 years all funds must be used to capitalize a SRF.

As funds for construction grants decrease the Department must phase out the grant program; therefore, the Department proposes that the FY89 priority list be the final list for obtaining construction grant funding. The Department's intent is to make grants available to those projects with either a Letter Class A, B, or C ranking. These projects have demonstrated water quality problems and are considered essential for the improvement of water quality in the state.

A letter has been sent to all communities on March 10, 1988 outlining the proposed changes taking place in the construction grants program. The letter requested that communities submit water quality problem documentation by April 15, 1988 to have their projects considered for ranking on the draft FY89 priority list. The Department will evaluate the documentation and use it to help rank projects for the draft FY89 priority list.

The public will be invited to comment and present testimony on the draft list and rule amendments at the proposed public hearing on June 16, 1988. All testimony from the public hearing will be evaluated and the Draft FY89 priority list may be adjusted and reranked. The proposed final construction grants priority list and rule amendments and associated public testimony will be presented to the commission for adoption at the August 19, 1989 meeting.

B. Funding

Oregon has $ 30.0 million available for grants in FY88 and a potential $ 27.4 million for FY89. After the Commission has approved the FY89 priority list, the Department will offer needed construction grant funds to communities in priority list order through Letter Class C projects. For a community to actually receive a grant all federal construction grant requirements must be completed by July 1, 1989. The July 1st deadline will allow the Department and EPA sufficient time to process applications and award grants prior to the end of the 1989 Federal Fiscal Year (September 30, 1989).

C. Draft Priority List

The draft FY89 Construction Grants Priority List is enclosed as Attachment D. The letter class and priority points received by each project are summarized in Attachment E.

Attachment F shows the project additions and deletions occurring for FY89.

The Commission should be aware that documentation on water quality problems associated with sewage treatment conveyance and disposal are continuing to be received from communities, individuals and staff members. The Department's intention is to evaluate for inclusion on the FY 89 list, all information and documentation received prior to the close of the hearing record on July 1, 1988. Therefore, the final FY 89 priority list, to be submitted for adoption at the August 19, 1988 EQC meeting, could differ from the enclosed draft FY 89 list.

Rule Amendments to the Discretionary Authority

A. Sewer Replacement and Rehabilitation

OAR 340-53-027 allows the Department discretionary authority to use up to 20 percent of the annual allotment for replacement or rehabilitation of major sewers and elimination of combined sewer overflows. This rule restricts funding to projects for which planning was substantially complete by December 29, 1981 or under a Commission order by December 31, 1986 to meet national municipal policy requirements.

The Department is requesting broadened eligibility for major sewer replacement and rehabilitation. The following rule amendments are proposed to broaden the use of discretionary authority:

The Director may at the Director's discretion utilize up to twenty (20) percent of the annual allotment for replacement or major rehabilitation of existing sewer systems [or elimination of combined sewer overflows] provided:

(1) The project is on the fundable portion of the state's current year priority list; and

(2) The project meets the enforceable requirements of the Clean Water Act; and

(3) [Planning for the proposed project was complete or substantially complete on December 29, 1981; or the project is necessary for a community that is under Commission Order as of December 31, 1986 to achieve compliance with the requirements of the national municipal policy.]

The project's facilities plan must show major sewer replacement or rehabilitation will reduce Infiltration and Inflow (I/I) and minimize or eliminate surface or underground water pollution. In addition, the project must be more cost effective than other alternatives for solving the identified water quality problems.

The above rule modification would allow several projects on the FY88 priority list to qualify for grant funds. These communities have severe water quality problems resulting from deteriorating sewers. For these communities to correct their water quality problems major sewer replacement or rehabilitation is essential.

The removal of the wording [or elimination of combined sewer overflows] is required to continue the Departments intention to exclude from funding consideration the elimination of combined sewer overflows (CSO). These projects are extremely costly for the associated improvements they bring in water quality and are not generally cost effective.

The Department recommends that the above proposed rule amendments would apply to projects on the present FY88 priority list and the proposed FY 89 list.

Public Hearing

Subject to Commission's approval of this request a public hearing to receive testimony on the proposed FY89 priority list and rule modifications will be scheduled for June 29, 1988 at 10:00 a.m. at the DEQ Offices, 4th Floor Conference Room, 811 S.W. Sixth Avenue, Portland, Oregon. Informational materials, including a draft priority list and the proposed rule amendments, will be distributed May 16, 1988.

Alternatives and Evaluation

A. The Commission could choose not to develop a construction grants priority list for FY89. However, federal rules require that a priority list be developed and approved before grant monies can be awarded to the state. For this reason the Department recommends Commission approval of an FY 89 priority list.

B. The Commission can choose not to broaden eligibility for funding major sewer replacement and rehabilitation under the discretionary authority (OAR 340-53-027). This would cause several communities to increase the local share of funding to improve their sewerage systems. These communities are small and the strong possibility exists that they would not be unable to accumulate the funds needed to do the work. Not repairing these sewerage systems would result in the continued degradation of water quality in receiving streams.

Summation

1. The Commission must adopt the state priority list for allocating federal construction grant funds for FY89.

2. The reauthorization of the Clean Water Act in 1987 phases out construction grants for sewage facilities and establishes a State Revolving Loan Fund (SRF).

3. Funding for construction grants will be offered to those letter Class A, B, and C projects with demonstrated water quality problems who complete all grant requirements by July 1, 1989.

4. Approximately $30.0 million is available in FY88 and $27.4 million is anticipated for FY89 to funded construction grant projects and capitalize a SRF.

5. Administrative rule modifications are proposed to continue excluding funding for elimination of combined sewer overflows and to broaden the eligibility to fund major sewer replacement and rehabilitation out of the 20 percent discretionary fund.

6. No change in state priority rating criteria is proposed.

7. The draft FY89 priority list is scheduled for public distribution on May 16, 1988.

8. A public hearing on the proposed priority list and the proposed rule modification has been tentatively scheduled for June 29, 1988 at 10:00 a.m.

Director's Recommendation

Based on the Summation, the Director recommends that the Commission authorize a public hearing to solicit public comment on the FY89 priority list and proposed rule amendments to broaden eligibility for major sewer replacement and rehabilitation, and continue to exclude from funding the elimination of combined sewer overflows.

Lydia Taylor for
Fred Hansen

Attachments
- A Statement of Need for Rule Making
- B Proposed Administrative Rule Amendments to OAR 340-53-027
- C Draft Notice for Public Hearing
- D Draft FY 89 Construction Grants Priority List
- E Draft FY 89 Construction Grants Points Calculation List
- F Project Addition and Deletions for the FY89 Priority List

Richard Kepler:c
WC3157
229-6218
April 1, 1988

ATTACHMENT A

STATEMENT OF NEED FOR RULEMAKING

Pursuant to ORS 183.335(7), this statement provides information on the Environmental Quality Commission's intended actions to consider revisions to OAR Chapter 340, Division 53 rules.

(1) Legal Authority

ORS 468.020 authorizes the Environmental Quality Commission to adopt rules and standards in accordance with ORS Chapter 183.

(2) Need for the Rule

Rule modifications are necessary to allow the Department to respond to changes in federal law affecting use of Federal Construction Grant Funds and to broaden project eligibility.

(3) Principal Documents Relied Upon in this rulemaking

(a) Public Law 92-500, as amended.
(b) OAR 340 Division 53

(4) Fiscal and Economic Impact of Rulemaking

One fiscal impact of this rulemaking is upon municipalities and special districts seeking financial assistance for sewerage projects. The rules affect the distribution of these funds. The proposed rule amendments concerning use of the discretionary authority will broaden project eligibility for sewer replacement and rehabilitation while continuing to exclude from funding elimination of combined sewer outfalls.

There is no anticipated direct impact on small businesses. Small businesses could indirectly benefit in the future from lower sewer user costs as a result of lower project cost through larger construction grants to their communities.

(5) Land Use Consistency

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

WC3158

USE OF DISCRETIONARY AUTHORITY

OAR 340-53-027

The Director may at the Director's discretion utilize up to twenty (20) percent of the annual allotment for replacement or major rehabilitation of existing sewer systems [or elimination of combined sewer overflows] provided:

(1) The project is on the fundable portion of the state's current year priority list; and

(2) The project meets the enforceable requirements of the Clean Water Act; and

(3) [Planning for the proposed project was complete or substantially complete on December 29, 1981; or the project is necessary for a community that is under Commission Order as of December 31, 1986 to achieve compliance with the requirements of the national municipal policy.]

The project's facilities plan must show major sewer replacement or rehabilitation will reduce Infiltration and Inflow (I/I) and minimize or eliminate surface or underground water pollution. In addition, the project must be more cost effective than other alternatives for solving the identified water quality problems.

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

THE FY 89 CONSTRUCTION GRANTS PRIORITY LIST AND MANAGEMENT SYSTEM NOTICE OF PUBLIC HEARING

Notice Issued: May 15, 1988
Hearing Date: June 29, 1988, 10:00 a.m.
Comments Due: July 1, 1988, 5:00 p.m.

WHO IS AFFECTED: Cities, counties, and special districts seeking U.S. Environmental Protection Agency grants for sewerage projects are directly affected.

WHAT IS PROPOSED: The adoption of the FY 89 Priority List for Sewerage Works Construction Grants is proposed by the Environmental Quality Commission. No change in the priority criteria used to establish priority ratings is proposed; one rule modification to broaden eligibility for major sewer replacement and rehabilitation while continuing to exclude from funding elimination of combined sewer overflows is proposed.

WHAT ARE THE HIGHLIGHTS: The construction grants priority list is used to distribute Federal funds for construction of public sewage works. Federal grant funds are being phased out and it is proposed that the FY 89 priority list be the final list used to fund projects with grants. Those projects with demonstrated water quality problems within the letter classes A, B, and C will be offered grants if all requirements to apply for a grant are fulfilled by July 1, 1989. A rule modification to the Discretionary Authority broadens eligibility for sewer replacement and rehabilitation and continues exclusion of funding for elimination of combined sewer overflows.

HOW TO COMMENT: Public Hearing--Wednesday, June 29, 1988, 10:00 a.m. at the following address:

Department of Environmental Quality
Fourth Floor Conference Room
811 S.W. Sixth Avenue
Portland, OR 97204

The proposed Priority List will be mailed to all cities, counties, sanitary or sewer districts, and interested persons on May 16, 1988. Written comments should be sent to DEQ, Construction Grants Section, 811 S.W. Sixth Avenue, Portland, OR 97204. The comment period will close at 5:00 p.m., July 1, 1988.

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.

FISCAL AND ECONOMIC IMPACT:

The Priority List and the management rules set forth a framework for distribution of a limited amount of federal funds to assist in financing sewerage system improvements for selected, high priority communities.

LAND USE CONSISTENCY:

These rules do not directly affect development of local land use programs. Relative project priorities are established on the basis of existing needs for improvements to water quality. After priorities for funding are determined, site specification facilities plans which demonstrate consistency with local comprehensive plans and appropriate statewide goals are developed by applicants.

ATTACHMENT D

Draft FY89 Construction Grants Priority List

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY
DRAFT FY89 CONSTRUCTION GRANTS PRIORITY LIST

RANK	COMMUNITY	AREA	COMPONENT	PROJECT NUMBER	STEP	READY TO PROCEED	TARGET CERT.	GENERAL FUND	SMALL COMM. FUND	ALT. TECH. FUND	INNOV TECH. FUND	PRIORITY POINTS
1	N. ALBANY C.S.D	AREA 2A	INTERCEPTOR	069401	3		06/88	313				B 233.14
2	ADAIR VILLAGE	CITY	STP IMP	067601	4	FY 88	09/88	437				B 196.72
			II CORRECTION	067602	4	FY 88	09/88	196				B 153.72
3	COOS BAY NO.2	CITY	STP IMP	062803	3		07/88	727				B 187.82
			I/I CORRECTION	062804	3		07/88					B 184.82
4	COOS BAY NO. 1	CITY	SEWER REHAB	062805	3		07/88	750				B 187.32
5	NORTH BEND	CITY	II/CORRECTION	052004	3	FY 88	07/88	28				B 184.98
6	COOS BAY NO.1	CITY	PS/FM/SWI	062802	3	FY 88	07/88	1,925				B 184.90
7	ROSEBURG U.S.A.	ROSEBURG CITY	I/I CORRECTION	069303	3	FY 89	07/89	1,650				B 182.73
8	TOLEDO	CITY	PUMP STATION	040802	4	FY 88	06/88	83				B 179.02
			I/I CORR	040801	4	FY 88	06/88	468				B 176.02
9	VERNONIA	CITY	I/I CORR	063102	4	FY 88	08/88	1,104				B 172.02
			STP IMP	063101	4	FY 88	08/88	121				C 175.02
10	ELGIN	CITY	STP IMP	047202	3	FY 89	12/88	259				B 167.81
			II CORRECTION	047202	4	FY 89	12/88	43				C 164.81
11	HAPPY VALLEY	CITY	INTERCEPTOR	056702	3	FY 88	07/88	635				B 150.32
12	BROOKINGS	CITY	STP IMP	067201	4	FY 88	08/88	880				B 147.08
13	PORT ORFORD	GARISON LAKE	STP IMP	071202	4	FY 88	08/88	1,100				B 146.04
14	NESKOWIN S.A.	DISTRICT	SYSTEM	060201	3	FY 88	08/88	482	694	252		B 142.80

NOTE: 1) AN ASTERISK AFTER THE FUND AMOUNT INDICATES 75% FUNDING 2) ALL DOLLAR AMOUNTS ARE IN THOUSANDS OF DOLLARS

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY
DRAFT FY89 CONSTRUCTION GRANTS PRIORITY LIST

RANK	COMMUNITY	AREA	COMPONENT	PROJECT NUMBER	STEP	READY TO PROCEED	TARGET CERT.	GENERAL FUND	SMALL COMM. FUND	ALT. TECH. FUND	INNOV TECH. FUND	PRIORITY POINTS
15	ATHENA	CITY	STP IMP	063501	4	FY 88	09/88	210				B 139.98
16	CARMEL-FOUL. SD	DISTRICT	SYSTEM	054202	3		/	440				B 102.60
17	CARLTON	CITY	STP IMP	061502	3	FY 88	07/88	466				C 222.86
18	USA	GASTON	INTERCEPTOR	057502	3	FY 88	05/88	667				C 199.21
19	HARRISBURG	CITY	STP IMP	072701	4	FY 88	09/88	1,375				C 197.70
			I/I CORR	072702	4	FY 88	09/88	55				C 194.70
20	MONMOUTH	CITY	RELIEF SEWER	062503	3	FY 88	09/88	70				C 196.64
21	JUNCTION CITY	CITY	II CORRECTION	049602	3	FY 88	09/88	52				C 195.14
22	SHERIDAN	SOUTH SIDE	SEWER REHAB	050603	3	FY 88	07/88	35				C 193.91
23	SHERIDAN	SOUTH SIDE	II CORRECTION	050604	3	FY 88	07/88	84				C 191.91
24	CARLTON	CITY	II CORRECTION	061503	3	FY 88	07/88	46				C 189.86
25	MT ANGEL	CITY	STP IMP	058802	3	FY 88	07/88	133				C 189.01
26	NORTH BEND	CITY	STP IMP	052005	3	FY 88	06/88	784				C 187.98
27	PRINEVILLE	CITY	STP IMP	064501	3		09/88	413				C 186.94
28	MT ANGEL	CITY	II CORRECTION	058803	3	FY 89	07/89	107				C 186.01
29	SWEET HOME	CITY	II CORRECTION	043203	3		09/88	55				C 182.23
30	LOWELL	CITY	STP IMP	057302	3	FY 88	08/88	715		43		C 176.35

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STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY
DRAFT FY89 CONSTRUCTION GRANTS PRIORITY LIST

RANK	COMMUNITY	AREA	COMPONENT	PROJECT NUMBER	STEP	READY TO PROCEED	TARGET CERT.	GENERAL FUND	SMALL COMM. FUND	ALT. TECH. FUND	INNOV TECH. FUND	PRIORITY POINTS
31	SOUTH SUB. S.D.	DISTRICT	STP IMP	066701	3		09/88	470				C 174.52
32	LOWELL	CITY	RELIEF SEWER	057304	3	FY 88	08/88	6				C 174.35
			II CORRECTION	057303	3	FY 88	08/88	105				C 173.35
33	MADRAS	FRINGE AREA	INTERCEPTORS	057902	3		09/88	297				C 169.06
34	DALLAS	CITY	II CORRECTION	059202	3	FY 89	09/88	89				C 168.79
35	ELGIN	CITY	PS	047203	4	FY 89	12/88	5				C 165.81
36	MONROE	CITY	STP IMP	056904	3	FY 88	09/88	66				C 161.38
37	FLORENCE	CITY	II CORRECTION	053303	3	FY 88	09/88	142				C 156.32
38	HALSEY	CITY	STP IMP	059501	4	FY 88	09/88	123				C 153.66
39	WALDPORT	CITY	STP IMP	073101	3		/					C 153.40
40	OAKLAND	CITY	STP IMP	061702	3		09/88	222				C 149.86
41	YONCALLA	CITY	STP IMP	059701	3		09/88	421				C 149.86
42	PORTLAND	ROYAL HIGHLANDS	INTERCEPTOR	072101	3	FY 87	09/88	501				C 148.60
43	YONCALLA	CITY	II CORRECTION	059703	3		09/88	17				C 146.86
44	BROOKINGS	CITY	II CORRECTION	067202	4	FY 88	09/88	200				C 144.08
45	RAINIER	CITY	SEWER REHAB	058602	3		09/88	439				C 143.44
46	ST HELENS	CITY	II CORRECTION	053902	3	FY 88	09/88	282				C 142.72

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STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY
DRAFT FY89 CONSTRUCTION GRANTS PRIORITY LIST

RANK	COMMUNITY	AREA	COMPONENT	PROJECT NUMBER	STEP	READY TO PROCEED	TARGET CERT.	GENERAL FUND	SMALL COMM. FUND	ALT. TECH. FUND	INNOV TECH. FUND	PRIORITY POINTS
47	PORT ORFORD	GARISON LAKE	INT/PS/FM	071201	3	FY 88	09/88	135				C 142.56
48	ST HELENS	CITY	PS NO. 1	053903	3	FY 88	09/88	84				C 142.00
49	HEPPNER	CITY	STP IMP	064801	4	FY 89	12/88	737				C 140.28
50	NEWPORT	CITY	OUTFALL	061802	3		09/88	722				C 139.82
51	MODOC POINT	SAN DIST	SYSTEM	046901	3		09/88	314		114		C 139.20
52	FOSSIL	CITY	STP IMP	065101	3		09/88	693				C 125.40
53	SCIO	CITY	II CORRECTION	051503	3		09/88	28				C 112.79
54	HALSEY	CITY	II CORRECTION	059502	4	FY 88	09/88	55				C 110.66
55	ATHENA	CITY	II CORRECTION	063502	4		09/88	36				C 96.98
56	CORVALLIS	WEST	INTERCEPTOR	066801	3	FY 87	/	165				D 232.14
57	N. ALBANY C.S.D	AREA 1,2,3 &4	HICKORY PS/FM	069402	3		/	237				D 224.42
58	N. ALBANY C.S.D	AREA 1,2 &4	SP. HILL DR INT	069403	3		/	842				D 224.22
59	NEWBERG	CITY	RIVER RD INT	049405	3	FY 87	/	55				D 199.19
60	NEWBERG	CITY	6TH ST REL SEW	049406	3	FY 87	/	55				D 198.41
61	NEWBERG	CITY	HANCOCK REL SEW	049407	3	FY 87	/	55				D 196.93
62	N. ALBANY C.S.D	AREA 3	N. ALB. RD INT	069404	3		/	215				D 193.00

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STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY
DRAFT FY89 CONSTRUCTION GRANTS PRIORITY LIST

RANK	COMMUNITY	AREA	COMPONENT	PROJECT NUMBER	STEP	READY TO PROCEED	TARGET CERT.	GENERAL FUND	SMALL COMM. FUND	ALT. TECH. FUND	INNOV TECH. FUND	PRIORITY POINTS
63	TRI CITY S.D.	MYRTLE CREEK	SLUDGE DISP	067001	3	FY 87	/	490				D 184.89
64	TRI CITY S.D.	MYRTLE CREEK	II CORRECTION	067002	3	FY 87	/	73				D 181.89
65	GOLD BEACH	MYRTLE ACRES	INTERCEPTOR	069801	3	FY 87	/	125				D 179.56
66	CANYONVILLE	NORTH AREA	INTERCEPTOR	071701	3		/	55				D 177.93
67	KLAMATH FALLS	REGIONAL	II CORRECTION	051605	3		/	264				D 171.52
68	GRANTS PASS	CITY	SOLIDS HANDLING	066101	3	FY 87	/	2,126				D 167.14
69	USA	DURHAM	SLUDGE	037102	3	FY 88	/	4,620				D 165.89
70	FLORENCE	CITY	STP IMP	053302	3	FY 87	/	1,488				D 159.32
71	BRKS HOPMERE SD	DISTRICT	SYSTEM	063701	3	FY 88	/	746				D 156.94
72	INDEPENDENCE	WEST	9TH ST. INTER	072901	3		/	25				D 154.42
73	REDMOND	HIGHSCHOOL	INTERCEPTOR	072201	3	FY 92	/	28				D 153.90
74	USA	ALOHA #3	PS	069902	3	FY 87	/	951				D 151.73
			I/I CORR	069902	3	FY 87	/					D 151.73
75	USA	BEAVERTON	PS	069903	3	FY 87	/	364				D 151.73
			I/I CORR	069903	3	FY 87	/					D 151.73
76	USA	HILLSBORO EAST	INTERCEPTOR	069904	3	FY 87	/	606				D 151.73
			I/I CORR	069904	3	FY 87	/					D 151.73
77	USA	LOWER TUALATIN	INTERCEPTOR	069905	3	FY 87	/	551				D 151.73
			I/I CORR	069905	3	FY 87	/					D 151.73

NOTE: 1) AN ASTERISK AFTER THE FUND AMOUNT INDICATES 75% FUNDING 2) ALL DOLLAR AMOUNTS ARE IN THOUSANDS OF DOLLARS

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY
DRAFT FY89 CONSTRUCTION GRANTS PRIORITY LIST

RANK	COMMUNITY	AREA	COMPONENT	PROJECT NUMBER	STEP	READY TO PROCEED	TARGET CERT.	GENERAL FUND	SMALL COMM. FUND	ALT. TECH. FUND	INNOV TECH. FUND	PRIORITY POINTS
78	USA	SW FOREST GROVE	INTERCEPTOR	069906	3	FY 87	/	128				D 151.73
			I/I CORR	069906	3	FY 87	/					D 151.73
79	USA	INTERCEP SOUTH	INTERCEPTOR	069907	3	FY 87	/	342				D 151.73
			I/I CORR	069907	3	FY 87	/					D 151.73
80	USA	TEKTRONIX	INTERCEPTOR	069908	3	FY 87	/	216				D 151.73
			I/I CORR	069908	3	FY 87	/					D 151.73
81	USA	REEDVILLE/BUTTE	INTERCEPTOR	069909	3	FY 87	/	388				D 151.73
			I/I CORR	069909	3	FY 87	/					D 151.73
82	USA	COOPER MTN	INTERCEPTOR	069910	3	FY 87	/	430				D 151.73
			I/I CORR	069910	3	FY 87	/					D 151.73
83	CRESWELL	NIBLOCK RD	INTERCEPTOR	051302	3	FY 88	/	176				D 151.64
84	USA	BANKS	INTERCEPTOR	057602	3		/	986				D 151.38
85	ENTERPRISE	CITY	STP IMP	055402	3		/	96				D 151.29
86	WALLOWA	CITY	STP IMP	067501	3		/	330				D 150.49
87	ELKTON	CITY	SYSTEM	071901	3		/		240	87		D 148.40
88	DOUGLAS CO	CAMAS VALLEY	SYSTEM	066601	3		/	440				D 148.36
89	FLORENCE	HECETA BEACH	ALT. COLLECTION	053306	3		/		382	139		D 148.30
			INTERCEPTOR	053305	3	FY 87	/	182				D 113.30
90	GERVAIS	CITY	STP IMP PS	073301	3		/					D 147.89
91	SEASIDE	CITY	P.S. IMP	068105	3		/	113				D 145.70

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STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY
DRAFT FY89 CONSTRUCTION GRANTS PRIORITY LIST

RANK	COMMUNITY	AREA	COMPONENT	PROJECT NUMBER	STEP	READY TO PROCEED	TARGET CERT.	GENERAL FUND	SMALL COMM. FUND	ALT. TECH. FUND	INNOV TECH. FUND	PRIORITY POINTS
92	WARRENTON	CITY	II CORRECTION	069201	3		/	127				D 141.96
93	ASTORIA	ALDERBROOK	PS/FM	061903	3	FY 87	/	17				D 138.00
94	KLAMATH FALLS	REGIONAL	STP EXPANSION	051606	3		/	411				D 134.52
95	SILETZ	CITY	STP IMP	070701	3	FY 88	/	28				D 133.00
96	GRANTS PASS	CITY	STP EXP	066102	3	FY 87	/	1,017				D 127.14
97	IMBLER	CITY	SYSTEM	056202	3		/	825				D 126.25
98	GRANTS PASS	S. SEVENTH	INTERCEPTOR	066103	3	FY 87	/	62				D 123.86
99	RIDDLE	CITY	I/I CORR	073201	3		/					D 123.77
100	GRANTS PASS	SECOND ST.	INTERCEPTOR	066104	3	FY 87	/	32				D 123.72
101	GRANTS PASS	F AND BOOTH ST.	INTERCEPTOR	066105	3	FY 87	/	20				D 123.72
102	GRANTS PASS	PINE AND ROGUE	INTERCEPTOR	066106	3	FY 87	/	127				D 123.72
103	GRANTS PASS	ROGUE AND LEE	INTERCEPTOR	066107	3	FY 87	/	24				D 123.72
104	GRANTS PASS	A STREET	INTERCEPTOR	066108	3	FY 87	/	54				D 123.58
105	GRANTS PASS	N. SEVENTH ST.	INTERCEPTOR	066109	3	FY 87	/	149				D 123.58
106	BROWNSVILLE	CITY	STP IMP	073001	3		/					D 123.29
107	GRANTS PASS	BRIDGE ST.	INTERCEPTOR	066110	3	FY 87	/	121				D 122.60

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STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY
DRAFT FY89 CONSTRUCTION GRANTS PRIORITY LIST

RANK	COMMUNITY	AREA	COMPONENT	PROJECT NUMBER	STEP	READY TO PROCEED	TARGET CERT.	GENERAL FUND	SMALL COMM. FUND	ALT. TECH. FUND	INNOV TECH. FUND	PRIORITY POINTS
108	ROGUE RIVER	S W AREA	INTERCEPTOR	071301	3		/	55				D 120.50
109	VENETA	CITY	II CORRECTION	066001	3		/	3				D 118.58
110	NORTH POWDER	CITY	STP IMP	056402	3		/	105				D 114.28
111	SUMPTER	CITY	SYSTEM	071401	3		/	406				D 113.30
112	BURNS	CITY	II CORRECTION	065001	3		/	220				D 113.23
113	BENTON CO.	ALPINE	SYSTEM	070601	3	FY 89	/	275				D 112.00
114	CORVALLIS	AIRPORT	INTERCEPTOR	045801	3		/	330				D 110.60
115	SCIO	N. W. AREA	INTERCEPTOR	051504	3		/	28				D 108.00
116	SISTERS	CITY	SYSTEM	054102	3	FY 87	/	160	310	113		D 107.72
117	WALLOWA	CITY	II CORRECTION	067502	3		/	55				D 107.49
118	CRESCENT S.D.	DISTRICT	SYSTEM	054601	3		/	82	152	55		D 107.44
119	USA	GASTON WEST	INTERCEPTOR	057503	3		/	106				D 105.13
120	UNION GAP S.D.	DISTRICT	INTERCEPTOR	061703	3	FY 88	/	124				D 104.22
121	PILOT ROCK	CITY	STP IMP	067101	3		/	660				D 100.42
122	TWIN ROCKS	SAN DISTRICT	PS	064701	3		/	17				D 100.00
123	WESTON	CITY	II CORRECTION	071601	3		/	55				D 96.72

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STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY
DRAFT FY89 CONSTRUCTION GRANTS PRIORITY LIST

RANK	COMMUNITY	AREA	COMPONENT	PROJECT NUMBER	STEP	READY TO PROCEED	TARGET CERT.	GENERAL FUND	SMALL COMM. FUND	ALT. TECH. FUND	INNOV TECH. FUND	PRIORITY POINTS
124	NEWPORT	SOUTH BEACH	PS/FM	061805	3		/	105				D 92.64
125	ONTARIO	CITY	II CORR	051801	3		/	110				D 90.94
126	USA	CORNELIUS	INTERCEPTOR	069901	3		/	220				D 63.38
127	GRANITE	CITY	SYSTEM	071001	3		/	28	8	3		D 32.60
128	STANFIELD	CITY	LIFT STATION	056502	3		/	28				E 131.75
129	USA	FOREST GROVE	INTERCEPTOR	069918	3	FY 87	/	79				E 101.73

NOTE: 1) AN ASTERISK AFTER THE FUND AMOUNT INDICATES 75% FUNDING 2) ALL DOLLAR AMOUNTS ARE IN THOUSANDS OF DOLLARS

ATTACHMENT E

Draft FY89 Construction Grants Points Calculation List

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY
POINTS LIST

PROJECT NUMBER	COMMUNITY	AREA	COMPONENT	STEP	CLASS	REG. EMPH.	POP. EMPH.	STREAM RANK	PROJECT TYPE	TOTAL POINTS
REPORT OPTIONS: DRAFT REPORT OF ALL PROJECTS ORDERED BY PROJECT NAME										
E 067602AA	ADAIR VILLAGE	CITY	II CORRECTION	4	B	50	5.54	91.18	7	B 153.72
E 067601AA	ADAIR VILLAGE	CITY	STP IMP	4	B	90	5.54	91.18	10	B 196.72
I 066404AA	ALBANY	CITY	CSO	3	C	90	8.90	91.18	3	C 193.08
I 046001AA	ALBANY	N.E. KNOXBUTTE	INTERCEPTOR	3	E	0	5.08	91.18	6	E 102.26
I 061903BB	ASTORIA	ALDERBROOK	COLLECTION	3	D	90	4.00	38.00	1	D 133.00
E 061903AA	ASTORIA	ALDERBROOK	PS/FM	3	D	90	4.00	38.00	6	D 138.00
E 063502AA	ATHENA	CITY	II CORRECTION	4	C	50	5.98	34.00	7	C 96.98
E 063501AA	ATHENA	CITY	STP IMP	4	B	90	5.98	34.00	10	B 139.98
I 043102AA	BAKER	CITY	STP IMP	3	E	0	7.96	49.00	10	E 66.96
I 071801AA	BENTON CO	FIRVIEW	COLLECTION	3	D	50	4.60	48.00	1	D 103.60
E 070601AA	BENTON CO.	ALPINE	SYSTEM	3	D	50	4.00	48.00	10	D 112.00
E 063701AA	BRKS HOPMERE SD	DISTRICT	SYSTEM	3	D	50	5.76	91.18	10	D 156.94
E 067202AA	BROOKINGS	CITY	II CORRECTION	4	C	90	7.08	40.00	7	C 144.08
E 067201AA	BROOKINGS	CITY	STP IMP	4	B	90	7.08	40.00	10	B 147.08
E 073001AA	BROWNSVILLE	CITY	STP IMP	3	D	50	6.20	57.09	10	D 123.29
E 065001AA	BURNS	CITY	II CORRECTION	3	D	50	6.90	49.33	7	D 113.23
I 071701BB	CANYONVILLE	NORTH AREA	COLLECTION	3	D	50	4.60	77.33	1	D 132.93
E 071701AA	CANYONVILLE	NORTH AREA	INTERCEPTOR	3	D	90	4.60	77.33	6	D 177.93
E 061503AA	CARLTON	CITY	II CORRECTION	3	C	90	6.22	86.64	7	C 189.86
E 061502AA	CARLTON	CITY	STP IMP	3	C	120	6.22	86.64	10	C 222.86
E 054202AA	CARMEL-FOUL. SD	DISTRICT	SYSTEM	3	B	50	4.60	38.00	10	B 102.60
I 069101AA	CHARLESTON	SAN DISTRICT	COLLECTION	3	D	90	5.56	80.00	1	D 176.56
I 072401AA	COLUMBIA CITY	EAST SIDE	COLLECTION	3	E	50	4.60	38.00	1	E 93.60
I 072401AB	COLUMBIA CITY	EAST SIDE	INT/PS/FM	3	E	50	4.60	38.00	1	E 93.60

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY
POINTS LIST

PROJECT NUMBER	COMMUNITY	AREA	COMPONENT	STEP	CLASS	REG. EMPH.	POP. EMPH.	STREAM RANK	PROJECT TYPE	TOTAL POINTS
E 062805AA	COOS BAY NO. 1	CITY	SEWER REHAB	3	B	90	8.32	80.00	9	B 187.32
E 062802AA	COOS BAY NO.1	CITY	PS/FM/SWI	3	B	90	7.90	80.00	7	B 184.90
E 062804AA	COOS BAY NO.2	CITY	I/I CORRECTION	3	B	90	7.82	80.00	7	B 184.82
E 062803AA	COOS BAY NO.2	CITY	STP IMP	3	B	90	7.82	80.00	10	B 187.82
E 045801AA	CORVALLIS	AIRPORT	INTERCEPTOR	3	D	50	4.60	48.00	8	D 110.60
I 066802AA	CORVALLIS	CITY	CSO	3	C	90	9.24	91.18	3	C 193.42
E 066801AA	CORVALLIS	WEST	INTERCEPTOR	3	D	130	4.96	91.18	6	D 232.14
I 054601BB	CRESCENT S.D.	DISTRICT	COLL	3	D	50	5.44	42.00	1	D 98.44
E 054601AA	CRESCENT S.D.	DISTRICT	SYSTEM	3	D	50	5.44	42.00	10	D 107.44
I 051303AA	CRESWELL	CITY	STP IMP	3	E	90	6.56	91.18	10	E 197.74
E 051302AA	CRESWELL	NIBLOCK RD	INTERCEPTOR	3	D	50	4.46	91.18	6	D 151.64
I 070501AA	CURRY CO.	HARBOR-WINCHUCK	INTERCEPTOR	3	E	0	6.48	40.00	6	E 52.48
E 059202AA	DALLAS	CITY	II CORRECTION	3	C	90	7.88	63.91	7	C 168.79
I 059204AA	DALLAS	CITY	STP EXPANSION	3	E	90	7.90	63.91	10	E 171.81
I 059203AA	DALLAS	NORTHEAST	INTERCEPTOR	3	C	130	3.90	63.91	6	C 203.81
I 059205AA	DALLAS	NORTHEAST AREA	COLLECTION	3	C	130	3.90	63.91	6	C 203.81
I 047701AA	DETROIT	CITY	SYSTEM	3	E	0	5.20	75.27	10	E 90.47
E 066601AA	DOUGLAS CO	CAMAS VALLEY	SYSTEM	3	D	90	4.36	44.00	10	D 148.36
I 062902AA	DRAIN	PASS CREEK	INTERCEPTOR	3	E	0	3.70	44.00	6	E 53.70
E 047202BB	ELGIN	CITY	II CORRECTION	4	C	90	6.48	61.33	7	C 164.81
E 047203AA	ELGIN	CITY	PS	4	C	90	6.48	61.33	8	C 165.81
I 047202CC	ELGIN	CITY	SEWER REHAB	3	C	90	6.48	61.33	9	C 166.81
E 047202AA	ELGIN	CITY	STP IMP	3	B	90	6.48	61.33	10	B 167.81
E 071901AA	ELKTON	CITY	SYSTEM	3	D	90	4.40	44.00	10	D 148.40
E 055402AA	ENTERPRISE	CITY	STP IMP	3	D	90	6.62	44.67	10	D 151.29

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY
POINTS LIST

PROJECT NUMBER	COMMUNITY	AREA	COMPONENT	STEP	CLASS	REG. EMPH.	POP. EMPH.	STREAM RANK	PROJECT TYPE	TOTAL POINTS
I 068903AA	EUGENE	AIRPORT	STP EXP	3	E	90	4.00	91.18	10	E 195.18
I 068902DD	EUGENE	RVR R-SANTA CLA	RR COLL.	3	B	120	8.04	91.18	1	B 220.22
I 068901CC	EUGENE	RVR R-SANTA CLA	SC COLL.	3	B	120	8.30	91.18	1	B 220.48
E 053303AA	FLORENCE	CITY	II CORRECTION	3	C	90	7.32	52.00	7	C 156.32
I 053304AA	FLORENCE	CITY	SEWER REHAB	3	C	90	7.48	52.00	9	C 158.48
E 053302AA	FLORENCE	CITY	STP IMP	3	D	90	7.32	52.00	10	D 159.32
E 053306AA	FLORENCE	HECETA BEACH	ALT. COLLECTION	3	D	90	5.30	52.00	1	D 148.30
E 053305AA	FLORENCE	HECETA BEACH	INTERCEPTOR	3	D	50	5.30	52.00	6	D 113.30
E 065101AA	FOSSIL	CITY	STP IMP	3	C	90	5.40	20.00	10	C 125.40
I 068001AA	GATES	CITY	SYSTEM	3	E	0	5.36	75.27	10	E 90.63
E 073301AA	GERVAIS	CITY	STP IMP PS	3	D	50	5.80	82.09	10	D 147.89
E 069801AA	GOLD BEACH	MYRTLE ACRES	INTERCEPTOR	3	D	130	3.56	40.00	6	D 179.56
I 071001BB	GRANITE	CITY	COLLECTION	3	D	0	2.60	20.00	1	D 23.60
E 071001AA	GRANITE	CITY	SYSTEM	3	D	0	2.60	20.00	10	D 32.60
E 066108AA	GRANTS PASS	A STREET	INTERCEPTOR	3	D	50	7.08	58.50	8	D 123.58
E 066110AA	GRANTS PASS	BRIDGE ST.	INTERCEPTOR	3	D	50	6.10	58.50	8	D 122.60
E 066101AA	GRANTS PASS	CITY	SOLIDS HANDLING	3	D	90	8.64	58.50	10	D 167.14
E 066102AA	GRANTS PASS	CITY	STP EXP	3	D	50	8.64	58.50	10	D 127.14
E 066105AA	GRANTS PASS	F AND BOOTH ST.	INTERCEPTOR	3	D	50	7.22	58.50	8	D 123.72
I 066111AA	GRANTS PASS	MILL ST.	SEWER REHAB	3	D	50	6.10	58.50	9	D 123.60
E 066109AA	GRANTS PASS	N. SEVENTH ST.	INTERCEPTOR	3	D	50	7.08	58.50	8	D 123.58
E 066106AA	GRANTS PASS	PINE AND ROGUE	INTERCEPTOR	3	D	50	7.22	58.50	8	D 123.72
E 066107AA	GRANTS PASS	ROGUE AND LEE	INTERCEPTOR	3	D	50	7.22	58.50	8	D 123.72
E 066103AA	GRANTS PASS	S. SEVENTH	INTERCEPTOR	3	D	50	7.36	58.50	8	D 123.86
E 066104AA	GRANTS PASS	SECOND ST.	INTERCEPTOR	3	D	50	7.22	58.50	8	D 123.72

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY
POINTS LIST

PROJECT NUMBER	COMMUNITY	AREA	COMPONENT	STEP	CLASS	REG. EMPH.	POP. EMPH.	STREAM RANK	PROJECT TYPE	TOTAL POINTS
I 069506BB	GRESHAM	CITY	GLISAN INT(R)	3	B	90	7.54	48.00	6	B 151.54
I 069505AA	GRESHAM	CITY	SANDY PS/FM(R)	3	B	90	5.82	48.00	6	B 149.82
I 069501BB	GRESHAM	CITY	STP IMP(R)	3	C	90	9.24	48.00	10	C 157.24
I 069503BB	GRESHAM	LINNEMAN	INTERCEPTOR(R)	3	B	90	6.40	48.00	6	B 150.40
I 069503CC	GRESHAM	MID. CO.	COLLECTION	3	B	90	8.90	48.00	1	B 147.90
E 059502AA	HALSEY	CITY	II CORRECTION	4	C	50	5.66	48.00	7	C 110.66
E 059501AA	HALSEY	CITY	STP IMP	4	C	90	5.66	48.00	10	C 153.66
E 056702AA	HAPPY VALLEY	CITY	INTERCEPTOR	3	B	90	6.32	48.00	6	B 150.32
E 072702AA	HARRISBURG	CITY	I/I CORR	4	C	90	6.52	91.18	7	C 194.70
E 072701AA	HARRISBURG	CITY	STP IMP	4	C	90	6.52	91.18	10	C 197.70
E 064801AA	HEPPNER	CITY	STP IMP	4	C	90	6.28	34.00	10	C 140.28
I 069603AA	HUNTINGTON	CITY	CSO	3	C	50	5.48	36.50	3	C 94.98
I 069602AA	HUNTINGTON	OLD TOWN	SEWER REHAB	3	C	50	5.48	36.50	9	C 100.98
I 067901AA	IDANHA	CITY	SYSTEM	3	E	0	5.08	75.27	10	E 90.35
E 056202AA	IMBLER	CITY	SYSTEM	3	D	50	4.92	61.33	10	D 126.25
E 072901AA	INDEPENDENCE	WEST	9TH ST. INTER	3	D	50	7.24	91.18	6	D 154.42
I 045601AA	JOSEPHINE CO	MERLIN/COL. V.	SYSTEM	3	E	0	4.00	58.50	10	E 72.50
E 049602AA	JUNCTION CITY	CITY	II CORRECTION	3	C	90	6.96	91.18	7	C 195.14
I 070102AA	KEIZER	NORTH	INTERCEPTORS	3	E	0	4.00	93.45	6	E 103.45
I 070105AA	KEIZER	WHEATLAND RD	INTERCEPTORS	3	E	0	5.40	93.45	6	E 104.85
I 051604BB	KLAMATH FALLS	PELICAN CITY	COLLECTION SYS	3	C	130	5.54	66.00	1	C 202.54
E 051605AA	KLAMATH FALLS	REGIONAL	II CORRECTION	3	D	90	8.52	66.00	7	D 171.52
E 051606AA	KLAMATH FALLS	REGIONAL	STP EXPANSION	3	D	50	8.52	66.00	10	D 134.52
I 070901AA	LANE COUNTY	COLLARD LAKE	SYSTEM	3	E	120	4.22	48.00	10	E 182.22
I 053701BB	LINCOLN CO.	S.W. AREA	COLLECTION	3	D	90	6.86	32.00	1	D 129.86

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY
POINTS LIST

PROJECT NUMBER	COMMUNITY	AREA	COMPONENT	STEP	CLASS	REG. EMPH.	POP. EMPH.	STREAM RANK	PROJECT TYPE	TOTAL POINTS
E 057303AA	LOWELL	CITY	II CORRECTION	3	C	90	5.62	70.73	7	C 173.35
E 057304AA	LOWELL	CITY	RELIEF SEWER	3	C	90	5.62	70.73	8	C 174.35
I 057305AA	LOWELL	CITY	SEWER REHAB	3	C	90	5.62	70.73	9	C 175.35
E 057302AA	LOWELL	CITY	STP IMP	3	C	90	5.62	70.73	10	C 176.35
I 067801AA	LYONS-MEHAMA	REGIONAL	SYSTEM	3	E	0	6.20	75.27	10	E 91.47
I 057903AA	MADRAS	FRINGE AREA	COLLECTION	3	C	90	6.06	67.00	1	C 164.06
E 057902AA	MADRAS	FRINGE AREA	INTERCEPTORS	3	C	90	6.06	67.00	6	C 169.06
E 046901AA	MODOC POINT	SAN DIST	SYSTEM	3	C	90	3.20	36.00	10	C 139.20
I 044403AA	MOLALLA	CITY	II CORRECTION	3	C	90	6.98	82.09	7	C 186.07
E 062503AA	MONMOUTH	CITY	RELIEF SEWER	3	C	90	7.46	91.18	8	C 196.64
E 056904AA	MONROE	CITY	STP IMP	3	C	90	6.56	54.82	10	C 161.38
I 056903JJ	MONROE	FRINGE	COLLECTION	3	D	0	2.60	54.82	1	D 58.42
E 058803AA	MT ANGEL	CITY	II CORRECTION	3	C	90	6.92	82.09	7	C 186.01
E 058802AA	MT ANGEL	CITY	STP IMP	3	C	90	6.92	82.09	10	C 189.01
E 069403AA	N. ALBANY C.S.D	AREA 1,2 &4	SP. HILL DR INT	3	D	120	7.04	91.18	6	D 224.22
E 069402AA	N. ALBANY C.S.D	AREA 1,2,3 &4	HICKORY PS/FM	3	D	120	7.24	91.18	6	D 224.42
E 069401AA	N. ALBANY C.S.D	AREA 2A	INTERCEPTOR	3	B	130	5.96	91.18	6	B 233.14
E 069404AA	N. ALBANY C.S.D	AREA 3	N. ALB. RD INT	3	D	90	5.82	91.18	6	D 193.00
E 060201AA	NESKOWIN S.A.	DISTRICT	SYSTEM	3	B	90	4.80	38.00	10	B 142.80
E 049406AA	NEWBERG	CITY	6TH ST REL SEW	3	D	90	6.96	93.45	8	D 198.41
E 049407AA	NEWBERG	CITY	HANCOCK REL SEW	3	D	90	5.48	93.45	8	D 196.93
E 049405AA	NEWBERG	CITY	RIVER RD INT	3	D	90	7.74	93.45	8	D 199.19
E 061802AA	NEWPORT	CITY	OUTFALL	3	C	90	7.82	32.00	10	C 139.82
I 061804AA	NEWPORT	CITY	STP EXP	3	E	0	7.82	32.00	10	E 49.82
I 061805BB	NEWPORT	SOUTH BEACH	COLLECTION	3	D	50	4.64	32.00	1	D 87.64

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PROJECT NUMBER	COMMUNITY	AREA	COMPONENT	STEP	CLASS	REG. EMPH.	POP. EMPH.	STREAM RANK	PROJECT TYPE	TOTAL POINTS
E 061805AA	NEWPORT	SOUTH BEACH	PS/FM	3	D	50	4.64	32.00	6	D 92.64
E 052004AA	NORTH BEND	CITY	II/CORRECTION	3	B	90	7.98	80.00	7	B 184.98
E 052005AA	NORTH BEND	CITY	STP IMP	3	C	90	7.98	80.00	10	C 187.98
E 056402AA	NORTH POWDER	CITY	STP IMP	3	D	50	5.28	49.00	10	D 114.28
E 061702AA	OAKLAND	CITY	STP IMP	3	C	90	5.86	44.00	10	C 149.86
I 061704AA	OAKLAND	DRIVERS VALLEY	INTERCEPTOR	3	E	0	3.80	44.00	6	E 53.80
I 051404AA	OAKRIDGE	CITY	REHAB	3	C	90	7.08	70.73	9	C 176.81
E 051801AA	ONTARIO	CITY	II CORR	3	D	50	7.94	26.00	7	D 90.94
E 067101AA	PILOT ROCK	CITY	STP IMP	3	D	50	6.42	34.00	10	D 100.42
I 071201BB	PORT ORFORD	GARISON LAKE	COLLECTION	3	D	90	4.56	40.00	1	D 135.56
E 071201AA	PORT ORFORD	GARISON LAKE	INT/PS/FM	3	C	90	4.56	40.00	8	C 142.56
E 071202AA	PORT ORFORD	GARISON LAKE	STP IMP	4	B	90	6.04	40.00	10	B 146.04
I 072810AA	PORTLAND	ADVENTIST	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072815AA	PORTLAND	BERRYDALE	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072825AA	PORTLAND	BLOOMINGTON	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072805AA	PORTLAND	BOYLES	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072841AA	PORTLAND	BRENTWOODACE	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072834AA	PORTLAND	BURNSIDE CENTRL	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072819AA	PORTLAND	BURNSIDE EAST	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072816AA	PORTLAND	BURNSIDE WEST	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072838AA	PORTLAND	CLIFFGATE	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072003BB	PORTLAND	COLUMBIA BASIN	AREA C PS/FM(R)	3	B	90	5.38	48.00	6	B 149.38
I 072002BB	PORTLAND	COLUMBIA BASIN	BRDWAY PS/FM(R)	3	B	90	7.56	48.00	6	B 151.56
I 072001CC	PORTLAND	COLUMBIA BASIN	COLLECTION	3	B	90	8.80	48.00	1	B 147.80
I 072004AA	PORTLAND	COLUMBIA BASIN	COLLECTION SYST	3	B	120	.00	48.00	1	B 169.00

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I 072001BB	PORTLAND	COLUMBIA BASIN	LOMBARD INTS(R)	3	B	90	7.60	48.00	6	B 151.60
I 072842AA	PORTLAND	DARLINGTON	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072843AA	PORTLAND	EASTMONT	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072806AA	PORTLAND	ENGLEWOOD	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072828AA	PORTLAND	ESSEX	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072829AA	PORTLAND	FAIRFIELD	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072839AA	PORTLAND	FLAVEL PARK	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072807AA	PORTLAND	FLOYD LIGHT	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072832AA	PORTLAND	GILBERT	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072844AA	PORTLAND	HYDEN ISLAND	PS/INT	3	C	50	.00	48.00	6	C 104.00
I 042603BB	PORTLAND	INVERNESS	BURNSIDE INT(R)	3	B	120	7.08	48.00	6	B 181.08
I 042602CC	PORTLAND	INVERNESS	CHERRY PK COLL	3	B	120	7.26	48.00	6	B 181.26
I 042602BB	PORTLAND	INVERNESS	CHERRY PK INT(R	3	B	120	7.26	48.00	6	B 181.26
I 042601DD	PORTLAND	INVERNESS	COLLECTION	3	B	120	9.02	48.00	1	B 178.02
I 042604BB	PORTLAND	INVERNESS	CULLY INTS(R)	3	B	120	7.48	48.00	6	B 181.48
I 042601CC	PORTLAND	INVERNESS	N.E. 122 COLL	3	B	120	8.00	48.00	6	B 182.00
I 042601BB	PORTLAND	INVERNESS	N.E. 122 INT(R)	3	B	120	8.00	48.00	6	B 182.00
I 072813AA	PORTLAND	IRVINGTON	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 034205BB	PORTLAND	JOHNSON CREEK	AREA D PS/FM(R)	3	B	90	6.22	48.00	6	B 150.22
I 034204BB	PORTLAND	JOHNSON CREEK	COLLECTION	3	B	90	9.64	48.00	1	B 148.64
I 034204CC	PORTLAND	JOHNSON CREEK	SE 111TH INT(R)	3	B	90	8.66	48.00	6	B 152.66
I 072802AA	PORTLAND	KNOTT PARK	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072835AA	PORTLAND	LINCOLN PARK	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072811AA	PORTLAND	LINN PARK	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072804AA	PORTLAND	LUBY	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00

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PROJECT NUMBER	COMMUNITY	AREA	COMPONENT	STEP	CLASS	REG. EMPH.	POP. EMPH.	STREAM RANK	PROJECT TYPE	TOTAL POINTS
I 072837AA	PORTLAND	LYMANN PARK	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072801AA	PORTLAND	MADISON	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072817AA	PORTLAND	MARSHAL	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072833AA	PORTLAND	MAYWOOD PARK	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072814AA	PORTLAND	MILL PARK	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072809AA	PORTLAND	MONTAVILLA	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072818AA	PORTLAND	PARKLANE	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072836AA	PORTLAND	PARKROSE	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072822AA	PORTLAND	POWELL VILLAGE	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072808AA	PORTLAND	RICHARDSON	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072826AA	PORTLAND	ROBIN WOOD	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072821AA	PORTLAND	ROBINBROOK	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072823AA	PORTLAND	ROSE	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
E 072101AA	PORTLAND	ROYAL HIGHLANDS	INTERCEPTOR	3	C	90	4.60	48.00	6	C 148.60
I 072830AA	PORTLAND	SACAJAWEA	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072803AA	PORTLAND	STRATHMORE	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072827AA	PORTLAND	SUMNER	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072840AA	PORTLAND	SUMNER PLACE	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072820AA	PORTLAND	WELLINGTON	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072824AA	PORTLAND	WINDMERE	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072812AA	PORTLAND	WOODLAND	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072831AA	PORTLAND	WOODMERE	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 070201AA	POWERS	CITY	SEWER REHAB	3	C	90	5.78	50.00	9	C 154.78
E 064501AA	PRINEVILLE	CITY	STP IMP	3	C	90	7.44	79.50	10	C 186.94
E 058602AA	RAINIER	CITY	SEWER REHAB	3	C	90	6.44	38.00	9	C 143.44

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I 072202AA	REDMOND	CITY	STP EXP	3	E	0	5.40	54.50	10	E 69.90
E 072201AA	REDMOND	HIGHSCHOOL	INTERCEPTOR	3	D	90	3.40	54.50	6	D 153.90
E 073201AA	RIDDLE	CITY	I/I CORR	3	D	50	6.10	60.67	7	D 123.77
E 071301AA	ROGUE RIVER	S W AREA	INTERCEPTOR	3	D	50	4.00	58.50	8	D 120.50
E 069303AA	ROSEBURG U.S.A.	ROSEBURG CITY	I/I CORRECTION	3	B	90	8.40	77.33	7	B 182.73
I 055101AA	SANDY	CITY	STP EXPANSION	3	E	0	6.90	68.45	10	E 85.35
I 066301AA	SCAPPOOSE	CITY	STP EXPANSION	3	E	0	7.04	48.00	10	E 65.04
E 051503AA	SCIO	CITY	II CORRECTION	3	C	50	5.52	50.27	7	C 112.79
E 051504AA	SCIO	N. W. AREA	INTERCEPTOR	3	D	50	4.00	48.00	6	D 108.00
E 068105AA	SEASIDE	CITY	P.S. IMP	3	D	90	7.40	46.30	2	D 145.70
I 068104AA	SEASIDE	N WAHENA RD	FORCE MAIN	3	E	90	5.08	46.30	2	E 143.38
I 068103AA	SEASIDE	S WAHENA RD	FORCE MAIN	3	E	90	4.90	46.30	2	E 143.20
E 050604AA	SHERIDAN	SOUTH SIDE	II CORRECTION	3	C	90	6.00	88.91	7	C 191.91
E 050603AA	SHERIDAN	SOUTH SIDE	SEWER REHAB	3	C	90	6.00	88.91	9	C 193.91
E 070701AA	SILETZ	CITY	STP IMP	3	D	50	6.00	67.00	10	D 133.00
I 054102CC	SISTERS	CITY	COLLECTION	3	D	50	5.72	42.00	1	D 98.72
E 054102AA	SISTERS	CITY	SYSTEM	3	D	50	5.72	42.00	10	D 107.72
E 066701AA	SOUTH SUB. S.D.	DISTRICT	STP IMP	3	C	90	8.52	66.00	10	C 174.52
I 053908AA	ST HELENS	CITY	CSO	3	C	90	7.72	38.00	3	C 138.72
E 053902AA	ST HELENS	CITY	II CORRECTION	3	C	90	7.72	38.00	7	C 142.72
I 053905AA	ST HELENS	CITY	INT P1	3	E	90	3.40	38.00	2	E 133.40
I 053906AA	ST HELENS	CITY	INT P2	3	E	90	3.40	38.00	2	E 133.40
E 053903AA	ST HELENS	CITY	PS NO. 1	3	C	90	6.00	38.00	8	C 142.00
I 053904AA	ST HELENS	CITY	STP IMP	3	E	90	7.72	38.00	10	E 145.72
I 053907BB	ST HELENS	N. VERNONIA RD	COLL SYSTEM	3	C	130	3.80	38.00	1	C 172.80

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E 056502BB	STANFIELD	CITY	LIFT STATION	3	E	50	6.42	67.33	8	E 131.75
I 071401BB	SUMPTER	CITY	COLLECTION	3	D	50	4.30	49.00	1	D 104.30
E 071401AA	SUMPTER	CITY	SYSTEM	3	D	50	4.30	49.00	10	D 113.30
E 043203AA	SWEET HOME	CITY	II CORRECTION	3	C	90	7.68	77.55	7	C 182.23
E 040801AA	TOLEDO	CITY	I/I CORR	4	B	90	7.02	72.00	7	B 176.02
E 040802AA	TOLEDO	CITY	PUMP STATION	4	B	90	7.02	72.00	10	B 179.02
E 067002AA	TRI CITY S.D.	MYRTLE CREEK	II CORRECTION	3	D	90	7.56	77.33	7	D 181.89
E 067001AA	TRI CITY S.D.	MYRTLE CREEK	SLUDGE DISP	3	D	90	7.56	77.33	10	D 184.89
I 044302AA	TURNER	CITY	INTERCEPTOR	3	E	0	6.12	91.18	6	E 103.30
E 064701AA	TWIN ROCKS	SAN DISTRICT	PS	3	D	50	4.00	38.00	8	D 100.00
E 061703AA	UNION GAP S.D.	DISTRICT	INTERCEPTOR	3	D	50	4.22	44.00	6	D 104.22
E 069902AB	USA	ALOHA #3	I/I CORR	3	D	50	.00	95.73	6	D 151.73
E 069902AA	USA	ALOHA #3	PS	3	D	50	.00	95.73	6	D 151.73
E 057602AA	USA	BANKS	INTERCEPTOR	3	D	90	5.38	48.00	8	D 151.38
E 069903AB	USA	BEAVERTON	I/I CORR	3	D	50	.00	95.73	6	D 151.73
E 069903AA	USA	BEAVERTON	PS	3	D	50	.00	95.73	6	D 151.73
E 069910AB	USA	COOPER MTN	I/I CORR	3	D	50	.00	95.73	6	D 151.73
E 069910AA	USA	COOPER MTN	INTERCEPTOR	3	D	50	.00	95.73	6	D 151.73
I 069901AC	USA	CORNELIUS	INTER	3	E	0	.00	95.73	6	E 101.73
E 069901AA	USA	CORNELIUS	INTERCEPTOR	3	D	0	7.38	48.00	8	D 63.38
I 069901AB	USA	CORNELIUS	PS	3	E	0	.00	95.73	6	E 101.73
I 069917AA	USA	COUNCIL CREEK	PS	3	E	0	.00	95.73	6	E 101.73
I 037103AA	USA	DURHAM	ADVANCED TREAT.	3	D	50	5.68	95.73	5	D 156.41
E 037102AA	USA	DURHAM	SLUDGE	3	D	50	10.16	95.73	10	D 165.89
E 069918AA	USA	FOREST GROVE	INTERCEPTOR	3	E	0	.00	95.73	6	E 101.73

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E 057502AA	USA	GASTON	INTERCEPTOR	3	C	90	5.48	95.73	8	C 199.21
I 057505AA	USA	GASTON SOUTH	INTERCEPTOR	3	E	0	3.40	95.73	6	E 105.13
E 057503AA	USA	GASTON WEST	INTERCEPTOR	3	D	0	3.40	95.73	6	D 105.13
I 069911AA	USA	HILEON/217	INTERCEPTOR	3	E	0	.00	95.73	6	E 101.73
I 068202AA	USA	HILLSBORO	CORNELIUS INT.	3	E	0	4.00	95.73	2	E 101.73
I 068201AA	USA	HILLSBORO	EFF DISPOSAL	3	E	0	8.00	95.73	10	E 113.73
I 068203AA	USA	HILLSBORO	II CORRECTION	3	B	90	8.00	95.73	7	B 200.73
E 069904AB	USA	HILLSBORO EAST	I/I CORR	3	D	50	.00	95.73	6	D 151.73
E 069904AA	USA	HILLSBORO EAST	INTERCEPTOR	3	D	50	.00	95.73	6	D 151.73
I 069916AA	USA	HILLSBORO WEST	INTERCEPTOR	3	E	0	.00	95.73	6	E 101.73
E 069907AB	USA	INTERCEP SOUTH	I/I CORR	3	D	50	.00	95.73	6	D 151.73
E 069907AA	USA	INTERCEP SOUTH	INTERCEPTOR	3	D	50	.00	95.73	6	D 151.73
E 069905AB	USA	LOWER TUALATIN	I/I CORR	3	D	50	.00	95.73	6	D 151.73
E 069905AA	USA	LOWER TUALATIN	INTERCEPTOR	3	D	50	.00	95.73	6	D 151.73
I 069912AA	USA	METZGER/PROGRES	INTERCEPTOR	3	E	0	.00	95.73	6	E 101.73
E 069909AB	USA	REEDVILLE/BUTTE	I/I CORR	3	D	50	.00	95.73	6	D 151.73
E 069909AA	USA	REEDVILLE/BUTTE	INTERCEPTOR	3	D	50	.00	95.73	6	D 151.73
I 072301AA	USA	ROCK CR.	ADVANCED TREAT.	3	D	50	6.60	95.73	5	D 157.33
I 069919AA	USA	SHERWOOD	PS	3	E	0	.00	95.73	6	E 101.73
E 069906AB	USA	SW FOREST GROVE	I/I CORR	3	D	50	.00	95.73	6	D 151.73
E 069906AA	USA	SW FOREST GROVE	INTERCEPTOR	3	D	50	.00	95.73	6	D 151.73
E 069908AB	USA	TEKTRONIX	I/I CORR	3	D	50	.00	95.73	6	D 151.73
E 069908AA	USA	TEKTRONIX	INTERCEPTOR	3	D	50	.00	95.73	6	D 151.73
I 069913AA	USA	TIGARD	INTERCEPTOR	3	E	0	.00	95.73	6	E 101.73
I 069914AA	USA	WEST BEAVERTON	INTERCEPTOR	3	E	0	.00	95.73	6	E 101.73

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I 069915AA	USA	WILLOW CR/SUNSE	INTERCEPTOR	3	E	0	.00	95.73	6	E 101.73
I 071501AA	VALE	A STREET	SEWER REHAB	3	D	90	6.40	26.00	8	D 130.40
E 066001AA	VENETA	CITY	II CORRECTION	3	D	50	6.76	54.82	7	D 118.58
I 066002AA	VENETA	CITY	STP EXPANSION	3	E	90	6.60	54.82	10	E 161.42
E 063102AA	VERNONIA	CITY	I/I CORR	4	B	90	6.48	68.54	7	B 172.02
E 063101AA	VERNONIA	CITY	STP IMP	4	C	90	6.48	68.54	10	C 175.02
E 073101AA	WALDPORT	CITY	STP IMP	3	C	90	6.40	47.00	10	C 153.40
E 067502AA	WALLOWA	CITY	II CORRECTION	3	D	50	5.82	44.67	7	D 107.49
E 067501AA	WALLOWA	CITY	STP IMP	3	D	90	5.82	44.67	10	D 150.49
I 060101BB	WALLOWA COUNTY	WALLOWA LAKE	COLL SYSTEM	3	D	0	6.00	44.67	1	D 51.67
E 069201AA	WARRENTON	CITY	II CORRECTION	3	D	90	6.96	38.00	7	D 141.96
I 069202AA	WARRENTON	CITY	STP EXPANSION	3	E	90	6.94	38.00	10	E 144.94
I 069203AA	WARRENTON	HARBOR & ENSIGN	PS/FM	3	E	90	5.06	38.00	2	E 135.06
I 069204AA	WARRENTON	MERLIN & SECOND	FORCE MAIN	3	E	90	4.86	38.00	2	E 134.86
I 069703AA	WESTFIR	NORTH	INTERCEPTOR	3	E	0	3.40	70.73	6	E 80.13
E 071601AA	WESTON	CITY	II CORRECTION	3	D	50	5.72	34.00	7	D 96.72
E 059703AA	YONCALLA	CITY	II CORRECTION	3	C	90	5.86	44.00	7	C 146.86
I 059702AA	YONCALLA	CITY	SEWER REHAB	3	C	90	5.86	44.00	9	C 148.86
E 059701AA	YONCALLA	CITY	STP IMP	3	C	90	5.86	44.00	10	C 149.86

ATTACHMENT F

PROJECT ADDITIONS AND DELETIONS FOR FY89

The following is a summary of project additions and deletions from the adopted FY88 priority list and reflected on the proposed FY89 priority list.

A. Project Additions

Brownsville	STP IMP at D123.29
Gervais	STP IMP, PS at D147.89
Riddle	I/I CORR at D123.77
Roseburg	USA I/I CORR at B182.73
Waldport	STP IMP at C153.40

B. Project Deletions

The following projects have been deleted from the FY89 priority list for one of the following reasons:

1. Project was funded from other sources.
2. Water quality problems were corrected.
3. Water quality problems can be corrected by non construction methods.

Community	Project	Project Number
Powers	Pump Station	070203
Powers	I/I Correction	070201
Powers	STP IMP	070202
Mill City	System	044701
Westfir	STP IMP	069702
Westfir	I/I Correction	069701
Oakridge	I/I Correction	051403
Oakridge	STP IMP	051402
Hood River	Interceptor	057702
Eagle Point	Interceptor	042902
Keizer	Interceptors	070101
Lincoln City	Interceptor	055904
Newport	Sludge handling	061803
Dufur	STP IMP	047302
Nyssa	STP IMP	070801
Nyssa	Pump Station	070802
Condon	STP IMP	070401
Milton-Freewater	Solids handling	058902
Milton-Freewater	STP IMP	058903
Ione	System	058302
Lane Co.(Mapleton)	System	044201
Lincoln Co.(SW area)	System	053701
Wallowa Co. (Wallowa Lake)	Interceptors	060101
Sodaville	System	066201
Florence	I/I Correction	053303
Joseph	STP IMP	051902
Amity	Outfall	050804

C. Projects Receiving Construction Grants in FY87

The following projects received grants in FY87 and have been removed from the Draft FY89 priority list.

Community	Project	Project Number
Coos Bay No. 1	STP IMP	062801
Estacada	STP IMP	059402
Gresham	Glisan Inter.	069504
Gresham	STP IMP	069501
Gresham	Solids Handling	069502
Gresham	Linneman Inter.	069503
Gresham	Johnson Cr. Inter.	069508
Kalamath Falls	Interceptor	051604
Portland	S. Mid Co. Inter.	034204
Portland	Interceptor P4	034203
Portland	103rd Inter.	034207
Portland	Brookland Inter.	034205
Portland	Flavel Inter.	034206
Portland	Cully Inter.	042604
Portland	Burnside Inter.	042603
Portland	N.E. Knott Inter.	042605
Portland	Lombard Inter.	072001
Portland	Broadway PS/FM	072002
Roseburg U.S.A.	Sewer Rehab.	069302
Salem	Interceptor	099401

WC3196

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, April 29, 1988, EQC Meeting

Request for Authorization to Conduct a Public Hearing on Proposed Additions to Solid Waste Rules Regarding Financial Assurance at Regional Solid Waste Disposal Facilities, OAR 340-61-010 and 029

Background

HB 2619 (passed by the 1987 Legislature) was developed to regulate regional disposal sites. A regional disposal site is defined as a site that is:

a) A disposal site selected pursuant to Chapter 679, Oregon Laws 1985 (landfill siting bill, SB 662), or

b) A disposal site that receives, or a proposed disposal site that is designed to receive more than 75,000 tons of solid waste a year from commercial haulers from outside the immediate service area in which the disposal site is located. As used above, immediate service area means the county boundary of all counties except a county that is within the boundary of the Metropolitan Service District. For a county within the Metropolitan Service District's immediate service area means the Metropolitan Service District boundary.

One section of HB 2619 added a subsection to ORS 459.235 as follows:

"ORS 459.235 Applications for permits; fees; bond.

(1) ...

(2) ...

(3) If the application is for a regional disposal facility, the applicant shall file with the Department a surety bond in the form and amount established by rule by the Commission. ..." (Copy of Section attached - Attachment I)

The Department is presently processing two permit applications for new regional disposal sites, Oregon Waste Systems near Arlington and Tidewater Barge near Boardman. In addition, one existing disposal site qualifies as a regional disposal site, Coffin Butte Landfill near Corvallis.

Statement of Need for Rulemaking, Fiscal Impact Statement, Land Use Consistency Statement, Draft Rule and Notice of Public Hearing are attached (Attachment II, III, IV and V).

Alternatives and Evaluation

The Solid Waste Advisory Committee examined a wide range of options for financial assurance.

The following questions were examined before a recommendation was made:

1. What is financial assurance to be provided for and at what levels?

    a. Closure and post-closure,
    b. Potential environmental damage, and
    c. Potential liability to off-site parties.

2. Can incentives be given for good operation/construction?

3. What type of financial instruments are available for security?

4. If extra money is accumulated over closure/post-closure costs, how should it be used upon site release?

Existing closure and post-closure financial assurance requirements (OAR 340-61-034) cover only the last five years of operation and post-closure activities. The amount is based on engineering estimates for anticipated activities only. It was the committee's recommendation that financial assurance for regional disposal facilities go beyond closure and post-closure activities. There was substantial discussion on what the amount for unanticipated costs should be if any. Several landfills in the state of Washington have had large expenditures for corrective action, some exceeding $30 million. The committee realized that they were changing the focus of the present closure and post-closure requirements by recommending that an "up front" closure fund be established and by also including a base amount for study, repair and remedial action.

During all of the discussions, the committee agreed that the financial assurance requirements should not be so high that the smaller operator would be unable to compete. It was suggested that operators be allowed to create an accumulating fund over a number of years rather than have all of the money at the beginning.

While the committee initially was in favor of incentives for good construction/operation, they ultimately decided that this concept was unworkable and dropped it from their recommendation.

It was also agreed that there should be financial assurance to cover closure/post-closure and potential remedial action. However, the committee indicated the Department should not get involved in requiring liability insurance for third party suits. This was based on the premise that the state should not be involved in requiring protection from citizen civil action.

The committee recommended that all of the financial instruments presently in the rules (OAR 340-61-034) be allowed. These are:

1. Closure trust fund,
2. Surety bond,
3. Irrevocable letter of credit,
4. Closure insurance policy,
5. Financial test, and
6. Other forms with the same security.

The following recommendation was made by the committee:

- Financial assurance for regional sites be determined by the amount needed for closure/post-closure or $1 million whichever is higher.

- That this fund be used for environmental liability at the direction of the Department to include study, repair and remedial action.

- All of the instruments currently allowed for financial assurance be allowed, including building up of the fund over a number of years (per ton fee).

DEQ staff took the committee's recommendation and prepared a draft rule. The draft rule was presented to the committee and received their approval.

During discussions of financial assurance, the committee voiced concerns that this rule would only be a stop gap measure until additional legislation was developed. They are especially interested in extending financial assurance to other disposal sites and exploring the possibility of a state insurance pool to cover smaller sites.

When financial assurance requirements for closure/post-closure of land disposal sites were imposed by the legislature in 1983 (ORS 459.270 and 459.273), there was concern over accumulation of excess money by landfill operators. ORS 459.273 requires that excess money to the extent practical be used for the following:

1. A reduction in the rates a person within the area served by the land disposal site is charged for solid waste collection service; or

2. Enhancing present or future solid waste disposal facilities within the area from which the excess money was received.

Because of the past legislative concern, these requirements have been placed on financial assurance at regional sites.

Summation

1. ORS 459.235(3) requires the Commission to adopt rules regarding type and amount of financial assurance for regional disposal facilities.

2. The Department's Solid Waste Advisory Committee has recommended that financial assurance rules contain the following:

   a. Financial assurance amount be equal to closure/post-closure cost estimates or $1 million, whichever is higher.

   b. That the Department be allowed to require use of the fund for remedial action in addition to closure/post-closure.

   c. That all instruments currently allowed in Department rules, OAR 340-61-034, be acceptable forms of financial assurance.

Director's Recommendation

Based on the summation, it is recommended that the Commission authorize a public hearing to take testimony on proposed new financial assurance rules for regional disposal facilities, OAR 340-61-029.

Lydia Taylor for
Fred Hansen

Attachments:
I. ORS 459.235
II. Statement of Need for Rulemaking
III. Statement of Land Use Consistency
IV. Draft Rule
V. Notice of Public Hearing

R.L. Brown:b
229-6237
SB7423
March 29, 1988

Attachment I
Agenda Item G
April 29, 1988 EQC Meeting

459.235 Applications for permits; fees; bond. (1) Applications for permits shall be on forms prescribed by the department. An application shall contain a description of the existing and proposed operation and the existing and proposed facilities at the site, with detailed plans and specifications for any facilities to be constructed. The application shall include a recommendation by the local government unit or units having jurisdiction and such other information the department deems necessary in order to determine whether the site and solid waste disposal facilities located thereon and the operation will comply with applicable requirements.

(2) Subject to the review of the Executive Department and the prior approval of the appropriate legislative review agency, permit fees may be charged in accordance with ORS 468.065 (2).

(3) If the application is for a regional disposal facility, the applicant shall file with the department a surety bond in the form and amount established by rule by the commission. The bond or financial assurance shall be executed in favor of the State of Oregon and shall be in an amount as determined by the department to be reasonably necessary to protect the environment, and the health, safety and welfare of the people of the state. The commission may allow the applicant to substitute other financial assurance for the bond, in the form and amount the commission considers satisfactory. [1971 c.648 §9; 1977 c.37 §1; 1983 c.144 §1; 1987 c.876 §18]

Attachment II
Agenda Item G
April 29, 1988, EQC Meeting

Before the Environmental Quality Commission
of the State of Oregon

In the Matter of Amending	)	Statement of Need for Rule
OAR 340-61-010 and Adopting	)	Amendment and Fiscal and
OAR 340-61-029	)	Economic Impact

1. Statutory Authority

ORS 459.235(3) provides that an applicant for a regional disposal site shall file with the Department a surety bond in the form and amount established by rule by the Commission.

2. Statement of Need

The Department presently has applications for two regional disposal sites. Before they can begin operation, the Commission must adopt rules setting the amount and form of financial assurance.

3. Principal Documents Relied Upon

a. Oregon Revised Statutes, Chapter 459.
b. Oregon Administrative Rules, Chapter 340, Division 61.

4. Fiscal and Economic Impact

The proposal would require that a minimum of $1 million be accumulated by the permittee over a maximum period of 5 years. This would equate to approximately 30 cents per ton for users of the proposed eastern Oregon sites, based on anticipated annual disposal. If the applicant uses a corporate guarantee, there would be no cost to this rule.

Valley Landfills, Inc., Corvallis, a small business, would be impacted by the rule beginning in July 1989. It is anticipated, however, that user fees at the disposal site would be increased to cover the additional cost. Other than small increases in fees to small businesses there would be no other fiscal impact on small businesses.

SB7423.2

Attachment III
Agenda Item G
April 29, 1988, EQC Meeting

Before the Environmental Quality Commission
of the State of Oregon

In the Matter of Amending	)	Land Use Consistency
OAR 340-61-010 and Adopting	)	
OAR 340-61-029	)	

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.

SB7423.3

Attachment IV
Agenda Item G
April 29, 1988, EQC Meeting

Proposed Amendments to OAR 340-61

DEFINITIONS

340-61-010 As used in these rules unless otherwise specified:

(1) "Access road" means any road owned or controlled by the disposal site owner which terminates at the disposal site and which provides access for users between the disposal site entrance and a public road.

(2) "Airport" means any area recognized by the Oregon Department of Transportation, Aeronautics Division, for the landing and taking-off of aircraft which is normally open to the public for such use without prior permission.

(3) "Aquifer" means a geologic formation, group of formations or portion of a formation capable of yielding usable quantities of ground water to wells or springs.

(4) "Assets" means all existing and probable future economic benefits obtained or controlled by a particular entity.

(5) "Baling" means a volume reduction technique whereby solid waste is compressed into bales for final disposal.

(6) "Base flood" means a flood that has a one percent or greater chance of recurring in any year or a flood of a magnitude equaled or exceeded once in 100 years on the average of a significantly long period.

(7) "Closure permit" means a document issued by the Department bearing the signature of the Director or his authorized representative which by its conditions authorizes the permittee to complete active operations and requires the permittee to properly close a land disposal

site and maintain the site after closure for a period of time specified by the Department.

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

(9) "Cover material" means soil or other suitable material approved by the Department that is placed over the top and side slopes of solid wastes in a landfill.

(10) "Composting" means the process of controlled biological decomposition of organic solid waste.

(11) "Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

(12) "Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

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

(14) "Digested sewage sludge" means the concentrated sewage sludge that has decomposed under controlled conditions of pH, temperature and mixing in a digester tank.

(15) "Director" means the Director of the Department of Environmental Quality.

(16) "Disposal site" means land and facilities used for the disposal, handling or transfer of or resource recovery from solid wastes, including but not limited to dumps, landfills, sludge lagoons, sludge treatment facilities, disposal sites for septic tank pumping or cesspool cleaning

service, transfer stations, resource recovery facilities, incinerators for solid waste delivered by the public or by a solid waste collection service, composting plants and land and facilities previously used for solid waste disposal at a land disposal site; but the term does not include a facility subject to the permit requirements of ORS 468.740; a landfill site which is used by the owner or person in control of the premises to dispose of soil, rock, concrete or other similar nondecomposable material, unless the site is used by the public either directly or through a solid waste collection service; or a site licensed pursuant to ORS 481.345.

(17) "Endangered or threatened species" means any species listed as such pursuant to Section 4 of the Federal Endangered Species Act and any other species so listed by the Oregon Department of Fish and Wildlife.

(18) "Financial assurance" means a plan for setting aside financial resources or otherwise assuring that adequate funds are available to properly close and to maintain and monitor a land disposal site after the site is closed according to the requirements of a permit issued by the Department.

(19) "Floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters which are inundated by the base flood.

(20) "Groundwater" means water that occurs beneath the land surface in the zone(s) of saturation.

(21) "Hazardous waste" means discarded, useless or unwanted materials or residues in solid, liquid or gaseous state and their empty containers which are classified as hazardous pursuant to ORS 459.410.

(22) "Heat-treated" means a process of drying or treating sewage sludge where there is an exposure of all portions of the sludge to high temperatures for a sufficient time to kill all pathogenic organisms.

(23) "Incinerator" means any device used for the reduction of combustible solid wastes by burning under conditions of controlled air flow and temperature.

(24) "Land disposal site" means a disposal site in which the method of disposing of solid waste is by landfill, dump, pit, pond or lagoon.

(25) "Landfill" means a facility for the disposal of solid waste involving the placement of solid waste on or beneath the land surface.

(26) "Leachate" means liquid that has come into direct contact with solid waste and contains dissolved and/or suspended contaminants as a result of such contact.

(27) "Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

(28) "Local government unit" means a city, county, metropolitan service district formed under ORS Chapter 268, sanitary district or sanitary authority formed under ORS Chapter 450, county service district formed under ORS Chapter 451, regional air quality control authority formed under ORS 468.500 to 468.530 and 468.540 to 468.575 or any other local government unit responsible for solid waste management.

(29) "Net working capital" means current assets minus current liabilities.

(30) "Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

(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) "Regional disposal site" means:

(a) A disposal site selected pursuant to chapter 679, Oregon Laws 1985; or

(b) A disposal site that receives, or a proposed disposal site that is designed to receive more than 75,000 tons of solid waste a year from commercial haulers from outside the immediate service area in which the disposal site is located. As used in this paragraph, "immediate service area" means the county boundary of all counties except a county that is within the boundary of the metropolitan service district. For a county within the metropolitan service district, "immediate service area" means the metropolitan service district boundary.

(38) [(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.

(39) [(38)] "Salvage" means the controlled removal of reusable, recyclable or otherwise recoverable materials from solid wastes at a solid waste disposal site.

(40) [(39)] "Sanitary landfill" means a facility for the disposal of solid waste which complies with these rules.

(41) [(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.

(42) [(41)] "Solid waste" means all putrescible and non-putrescible 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 semi-solid 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.

(43) [(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.

(44) [(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.

(45) [(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 a disposal site, including but not limited to a large hopper, railroad gondola or barge.

(46) [(45)] "Underground drinking water source" means an aquifer supplying or likely to supply drinking water for human consumption.

(47) [(46)] "Vector" means any insect, rodent or other animal capable of transmitting, directly or indirectly, infectious diseases from one person or animal to another.

(48) [(47)] "Waste" means useless or discarded materials.

(49) [(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.

REGIONAL LANDFILLS

OAR 340-61-029

(1)(a) At least three (3) months prior to first receiving waste, the applicant for a new regional disposal facility shall submit to and have approved by the Department, a financial assurance plan. For purposes of this rule "new regional disposal facility" is a regional disposal facility which has received no waste prior to January 1, 1988.

(b) Regional disposal facilities existing on January 1, 1988 must submit to the Department a financial assurance plan with their application for renewal of the existing solid waste disposal permit at least three (3) months prior to permit expiration.

(c) The financial assurance plan must be in accordance with OAR 340-61-034(1)(a), (b) and (c).

(2) The total amount of financial assurance to be provided shall be the greater of:

(a) The sum of closure and post-closure estimated costs as approved by the Department, or

(b) $1,000,000.

(3)(a) The Department will approve only forms of financial assurance which are listed in OAR 340-61-034(3)(c) (A through G).

(b) If the financial assurance plan provides for accumulation of the total amount over a period of time, the time shall not exceed five (5) years from startup or renewal of the permit.

(4) The financial assurance plan must be evaluated by the applicant and new amounts submitted to the Department as operational plans are amended or at least once each five (5) years.

(5) Financial assurance shall provide that the Department may use a portion, or all, of the financial assurance to cover study/repair and remedial action to address pollution from the landfill.

(6) If the Department requires use of the financial assurance for remedial action, the permittee shall submit a plan within three (3) months to reestablish the fund.

(7) Upon successful closure and release from permit requirements by the Department, any excess money in the financial assurance account must be used in a manner consistent with OAR 340-61-034(3)(a)(C).

(8) The permittee is subject to audit by the Department and shall allow the Department access to all records during normal business hours for the purpose of determining compliance with this rule.

Attachment V
Agenda Item G
4/29/88, EQC Meeting

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

NOTICE OF PUBLIC HEARING

Hearing Date: 6/2/88
Comments Due: 6/3/88

WHO IS AFFECTED:

Persons applying for or holding a Solid Waste Disposal Permit for a regional disposal facility.

WHAT IS PROPOSED:

Adoption of a new rule requiring financial assurance at a regional disposal facility.

WHAT ARE THE HIGHLIGHTS:

A regional disposal facility (receives over 75,000 tons of solid waste yearly from out of county) will be required to provide at least $1 million financial assurance for closure/post-closure and remedial action. The facility will be allowed to accumulate the money over a five-year period. Financial assurance may be provided by instruments presently identified in Department rules (OAR 340-61-034). These are: 1. closure trust fund, 2. surety bond, 3. irrevocable letter of credit, 4. closure insurance policy, 5. financial test, 6. other forms with the same security.

HOW TO COMMENT:

A public hearing is scheduled for:

9:00 a.m., Thursday
June 2, 1988
DEQ, Headquarters Office
4th Floor Conference Room
811 S.W. 6th Avenue
Portland

Written comments should be sent to Robert L. Brown, Hazardous and Solid Waste Division, DEQ, 811 S.W. 6th Avenue, Portland, OR 97204-1390, by 5:00 p.m., June 3, 1988.

WHAT IS THE NEXT STEP:

The Environmental Quality Commission may adopt the rule as proposed, adopt a modified rule or decline to adopt the rule as a result of the hearing testimony.

Statements of Need, Fiscal Impact, Land Use Consistency, Statutory Authority and Principal Documents Relied Upon are filed with the Secretary of State.

SB7423.5

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.

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, April 29, 1988, EQC Meeting

Request for authorization to conduct a public hearing on proposed amendments and new rules relating to the opportunity to recycle yard debris, OAR 340-60-015 through 140.

BACKGROUND

On December 11, 1987 the Environmental Quality Commission (EQC) adopted rules which identified yard debris as a principal recyclable material in the five Portland area wastesheds. At that meeting the EQC directed the Department to draft additional rules which clarify the range of acceptable alternative methods for providing the opportunity to recycle yard debris.

The Commission has been dealing with the issue of yard debris recycling since they adopted rules relating to the implementation of the Oregon Recycling Opportunity Act in December 1984. Over that time period the Department has met with a series of yard debris recycling task forces, held a number of informational meetings and public hearings and periodically returned to the Commission with issues related to yard debris recycling.

The major questions which have been raised before the Commission and the Department have been as follows:

1) Are the yard debris processors capable of handling the additional volume which will be generated from a collection system? Is there a market for more processed yard debris products?

2) How can yard debris collection and processing capacity be balanced?

3) Who will plan, provide and pay for yard debris collection.

4) What level of yard debris recycling/collection service will be required?

5) What are acceptable alternative methods for providing the opportunity to recycle? What standard will be used for the acceptance or non acceptance of a proposed alternative method?

Local governments, solid waste and recyclable material collectors and yard debris processors in each of the five wastesheds of focus must determine where yard debris can be successfully collected and recycled and where it fails to meet the definition of a "recyclable material".

Program costs are a concern for both the service providers and the public. If programs are established too quickly they may overload the existing processing capacity and create economic and environmental problems. If inefficient programs are established they may be so costly that there will be a public backlash with a resulting low participation. On the other hand, local government and the collection industry are very hesitant to initiate a costly new collection program without assurance of program success and some form of cost recovery.

The Department has continued to work with an advisory group of affected persons during this rule drafting process. This group has reviewed and commented on the proposed rules but has not reached a consensus in support of the proposed rules. There remains a strong difference of opinion as to the appropriate level of yard debris recycling and the appropriate role for the Department and Commission in directing the development of yard debris collection and recycling programs.

The proposed rules address eight major issues elements: 1) standards for a range of acceptable alternative methods; 2) responsibility for development of the yard debris recycling plan; 3) responsibility for providing the opportunity to recycle yard debris; 4) performance standards for yard debris recycling programs; 5) an annual report on processor demand; 6) linkage between the processor demand and collection system performance standards; 7) requirements related to yard debris recycling at depots and disposal sites; and 8) clarification of the ability of service providers to charge for yard debris collection service.

The proposed rules both identify standards for acceptable alternative methods and list specific methods which might be proposed. There was discussion of this issue with the advisory group and some proposed alternative methods were dropped from the rules. A strong feeling among some of the advisors was that a greater range of acceptable alternative methods should be provided. There was also some concern that the standards were too restrictive on service providers.

The responsibility for planning and development of yard debris recycling program falls on local government. Some of the advisors felt either the planning or both the planning and development functions were more appropriately done at the regional level. The proposed rules were changed to provide the option for local governments to use regional planning and

implementation agencies if they so desire. There was also a suggestion that the Department or Commission should use its authority over Metro's regional waste reduction plan to facilitate the development of a regional yard debris recycling program.

Performance standards for yard debris programs have been incorporated into the proposed rules. These performance standards are linked to the ability of the yard debris processors to utilize increasing amount of material. There is also a linkage between the processor demand and the planning process. The rules call for the Department to report on processor demand so that this information can be incorporated into the planning process. The performance standards are designed so that local government will not be required to provide yard debris collection programs which are beyond the processor's marketing capacity. There was strong advisor support for the concept of linking collection requirements to processor market capacity. However, some advisors felt this relationship was already implicit in the definition of "recyclable material" and that it was unnecessary to delineate it further in performance standards.

The rules also provide guidance for the operation of collection depots at disposal sites or other appropriate locations and restrict disposal of source separated yard debris at landfills.

The question of how new yard debris collection programs will be financed is another major issue. Early drafts of the proposed rules contained specific financing mechanisms. However, the advisory group felt that local and regional governments already had adequate authority to finance the cost of yard debris collection and specific financing proposals were removed at their suggestion.

ALTERNATIVES AND EVALUATION

The Commission has three major alternatives in adopting rules relating to the collection and recycling of yard debris. First, the Commission could adopt the minimum required guidance and leave the bulk of the details on how the opportunity to recycle will be provided to the affected persons in each wasteshed. Second, the Commission could identify the major issues and provide rules which structure the decision making process for local governments and the affected persons. Finally, the Commission could adopt rules which deal with each specific local issue.

The Oregon revised statutes and administrative rules related to the opportunity to recycle provide the basic direction for affected persons to determine if and how to provide the opportunity to recycle yard debris. These basic standards leave a great deal of room for interpretation. Most important, however, is that they do not address the issues of responsibility or level of performance for each aspect of providing the opportunity to recycle. These issues are only addressed by the Commission after it has

made a finding that the opportunity to recycle is not being provided to a portion of a wasteshed.

If the Commission adopts rules which provide guidance as to responsibility for and adequacy of program implementation, this guidance will be available to the affected persons prior to program planning and implementation. Local governments and service providers will be aware of their roles and be able to act accordingly. The proposed rules provide this type of guidance. These rules identify the specific role of local government, provide criteria for determining when an alternative method is acceptable, and set minimum performance standards of yard debris recycling programs. They also address some specific issues which have been raised by affected persons during past yard debris recycling discussions.

Finally, the Commission could adopt rules which attempt to resolve each local issue relating to yard debris. This approach would make local government's planning process much easier. However, there is so much diversity among the local yard debris recycling situations it would be very difficult to produce specific rules which address all of the situations satisfactorily. Very specific rules may not allow the affected person to design and implement the most appropriate yard debris recycling program for their jurisdiction.

SUMMATION

1. The Commission has identified yard debris as a principal recyclable material in the five Portland area wastesheds.

2. The Commission has directed the Department to draft additional rules which clarify the range of acceptable alternative methods for providing the opportunity to recycle source separated yard debris.

3. The Department has drafted proposed rules which clarify the range of alternative methods.

4. These proposed rules also assign responsibility for planning and implementation of yard debris recycling programs and provide a process for linking the rate of yard debris collection to the demand for material from yard debris processors.

5. The Department has conferred with key affected person during the development of the proposed rules. Although many suggestions were incorporated into the proposed rules there was no consensus on several of the major issues addressed in the rule.

6. The proposed rules provide guidance on the major issues relating to yard debris recycling. These rules also set minimum standards for yard debris recycling programs and for alternative methods for providing the

opportunity to recycle yard debris. However, these rules still leave room for local governments and other affected persons to decide what specific direction yard debris recycling will take in their jurisdiction.

DIRECTOR'S RECOMMENDATION

Based upon the summation, it is recommended that the Commission authorize a public hearing on the proposed rule changes related to yard debris recycling programs.

Lydia Taylor for
Fred Hansen

Attachments
I. Proposed Rule Changes OAR 340-60-015 to 140
II. Rule Making Statements 1987 EQC Meeting
III. Public Notice

William R. Bree:WRB
229-6975
March 30, 1988
YF3027.1

Attachment I
Agenda Item H
4/29/88, EQC Meeting

OREGON ADMINISTRATIVE RULES
DIVISION 60
Recycling and Waste Reduction

OAR 340-60-015 is amended as follows:

Policy Statement

340-60-015 Whereas inadequate solid waste collection, storage, transportation, recycling and disposal practices waste energy and natural resources and cause nuisance conditions, potential hazards to public health and pollution of air, water and land environment, it is hereby declared to be the policy of the Commission:

(1) To require effective and efficient waste reduction and recycling service to both rural and urban areas.

(2) To promote and support comprehensive local or regional government solid waste and recyclable material management:

(a) Utilizing progressive waste reduction and recycling techniques;

(b) Emphasizing recovery and reuse of solid waste; and

(c) Providing the opportunity to recycle to every person is Oregon through best practicable methods.

(3) To establish a comprehensive statewide program of solid waste management which will, after consideration of technical and economic feasibility, establish the following priority in methods of managing solid waste:

(a) First, to reduce the amount of solid waste generated;

(b) Second, to reuse material for the purpose for which it was originally intended;

(c) Third, to recycle material which cannot be reused;

(d) Fourth, to recover energy from solid waste that cannot be reused or recycled so long as the energy recovery facility preserves the quality of air, water and land resources; and

(e) To dispose of solid waste that cannot be reused, recycled, or from which energy cannot be recovered by landfilling or other methods approved by the Department.

(4) To retain primary responsibility for management of adequate solid waste programs with local government units.

(5) To encourage maximum participation of all affected persons and generators in the planning and development of required recycling programs.

(6) To place primary emphasis on the provision of the opportunity to recycle to residential generators of source separated recyclable materials.

(7) To encourage local government to develop programs to provide the opportunity to recycle which cause only minimum dislocation of:

(a) Recycling efforts, especially the activities of charitable, fraternal, and civic groups; and

(b) Existing recycling collection from commercial and industrial sources.

(8) To encourage local governments to develop programs to provide the opportunity to recycle source separated recyclable material in a manner which results in the highest level of public participation and the greatest level of removal of recyclable material from the solid waste stream. Such a program should provide frequent, convenient and easily publicized and understood system for the collection of recyclable material from every resident in the jurisdiction.

(9) Encourage the utilization of products made from recyclable material including processed or composted yard debris products.

(10) Coordinate the recovery of source separated recyclable materials with the demand for those materials from the facilities which recycled them and the demand for the products made from recyclable materials.

OAR 340-60-030 is amended as follows:

Principal Recyclable Material

340-60-030 (1) The following are identified as the principal recyclable materials in the wastesheds as described in Sections (4) through (12) of this rule:

(a) Newspaper;
(b) Ferrous scrap metal;
(c) Non-ferrous scrap metal;
(d) Used motor oil;
(e) Corrugated cardboard and kraft paper;
(f) Aluminum;
(g) Container glass;
(h) Hi-grade office paper;
(i) Tin cans;
(j) Yard debris[, effective 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].

(2) In addition to the principal recyclable materials listed in section (1) of this rule, other materials may be recyclable material at specific locations where the opportunity to recycle is required.

(3) The statutory definition of "recyclable material" (ORS 459.005(15)) determines whether a material is a recyclable material at a specific location where the opportunity to recycle is required.

(4) In the following wastesheds, the principal recyclable materials are those listed in subsections 1(a) through (j) of this rule:

(a) Clackamas wasteshed;
(b) Multnomah wasteshed;
(c) Portland wasteshed;
(d) Washington wasteshed;
(e) West Linn wasteshed.

(5) In the following wastesheds, the principal recyclable materials are those listed in subsections 1(a) through (i) of this rule:

(a) Benton and Linn wasteshed;
(b) Clatsop wasteshed;
(c) Hood River wasteshed;

(d) Lane wasteshed;
(e) Lincoln wasteshed;
(f) Marion wasteshed;
(g) Polk wasteshed;
(h) Umatilla wasteshed;
(i) Union wasteshed;
(j) Wasco wasteshed;
(k) Yamhill wasteshed.

(6) In the following wastesheds, the principal recyclable materials are those listed in subsections 1(a) through (g) of this rule:
(a) Baker wasteshed;
(b) Crook wasteshed;
(c) Jefferson wasteshed;
(d) Klamath wasteshed;
(e) Tillamook wasteshed.

(7) In the following wastesheds, the principal recyclable materials are those listed in subsections 1(a) through (h) of this rule:
(a) Coos wasteshed;
(b) Deschutes wasteshed;
(c) Douglas wasteshed;
(d) Jackson wasteshed;
(e) Josephine wasteshed.

(8) In the following wasteshed, the principal recyclable materials are those listed in subsections (1)(a) through (f) of this rule:
Malheur wasteshed.

(9) In the following wastesheds, the principal recyclable materials are those listed in subsections 1(a) through (g) and (i) of this rule:
(a) Columbia wasteshed;
(b) Milton-Freewater wasteshed.

(10) In the following wastesheds, the principal recyclable materials are those listed in subsections 1(a) through (e) of this rule:
(a) Curry wasteshed;
(b) Grant wasteshed;
(c) Harney wasteshed;
(d) Lake wasteshed.

(11) In the following wastesheds, the principal recyclable materials are those listed in subsections 1(a) through (d) of this rule:
(a) Morrow wasteshed;
(b) Sherman wasteshed;
(c) Wallowa wasteshed.

(12) In the following wastesheds, the principal recyclable materials are those listed in subsections (1)(b) through (d) of this rule:
(a) Gilliam wasteshed;
(b) Wheeler wasteshed.

(13) (a) The opportunity to recycle shall be provided for each of the principal recyclable materials listed in sections (4) through (12) of this rule and for other materials which meet the statutory definition of recyclable material at specific locations where the opportunity to recycle is required.

(b) The opportunity to recycle is not required for any material which a recycling report, approved by the Department, demonstrates does not meet the definition of recyclable material for the specific location where the opportunity to recycle is required.

(14) Between the time of the identification of the principal recyclable materials in these rules and the submittal of the recycling reports, the Department will work with affected persons in every wasteshed to assist in identifying materials contained on the principal recyclable material list which do not meet the statutory definition of recyclable material at some locations in the wasteshed where the opportunity to recycle is required.

(15) Any affected person may request the Commission modify the list of principal recyclable material identified by the Commission or may request a variance under ORS 459.185.

(16) The Department will at least annually review the principal recyclable material lists and will submit any proposed changes to the Commission.

OAR 340-60-035 is amended as follows:

Acceptable, Alternative Methods for Providing the Opportunity to Recycle

340-60-035 (1) Any affected person in a wasteshed may propose to the Department an alternative method for providing the opportunity to recycle. Each submittal shall include a description of the proposed alternative method and a discussion of the reason for using this method rather than the general method set forth in OAR 340-60-020(1)(a).

(2) The Department will review these proposals as they are received. Each proposed alternative method will be approved, approved with conditions, or rejected based on consideration of the following criteria:

(a) The alternative will increase recycling opportunities at least to the level anticipated from the general method set forth in; OAR 340-60-020 for providing the opportunity to recycle;

(b) The conditions and factors which make the alternative method necessary;

(c) The alternative method is convenient to the people using or receiving the service;

(d) The alternative method is as effective in recovering recyclable materials from solid waste as the general method set forth in OAR 340-60-020 for providing the opportunity to recycle.

(3) The affected persons in a wasteshed may propose as provided in section (1) of this rule an alternative method to providing on-route collection as part of the opportunity to recycle for low density population area within the urban growth boundaries of a city with a population over 4,000 or, where applicable, the urban growth boundaries established by a metropolitan district.

(4) The Department may not approve or conditionally approve an alternative method for providing the opportunity to recycle yard debris if the program does not meet the following minimum standards:

(a) The alternative method is available to all residents in the local jurisdiction.

(b) The alternative method results in the recycling of yard debris.

(c) There is a promotion campaign which is designed to inform all potential users about the availability and use of the method.

(d) The jurisdictions covered by the alternative method are included in a yard debris recycling plan approved by the Department which includes the alternative method, and

(e) Implementation of the alternative method will meet the performance requirements of section OAR 340-60-130.

(5) The Department shall include, but is not limited to, the following criteria in an evaluation of an alternative method for providing the opportunity to recycle yard debris.

(a) Projected participation rate.

(b) Projected recovery rate.

(c) Distance the residents of the jurisdiction have to travel to use the alternative method.

(d) Potential for expansion.

(e) The type and level of promotion and education associated with the alternative method.

(6) The Department may provide conditional approval of an alternative method for providing the opportunity to recycle yard debris which is not as effective as monthly on-route collection if:

(a) One of the conditions of approval is a phased improvement in the alternative method to reach or exceed the level of effectiveness of on-route collection or.

(b) In a jurisdiction which is served only by a processor or processors who have a limited demand for yard debris one of the conditions of the approval is a phased improvement in the alternative method to match the growth in processor demand for yard debris.

(7) The following methods for providing the opportunity to recycle yard debris shall be considered to be acceptable alternatives to monthly on-route collection of yard debris provided they can meet the performance standards set out in OAR 340-60-130:

(a) Seasonal weekly or seasonal monthly on-route collection of yard debris from all collection service customers or all residents;

(b) Seasonal weekly or seasonal monthly on-call collection of yard debris from all residents;

(c) Weekly, bimonthly, monthly, monthly with weekly service during high generation seasons, seasonal weekly, seasonal monthly or continuously available collection depot for yard debris from all residents;

(d) Annual or biannual on-route or on-call collection of yard debris from all residents.

OAR 340-60-075 is amended as follows:

Reasonable Specifications for Recyclable Materials

340-60-075 No person providing the opportunity to recycle shall be required to collect or receive source separated recyclable material which

has not been correctly prepared to reasonable specifications which are related to marketing, transportation [or], storage or regulatory agency requirements and which have been publicized as part of an education and promotion program.

OAR 340-60-080 is amended as follows:

Prohibition

340-60-080 In addition to the provisions set forth in ORS 459.195, no person shall:

(1) Dispose of source separated recyclable material which has been collected or received from the generator [by any method other than reuse or recycling.] by landfilling.

(2) Contaminate source separated recyclable material which has been set out for collection or delivered to a collection depot or to a recycling facility with solid waste or other material in such a way as to render that material not recyclable.

Local Government Responsibility

340-60-115 Each local government unit in a wasteshed where yard debris has been identified as a principal recyclable material shall, either individually or joinitly through intergovernmental agreement, provide for the following:

(1) The yard debris recycling plan called for in OAR 340-60-125.

(2) Either an on-route program for yard debris collection from each collection service customer in the jurisdiction, or an acceptable alternative method which meets the criteria set out in OAR 340-60-035 and OAR 340-60-130, and

(3) An education and promotion program which meets the requirements of OAR 340-60-040.

Yard Debris Processors' Demand Report

340-60-120 The Department will at least annually review and report the level of demand for yard debris at processing facilities including:

(1) Yard debris received;

(2) Sales and distribution of yard debris products;

(3) Projected sales and distribution for the next three years.

Yard Debris Recycling Plans

340-60-125 (1) Each local government unit in the wastesheds where yard debris has been identified as a principal recyclable material shall, individually or jointly through intergovernmental agreement, submit to the Department, as part of the wasteshed recycling report, a yard debris recycling plan which describes how the opportunity to recycle yard debris will be provided to the residents in their jurisdiction.

(2) The yard debris recycling plan shall include the following information:

(a) The estimated amount of yard debris available,

(b) The proposed collection method for yard debris,

(c) The number of potential participants in the program,

(d) The projected participation level,

(e) The expected amount of material to be recovered,

(f) The process by which the yard debris will be recycled or the location to which the yard debris will be sent for recycling,

(g) The projected growth of the program over the first four years of operation, and

(h) Any approved alternative method for providing the opportunity to recycle yard debris which is going to be used.

(3) The Department shall review and approve or disapprove the yard debris recycling plans based on whether the information in the plan is accurate and the program described in the plan is designed to meet the performance requirements in OAR 340-60-030.

Yard Debris Recycling Programs

OAR 340-60-130 Each local government unit in the wastesheds where yard debris has been identified as a principal recyclable material shall, either individually or jointly through intergovernmental agreement, provide the opportunity to recycle source separated yard debris.

(1) Programs for providing the opportunity to recycle yard debris shall be designed to recover yard debris at the level identified in an approved yard debris recycling plan.

(2) Within one year after the Department has reported a processors' demand of 25% and has approved the local government's yard debris recycling report, that local government shall provide a yard debris recycling program which results in recovery of at least 25% of the yard debris generated in the jurisdiction.

(3) Within one year after the Department has reported a processors' demand of 50% and has approved the local government's yard debris recycling report, that local government shall provide a yard debris recycling program which results in recovery of at least 50% of the yard debris generated in the jurisdiction.

(4) Within one year after the Department has reported a processors' demand of 75% and has approved the local government's yard debris recycling report, that local government shall provide a yard debris recycling program which is designed to recover 75% and results in recovery of at least 50% of the yard debris generated in the jurisdiction.

(5) Within one year after the Department has reported a processors' demand of 100% and has approved the local government's yard debris recycling report, that local government shall provide a yard debris recycling program which is designed to recover 100% and results in recovery of at least 50% of the yard debris generated in the jurisdiction.

(6) If a local government unit does not submit an acceptable yard debris recycling plan as called for in OAR 340-60-125, or if a yard debris

recycling program fails to meet the performance standards set out in this rule it shall be considered to be not providing the opportunity to recycle yard debris and the Department may order the local government to provide:

(a) Weekly on route collection of yard debris to all of the residents of that jurisdiction, and

(b) An education and promotion program which meets the requirements of OAR 340-60-040.

CHARGE FOR SERVICE

340-60-135 A local government unit, yard debris depot operator, or yard debris collector may charge the yard debris generators who use the collection system an amount up the actual cost of providing the service:

(1) The charge for operation of a separate program for the collection of yard debris shall not be considered an additional charge for service as is prohibited in ORS 459.190.

(2) The cost of providing the service may include associated costs such as the cost of administration, enforcement, nuisance control and reasonable profit to private operators.

YARD DEBRIS AT DISPOSAL SITES

340-60-140 (1) All disposal sites in a wasteshed in which yard debris has been identified as a principal recyclable material are prohibited from receiving source separate yard debris for disposal after the Department has made the capacity review and report called for in OAR 340-60-120.

(2) By January 1, 1989 each disposal site in the wastesheds where yard debris has been identified as a principal recyclable material shall provide at a separate location, a yard debris collection depot, where yard debris can be delivered. The operator of the disposal site shall be responsible to see that all of the yard debris delivered to the yard debris collection depot is recycled into a usable product on-site or is sent to a facility where it is recycled into a usable product.

(3) A disposal site operator may refer the public to a "more convenient location", as provided in ORS 459.165 (1)(a), for delivery of source separated yard debris if the location is more convenient to the majority of the public served by the disposal site.

(4) A disposal site may refuse to accept source separated yard debris for disposal if it has documented to the Department that source separated yard debris is not a recyclable material at;

(a) the on-site yard debris recycling depot or

(b) a "more convenient location" as provided in ORS 459.165 (1)(a).

(5) The operator of a depot for the collection of source separated yard debris may not include the cost transfer to and tipping fees at a processing facility to calculated if yard debris is a recyclable material unless those costs are included in the fee charged to the public to deliver yard debris to the depot.

(6) Each disposal site where source separated yard debris is a recyclable material shall charge a surcharge for loads of material which are

substantially all yard debris but are contaminated with 10% or less by volume contamination and thus not suitable for recycling. The surcharge shall be the greater of $1 per cubic yard or $5 per ton. The revenue from such a surcharge shall be returned to the local government unit from which the material originated and shall be used for the yard debris collection promotion and education programs.

YF3030

RULEMAKING STATEMENTS
for
Amendments and Proposed New Rules Pertaining to the Opportunity to Recycle

OAR Chapter 340, Division 60, Sections 015 through 140

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

STATEMENT OF NEED:

Legal Authority

ORS 459.170 requires the Commission to adopt rules and guidelines necessary to carry out the provisions of ORS 459.165 to 459.200. Yard debris has been identified as a principal recyclable material in five wastesheds. The Commission is amending rules and adopting new rules which are necessary to carry out the provisions of the Act relating to providing the opportunity to recycle yard debris.

Need for the Rule

Yard debris represents a significant portion of the solid waste stream presently going to disposal in the Portland metropolitan area. The Environmental Quality Commission has identified source separated yard debris as a principal recyclable material in the five Portland area wastesheds. Local governments and other affected persons are now required to determine if yard debris meets the definition of a recyclable material at the specific locations where on-route or depot collection systems for recyclable materials are required. Additional rules from the Commission will clarify the responsibility of each of the affected persons, provide a mechanism to balance the level of collection of yard debris to the potential demand for yard debris at processing facilities, and clarify the range of acceptable alternative methods for providing the opportunity to recycle yard debris. The yard debris recycling programs which will be developed under these rules would result in a significant reduction in waste disposal at land disposal sites.

Principal Documents Relied Upon

a. Oregon Revised Statutes, Chapter 459.
b. Oregon Administrative Rules, Chapter 340, Division 60.
c. Technical Report: Feasibility Analysis of Yard Debris Collection Alternatives, Metropolitan Service District, January 1988.
d. Metro Marketing Plan for Yard Debris Compost, Metropolitan Service District, November 1986.
e. Market Analysis of Portland Metropolitan Area Yard Debris, Metropolitan Service District, September 1986.

g. "Economics of On-Route Collection of Yard Debris," Metropolitan Service District, December 1985.
h. "A Demonstration Project for Recycling Yard Debris," Metropolitan Service District, March 1983.

FISCAL AND ECONOMIC IMPACT STATEMENT:

This action will have no significant fiscal impact on the Department. It will have an economic impact on local government, private businesses and the public.

Separate systems for the collection of source separated yard debris will have costs associated with them. These costs will have to be paid by the yard debris generator, solid waste generator or appropriate local government. The amount of cost will vary depending on the system of collection and the type of regulation and rate control exercised by local government. Ultimately, the public will pay additional costs of new yard debris collection systems.

In many cases the collection and recycling of yard debris can be provided at less cost to the generator of that material than collection and disposal of the same material as solid waste. These savings over the cost of disposal should be experienced by the public in lower solid waste collection and disposal costs.

Small businesses will also be affected by any change in the collection system for yard debris. Competition between small businesses for this new level of service will cause some companies to benefit, potentially at the expense of others. There should be a significant net increase in business activity in the collection of yard debris.

Yard debris processors should also benefit from the increased levels of material recovery. Finally, there should be an increase in the availability of processed yard debris products. This may result in a price reduction on this material to the public.

LAND USE CONSISTENCY STATEMENT:

The proposed rules appear to affect land use and appear to be consistent with statewide planning goals.

With regard to Goal 6 (air, water and land resources quality), the rules provide for recycling of solid waste in a manner that encourages the reduction, recovery and recycling of material which would otherwise be solid waste, and thereby provide protection for air, water and land resource quality.

With regard to Goal 11 (public facilities and services), the rules provide for solid waste disposal needs by promoting waste reduction at the point of generation, through beneficial use and recycling. The rules also intend to assure that current and long-range waste disposal needs will be reduced by the provision of the opportunity to recycle.
The rules do not appear to conflict with other goals.

Public comment on any land use issue involved is invited and may be submitted in the manner described in the accompanying NOTICE OF PUBLIC HEARING.

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 brought to our attention by local, state or federal authorities.

WRB:b
YB5173.R
4/29/88

Attachment III
Agenda Item H
4/29/88, EQC Meeting

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Proposed Rules Related to Providing the Opportunity to Recycle Source Separated Yard Debris

Date Prepared: 4/11/88
Hearing Date : 5/31/88
Comments Due : 6/ 1/88

WHO IS AFFECTED: Owners and operators of solid waste collection and disposal businesses and their customers. Operators of yard maintenance services. Operators of yard debris processing facilities. Local governments. The public who generate yard debris. Individuals involved in the implementation of the Oregon Recycling Opportunity Act (ORS 459.005 to 459.285).

WHAT IS PROPOSED The Department proposes to amend Oregon Administrative Rules, Division 340, Section 60 to set standards for yard debris recycling programs, initiating a process for the collection of source separated yard debris from generators. Implementation would begin January 1, 1989.

WHAT ARE THE HIGHLIGHTS: These rules assign the responsibility for yard debris recycling to local government. They set criteria for determining when an alternative method of providing the opportunity to recycle is acceptable. They also outline a planning and implementation process for yard debris recycling programs. The rules contain an enforcement procedure for jurisdictions which fail to provide the opportunity to recycle yard debris.

HOW TO COMMENT: Public hearings will be held before a hearings officer at:

2:00 p.m. and 7:00 p.m.
Tuesday, May 31, 1988
Hearing Room - 2nd Floor
Portland Building
1120 S.W. 5th Avenue
Portland, Oregon

Written or oral comments can be presented at the hearing. Written comments can also be sent to the Department of Environmental Quality, Hazardous and Solid Waste Division, 811 S.W. 6th Avenue, Portland, Oregon 97204, but must be received no later than 5:00 p.m., Wednesday. June 1, 1988.

(OVER)

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.

Copies of the complete proposed rule package may be obtained from the DEQ Hazardous and Solid Waste Division in Portland (811 S.W. 6th Avenue). For further information contact William R. Bree at 229-6975.

WHAT IS THE NEXT STEP: The Environmental Quality Commission may adopt the amendments and new rules identical to the ones proposed, adopt modified amendments and rules as a result of testimony received or may decline to adopt any changes to the existing rules. The Commission may consider the proposed amendments and new rules at its meeting on July 8, 1988.

YF3027.D

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, April 29, 1988 EQC Meeting

Request for Authorization to Conduct Public Hearings on Proposed New Administrative Rules for the Waste Tire Program, OAR 340-62: Permit Procedures and Standards for Waste Tire Storage Sites and Waste Tire Carriers

Background

Approximately one waste tire is generated per capita each year. Thus as many as 2 million waste tires must be disposed of annually in Oregon. Of these, approximately 1 million are annually processed into chips, which can be mixed with "hogged" wood waste to produce a fuel for use in industrial boilers.

A relatively small number of tires serve as raw materials for small business and other useful purposes such as holding down tarps, barriers, etc. The remainder go into landfills and tire "piles" or are illegally burned or dumped.

Disposal of spent tire casings has been a long-term problem. Several landfills do not accept tires because of compaction problems. Several large tire piles (three with more than a million tires each) exist around the state. Smaller illegally dumped piles can be observed in nearly every county. Most of these have not been protected from vandalism and possible fires.

Tire piles often "catch" fire. Once on fire, they are nearly uncontrollable. Tire burning causes dense, black smoke and emissions of large amounts of particulate and hydrocarbons. The hydrocarbons emitted include many toxic compounds such as acetone, benzene, methylene chloride and toluene. Tires also contain 1.5% zinc along with measurable quantities of chlorine, chromium, fluoride, cadmium and lead. Very large tire fires have been observed to produce a liquid waste stream of pyrolytic oil which is contaminated with the same products listed above. This oil flow can contaminate surface and groundwater as it flows from the burning tires.

Tire piles also collect rainwater, providing a breeding ground for mosquitoes and other pests. They can attract and harbor other vectors such as rats.

Proper disposal of waste tires can be expensive, making illegal dumping a serious problem. The reuse and recycling of waste tires has been restricted by a lack of developed markets.

Waste Tire Program (HB 2022)

The 1987 Oregon Legislature passed HB 2022 (ORS 459.705 through 459.790) to address the waste tire disposal problem, and to enhance the market for waste tires. HB 2022 is included as Attachment I. It sets up the following comprehensive program for waste tires:

1. Storage sites accepting waste tires must have a permit issued by DEQ. Solid waste disposal sites which store over 100 tires will also have to have their DEQ permit modified to authorize tire storage. Effective July 1, 1988.

   The following are exempt from the permitting requirement: a) sites with fewer than 100 tires; b) tire dealers with fewer than 1,500 waste tires; and c) tire recappers with fewer than 3,000 waste tires.

2. Certain carriers hauling waste tires must have a permit issued by DEQ.

3. Waste tires may not be disposed of in land disposal sites after July 1, 1989 unless they are chipped, or recycling is not economical.

4. A $1.00 fee is assessed on the sale of all new replacement tires sold in Oregon, beginning January 1, 1988. The fee sunsets June 30, 1991. It is collected by retail tire dealers and paid to the Oregon Department of Revenue (DOR). The tire dealers keep $.15 per tire. DOR deducts their administrative expenses from the fund. The rest goes into the Waste Tire Recycling Fund, administered by the DEQ.

5. The Waste Tire Recycling Fund will be used for partial reimbursements to users of recycled tires or tire chips; to help finance the cleanup of some waste tire dump sites; and to pay for DEQ's administrative costs.

Department responsibilities under the statute fall into two broad areas: permitting (tire storage sites and tire carriers); and overseeing use of the Waste Tire Recycling Fund. Since the first statutory deadline requiring Department action (July 1, 1988) involves site permitting, the Department is first developing rules to meet that deadline. Thus, these proposed rules cover waste tire site and tire carrier permit procedures and requirements. In a second stage of rulemaking, the Department will treat use of the Waste Tire Recycling Fund. Procedures and criteria for reimbursements to users of

waste tires and for tire site cleanup will be developed at the same time since they will be funded from the same source. Substantial monies will not be available in the Fund until later in the year. The Department will draft a rule for the use of the Fund by June 8.

DEQ Implementation

Sites storing more than 100 waste tires must have a waste tire storage site permit from DEQ by July 1, 1988, or be subject to a civil penalty of up to $500 a day. The department established a timeline to have permanent rules adopted by July 11, 1988. DEQ created a Waste Tire Task Force to help in developing the proposed rules. The Task Force consists of representatives of all interested parties. It was convened the first week in February. Three working subcommittees were formed: Subcommittee on Site Permitting and Cleanup, Subcommittee on Tire Carrier Permitting, and Reimbursement Subcommittee. The full Task Force has met three times; the Site Permitting Subcommittee has met three times; the Reimbursement Subcommittee has met twice; and the Tire Carrier Permitting Subcommittee has met once. Attachments III and IV list members of the Task Force, and its meeting schedule. Draft rules were given to the Task Force in late February for their review and discussion.

The Site Permitting and Carrier Permitting Subcommittees worked on issues directly related to the proposed rule, while the Reimbursement Subcommittee compiled information on the market potential for reuse of waste tires. That information is included in the Waste Tire Market Analysis (Attachment II). The Subcommittee's consensus was that direct incineration of waste tires offers the best near-term potential for absorbing the bulk of the state's waste tires. Other markets have potential for reuse of waste tires (rather than burning for the energy value), but will take longer to develop.

The first step in getting the tire sites and waste tire carriers under permit is identifying them. For the past few months DEQ has been identifying sites storing over 100 waste tires, and tire carriers. We have enlisted the help of the Regions, and done mailings to such groups as county sanitarians, roadmasters, sheriffs and other local officials, vector control districts, fire districts, National Forests, and the Bureau of Land Management. Site identification will be finished by May 1. We have contacted solid waste disposal site operators for help in identifying tire carriers. We will require tire storage sites to give us the names of the tire carriers they use as part of the permit process. To date about 160 tire sites have been identified.

DEQ sent notice to permitted solid waste sites the last week in March outlining requirements of HB 2022. They will be required to have their solid waste permits modified by July 1, 1988 if they want to store over 100 waste tires after that date.

Major Elements in Proposed Rule

The present proposed rule covers permitting and cleanup standards for waste tire storage sites, permitting of tire carriers, and standards for tire

chipping for landfills. A rule governing incentives and application for site cleanup funds will be drafted in June.

The rule as drafted is broken down into the following main elements: conditions when a waste tire storage permit is required; permittee obligations; storage site standards; closure procedures; modification of solid waste disposal site permits for solid waste sites; chipping standards; requirements for waste tire carrier permits; and civil penalties.

1. Waste Tire Storage Site Permit Procedure. A major issue was how to structure the permit procedure for waste tire storage sites, since permanent rules for the program will not be adopted by the time sites must be permitted. A two-stage procedure is being proposed which would consist of a simple, initial application, and would also allow DEQ to permit sites by early July. A "first-stage" or limited duration permit would be processed before rules are adopted, and a "second-stage" or regular permit would follow after rule adoption:

   -- A "first-stage" permit will be issued based on statutory requirements and subject to pending rules. It will expire at the end of six months unless a "second-stage" permit is applied for. The department is recommending no application fee for the "first-stage" permit. Identified tire sites will be sent permit applications in May, with a June 1 application deadline to DEQ. Permits will be issued by early July. Consultation with the Attorney General's office has endorsed this procedure.

      Any tires received by a site after the effective date of the rules will have to be stored in compliance with the rule's standards.

      The "first-stage" permit will require that either all waste tires be removed from the site before the expiration of the permit (6 months), or the owner will have to apply for a "second-stage" permit.

      Small sites with only a few hundred tires could of course get rid of those tires by July 1 rather than apply for a "first-stage" permit.

      The Task Force felt it was important to encourage all tire pile owners to work with DEQ in getting their sites under permit, even if they do not want to operate as long-term waste tire storage sites. They felt it was unrealistic to assume that tire pile owners with perhaps several thousand tires would be able to dispose of these tires legitimately by the effective date of the permit requirement, July 1, 1988. The preferred "disposal" method might be torching the tire pile. The Legislature structured the program so that DEQ may require, as a condition of receiving a waste tire storage site permit, a plan to remove and process the waste tires.

In such cases, a waste tire storage site permit would in essence be a compliance schedule to clean up the site.

To encourage applications, the Task Force wanted a nominal or no application fee and a simple initial application procedure for waste tire storage sites.

-- A "second-stage" or regular permit will include additional requirements, such as a comprehensive management plan, a complete contingency plan, financial assurance, and a compliance plan to remove or process the waste tires. It will require evidence that all other DEQ rules and standards will be complied with, including compliance with local land use regulations. Applicants who want to be regular tire storage sites will have to apply for the "second-stage" permit by September 1, 1988. An application fee of $250 is recommended. An annual compliance fee to cover DEQ's monitoring, inspection and surveillance of the site will become effective for calendar year 1989, under the "second-stage" permit. The permit could be issued for up to five years.

2. Fee Structure. The Task Force recommends uniform permit fees for all waste tire storage site permit applicants, rather than fees based on the size of the facility. Their thinking was that DEQ's administrative costs per site may well not depend on the size of the site. Some relatively small sites whose owners have few resources may be more difficult to bring under compliance than large sites.

   The tire carrier fee however would take into account the size of the applicant. The recommended fee structure includes an annual compliance fee partially based on how many trucks the business has.

   Some tire carriers, especially those who haul used tire casings between retail tire dealers and retreaders, may also need to store over 100 waste tires at their place of business. The Task Force wanted to avoid their having to apply for two separate permits, one for tire storage and one as a carrier. They recommended a combined permit process.

Recommended fee structure:

- Waste tire storage sites:

"Second-stage" application fee	$250
Annual compliance fee	$250

- Waste tire carriers:

Application fee	$25
Annual compliance fee	
Base (per company or corporation)	$175
Plus annual fee per vehicle	$25

- Combined fee (carrier/storage site)

Application fee	$250
Annual compliance fee	
Base (per company or corporation)	$250
Plus annual fee per vehicle	$25

3. Site Storage Standards. Major concerns in setting standards for waste tire storage sites are fire prevention and suppression, prevention of vandalism, vector control, and keeping tires out of waterways.

   The State Fire Marshall was contacted concerning tire storage standards in the Uniform Fire Code. The Task Force was very concerned that tires be stored so that any fires can be easily broken up. The Task Force felt that a "maximum bulk" standard would best address their concern, with an additional limit on pile height and minimum fire lane standard.

   The following maximum tire pile dimensions are recommended:

   Width: 50 feet
   Area: 15,000 square feet
   Height: 6 feet
   Minimum fire lane width: 50 feet

   The Siting Subcommittee recommends DEQ discretion in allowing greater bulk and narrower fire lanes than the standard, for waste tire processing sites which do not store tires on a long-term basis. The recommendation is to allow greater bulk for such companies if DEQ and the local fire authority are satisfied that they have additional fire-suppression equipment or materials on site to quickly extinguish any fire.

   No generally accepted tire storage standards addressing vector control were found. The proposed rule would allow DEQ discretion to require the site to provide vector control measures if it is likely to pose a public health hazard because of location in a residential area, etc.

   The rule would provide for access control to the site, and screening if DEQ deems it necessary.

4. Definition of Waste Tire. The statute defines "waste tire" as a tire that is no longer suitable for its original intended purpose because of wear, damage or defect. There was much discussion in

the Task Force as to whether this definition should cover tire casings intended for recapping. People who store or haul "waste tires" are covered by this statute. Only a person involved in the tire trade can tell whether a used tire is recappable, or only fit to be discarded. For ease of administration, it was decided that recappable casings should be deemed "waste tires".

5. "Beneficial Use" of Whole Waste Tires. The Task force discussed the issue of whether waste tires being put to such beneficial uses as tire fences should be required to get storage site permits. The Task Force felt that there may be various legitimate uses of whole waste tires that should be exempt from the storage site permit requirement. However, instead of trying to define all such exempt uses in the rule, the Task Force recommended allowing the department to grant exemptions on a case-by-case basis. The applicant would have to demonstrate that the use had an economic value, and did not cause environmental, fire or health hazards. The proposed rule incorporates this recommendation. This meshes well with past department policy on regulation of tire fences.

6. Financial Assurance. Financial assurance is required of waste tire storage site permittees and waste tire carriers. The statute requires sites to have financial assurance acceptable to DEQ to cover "waste tire removal and processing, fire suppression or other measures to protect the environment and the health, safety and welfare of the people of this state." The proposed rule would have the applicant calculate costs of tire removal for the maximum number of tires allowed to be stored; the amount of financial assurance required would be based on that.

7. Recordkeeping. The statute contains a reporting requirement. The proposed rule would require storage sites and carriers to keep records of all tires shipped and received; but numbers may be approximate (e.g. "semi-load" or "pick-up load").

8. Chipping Standards. The Commission is required to set chipping standards for tires to be disposed of in land disposal sites. The standard will have an economic impact on landfill operators; machines will have to be purchased or services contracted for to chip the tires. "Splitting" (cutting tires in two) would be cheaper than chipping to smaller pieces. Most Task Force members felt splitting did not allow proper disposal of tires. Further, the intent of the legislation was not to encourage landfilling. Allowing split tires to be landfilled would tend to encourage landfill of tires.

9. Tire Carrier Standards. The main statutory requirements for tire carriers are that they pay certain fees; have a $5,000 bond; and properly dispose of waste tires. A number of issues were identified by the Task Force, in the following areas: carriers who haul recappable tire casings to retreaders; retail tire dealers who service commercial accounts, installing new tires and hauling the replaced, used tires back to their store; and tire dealers and

retreaders who carry casings in-house. As noted above, "waste tire" was defined to include recappable casings. The Task Force proposed language which would offer relief from the permit requirement to certain carriers in the latter two categories.

10. Civil Penalty. The statute adds violation of the waste tire storage and disposal law to actions subject to a civil penalty of up to $500 a day under the general solid waste penalty section.

Authority to Act

HB 2022 requires the EQC and DEQ to do several things:

1. Establish tire chipping standards for tires to be disposed of in permitted land disposal sites after July 1, 1989. (EQC - ORS 459.710 (1)(a))

2. Establish conditions and issue or deny permits for waste tire storage sites that store over 100 tires after July 1, 1988. (DEQ - ORS 459.715, 459.725, 459.730, 459.745)

3. Modify solid waste disposal site permits to allow storage of waste tires after July 1, 1988. (DEQ - ORS 459.(2)(a))

4. Establish conditions and issue or deny permits for waste tire carriers. (DEQ - ORS 459.725, 459.730, 459.745)

5. Determine an application fee for waste tire storage site and waste tire carrier permit applications, and a fee to cover DEQ's monitoring and inspection of permittees. (EQC - ORS 459.730 (1)(d) and (2)(e), 459.750)

6. Adopt rules to carry out the provisions of the Waste Tire Program. (EQC - ORS 459.785)

The proposed new rule is included as Attachment V.

Alternatives and Evaluation

The alternatives are as follows:

1. Authorize the Department to conduct public hearings on the proposed rule.

2. Do not authorize public hearings.

The Department believes that public hearings are needed to solicit comments from affected members of the public, and to identify additional issues regarding waste tire storage and transporting. Public testimony assists the Department staff in preparing the proposed rule to be presented for Commission consideration and possible adoption.

Summation

1. The Waste Tire Program passed by the 1987 Legislature gives DEQ responsibilities to implement a program regulating storage, transportation and reuse of waste tires. This includes establishing rules to set standards for storage sites, and permit fees.

2. The Department established a Waste Tire Task Force to help develop the proposed rule.

3. The proposed rule covers permitting and storage standards for waste tire storage sites and solid waste permit modifications to allow waste tire storage; permit procedures and requirements for waste tire carriers; and chipping standards for waste tires to be landfilled.

4. The Department will draft a rule covering use of the Waste Tire Recycling Fund (reimbursement for use of waste tires, and funding for tire site cleanup) at a future date.

5. In order to store more than 100 waste tires, a site must receive a permit from the Department by July 1, 1988. The Department is proposing a two-stage permit process to comply with this statutory deadline.

6. The proposed rule would affect many persons throughout the state. Hearings will allow the public to raise additional concerns which will be considered in drafting a final rule.

Director's Recommendation

Based on the Summation, it is recommended that the Commission authorize public hearings to take testimony on the proposed rule to implement the Waste Tire Program, OAR 340-62, as presented in Attachment V.

Lydia Taylor
Fred Hansen for

Attachments:
I. HB 2022
II. Waste Tire Market Analysis
III. Waste Tire Task Force Membership
IV. Schedule of Task Force Meetings
V. Draft Rule OAR 340-62
VI. Draft Hearings Notice
VII. Draft Statement of Need for Rulemaking
VIII. Draft Fiscal and Economic Impact, and Land Use Consistency

Deanna Mueller-Crispin:dmc
229-5808
April 1, 1988 (SB7433)

Attachment I
Agenda Item I
4/29/88, EQC Meeting

Enrolled
House Bill 2022

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Presession filed (at the request of Joint Interim Committee on Hazardous Materials).

CHAPTER 766

AN ACT

Relating to tire recycling; creating new provisions; amending ORS 459.995; appropriating money; and limiting expenditures.

Be It Enacted by the People of the State of Oregon:

SECTION 1. As used in sections 1 to 18 of this Act:

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

(2) "Consumer" means a person who purchases a new tire to satisfy a direct need, rather than for resale.

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

(4) "Director" means the Director of the Department of Environmental Quality.

(5) "Dispose" means to deposit, dump, spill or place any waste tire on any land or into any waters of the state as defined by ORS 468.700.

(6) "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.

(7) "Store" or "storage" means the placing of waste tires in a manner that does not constitute disposal of the waste tires.

(8) "Tire" means a continuous solid or pneumatic rubber covering encircling the wheel of a vehicle in which a person or property is or may be transported in or drawn by upon a highway.

(9) "Tire carrier" means any person engaged in picking up or transporting waste tires for the purpose of storage or disposal. This does not include solid waste collectors operating under a license or franchise from any local government unit and who transport fewer than 10 tires at any one time or persons transporting fewer than five tires with their own solid waste for disposal.

(10) "Tire retailer" means any person engaged in the business of selling new replacement tires.

(11) "Waste tire" means a tire that is no longer suitable for its original intended purpose because of wear, damage or defect.

SECTION 2. (1) Except as provided in subsection (2) of this section, after July 1, 1989, no person shall dispose of waste tires in a land disposal site, as defined in ORS 459.005.

(2) After July 1, 1989, a person may dispose of waste tires in a land disposal site permitted by the department if:

(a) The waste tires are chipped in accordance with standards established by the Environmental Quality Commission;

(b) The waste tires were located for disposal before July 1, 1989, at a land disposal site permitted by the department;

(c) The commission finds that the reuse or recycling of waste tires is not economically feasible;

(d) The waste tires are received from a solid waste collector, operating under a license or franchise from any local government unit, who transports fewer than 10 tires at any one time; or

(e) The waste tires are received from a person transporting fewer than five tires in combination with the person's own solid waste for disposal.

SECTION 3. (1) After July 1, 1988, no person shall store more than 100 waste tires anywhere in this state except at a waste tire storage site operated under a permit issued under sections 3 to 12 of this Act.

(2) Subsection (1) of this section shall not apply to:

(a) A solid waste disposal site permitted by the department if the permit has been modified by the department to authorize the storage of tires;

(b) A tire retailer with not more than 1,500 waste tires in storage; or

(c) A tire retreader with not more than 3,000 waste tires stored outside.

SECTION 4. (1) Each waste tire storage site permittee shall be required to do the following as a condition to holding the permit:

(a) Report periodically to the department on numbers of waste tires received and the manner of disposition.

(b) Maintain current contingency plans to minimize damage from fire or other accidental or intentional event.

(c) Maintain financial assurance acceptable to the department and in such amounts as determined by the department to be reasonably necessary for waste tire removal processing, fire suppression or other measures to protect the environment and the health, safety and welfare of the people of this state.

(d) Maintain other plans and exhibits pertaining to the site and its operation as determined by the department to be reasonably necessary to protect the public health, welfare or safety or the environment.

(2) The department may waive any of the requirements of subsection (1) of this section for a waste tire storage site in existence on or before January 1, 1988.

SECTION 5. (1) The department shall furnish an application form to anyone who wishes to operate a waste tire storage site or to be a waste tire carrier.

(2) In addition to information requested on the application form, the department also shall require the submission of such information relating to the construction, development or establishment of a proposed waste tire storage site and facilities to be operated in conjunction therewith and such additional information, data and reports as it considers necessary to make a decision granting or denying a permit.

SECTION 6. (1) Permit applications submitted to the department for operating a waste tire storage site shall contain the following:

(a) The management program for the operation of the site, including the person to be responsible for the operation of the site, the proposed method of disposal and the proposed emergency measures to be provided at the site.

(b) A description of the size and type of facilities to be constructed upon the site, including the height and type of fencing to be used, the size and construction of structures or buildings, warning signs, notices and alarms to be used.

(c) The exact location and place where the applicant proposes to operate and maintain the site, including the legal description of the lands included within the site.

(d) An application fee, as determined by the commission to be adequate to pay for the department's costs in investigating and processing the application.

(e) Any additional information requested by the department.

(2) A permit application submitted to the department for operating as a waste tire carrier shall include the following:

(a) The name and place of business of the applicant.

(b) A description and license number of each truck used for transporting waste tires.

(c) The locations of the sites at which waste tires will be stored or disposed.

(d) A bond in the sum of $5,000 in favor of the State of Oregon. In lieu of the bond, the applicant may submit financial assurance acceptable to the department.

(e) An application fee, as determined by the commission to be adequate to pay for the department's costs in investigating and processing the application.

(f) Any additional information requested by the department.

(3) The bond required under subsection (2) of this section shall be executed by the applicant as principal and by a surety company authorized to transact a surety business within the State of Oregon. The bond shall be filed with the department and shall provide that:

(a) In performing services as a waste tire carrier, the applicant shall comply with the provisions of sections 1 to 18 of this Act and rules adopted by the commission regarding tire carriers; and

(b) Any person injured by the failure of the applicant to comply with the provisions of sections 1 to 18 of this Act or the rules adopted by the commission regarding waste tire carriers shall have a right of action on the bond in the name of the person, provided that written claim of such right of action shall be made to the principal or the surety company within two years after the injury.

SECTION 7. (1) Following the submittal of a waste tire storage site permit application, the director shall cause notice to be given in the county where the proposed site is located in a manner reasonably calculated to notify interested and affected persons of the permit application.

(2) The notice shall contain information regarding the location of the site and the type and amount of waste tires intended for storage at the site, and may fix a time and place for a public hearing. In addition, the notice shall give any person substantially affected by the proposed site an opportunity to comment on the permit application.

SECTION 8. The department may conduct a public hearing in the county where a proposed waste tire storage site is located and may conduct hearings at other places as the department considers suitable. At the hearing the applicant may present the application and the public may appear or be represented in support of or in opposition to the application.

SECTION 9. Based upon the department's review of the waste tire storage site or waste tire carrier permit application, and any public comments received by the department, the director shall issue or deny the permit. The director's decision shall be subject to appeal to the commission and judicial review under ORS 183.310 to 183.550.

SECTION 10. A fee may be required of every permittee under sections 3 to 12 of this Act. The fee shall be in an amount determined by the commission to be adequate, less any federal funds budgeted therefor by legislative action, to carry on the monitoring, inspection and surveillance program established under section 12 of this Act and to cover related administrative costs.

SECTION 11. The director may revoke any permit issued under sections 3 to 12 of this Act upon a finding that the permittee has violated any provision of sections 3 to 12 of this Act or rules adopted pursuant thereto or any material condition of the permit, subject to appeal to the commission and judicial review under ORS 183.310 to 183.550.

SECTION 12. The department shall establish and operate a monitoring, inspection and surveillance program over all waste tire storage sites and all waste tire carriers or may contract with any qualified public or private agency to do so. After reasonable notice, owners and operators of these facilities must allow necessary access to the site of waste tire storage and to its records, including those required by other public agencies, for the monitoring, inspection and surveillance program to operate.

SECTION 12a. Fees received by the department pursuant to sections 6 and 10 of this Act shall be deposited in the State Treasury and credited to the department and are continuously appropriated to carry out the provisions of sections 4 to 12 of this Act.

SECTION 13. (1) Any person who purchases waste tires generated in Oregon or tire chips or similar materials from waste tires generated in Oregon and who uses the tires or chips or similar material for energy recovery or other appropriate uses may apply for partial reimbursement of the cost of purchasing the tires or chips or similar materials.

(2) Any person who uses, but does not purchase, waste tires or chips or similar materials, for energy recovery or another appropriate use, may apply for a reimbursement of part of the cost of such use.

(3) Any costs reimbursed under this section shall not exceed the amount in the Waste Tire Recycling Account. If applications for reimbursement during a period specified by the commission exceed the amount in the account, the commission shall prorate the amount of all reimbursements.

(4) The intent of the partial reimbursement of costs under this section is to promote the use of waste tires by enhancing markets for waste tires or chips or similar materials. The commission shall limit or eliminate reimbursements if the commission finds they are not necessary to promote the use of waste tires.

(5) The commission shall adopt rules to carry out the provisions of this section. The rules shall:

(a) Govern the types of energy recovery or other appropriate uses eligible for reimbursement, including but not limited to recycling other than retreading, or use for artificial fishing reefs;

(b) Establish the procedure for applying for a reimbursement; and

(c) Establish the amount of reimbursement.

SECTION 14. The Waste Tire Recycling Account is established in the State Treasury, separate and distinct from the General Fund. All moneys received by the Department of Revenue under sections 20 to 43 of this Act shall be deposited to the credit of the account. Moneys in the account are appropriated continuously to the Department of Environmental Quality to be used:

(1) For expenses in cleaning up waste tire piles as provided in section 15 of this Act;

(2) To reimburse persons for the costs of using waste tires or chips or similar materials; and

(3) For expenses incurred by the Department of Environmental Quality in carrying out the provisions of sections 2, 3 and 13 to 18 of this Act.

SECTION 15. (1) The department, as a condition of a waste tire storage site permit issued under sections 3 to 12 of this Act, may require the permittee to remove or process the waste tires according to a plan approved by the department.

(2) The department may use moneys from the Waste Tire Recycling Account to assist a permittee in removing or processing the waste tires. Moneys may be used only after the commission finds that:

(a) Special circumstances make such assistance appropriate; or

(b) Strict compliance with the provisions of sections 1 to 18 of this Act would result in substantial curtailment or closing of the permittee's business or operation or the bankruptcy of the permittee.

(3) The department may use subsections (4) to (7) of this section if:

(a) A person fails to apply for or obtain a waste tire storage site permit under sections 3 to 12 of this Act; or

(b) A permittee fails to meet the conditions of such permit.

(4) The department may abate any danger or nuisance created by waste tires by removing or processing the tires. Before taking any action to abate the danger or nuisance, the department shall give any persons having the care, custody or control of the waste tires, or owning the property upon which the tires are located, notice of the department's intentions and order the person to abate the danger or nuisance in a manner approved by the department. Any order issued by the department under this subsection shall be subject to appeal to the commission and judicial review of a final order under the applicable provisions of ORS 183.310 to 183.550.

(5) If a person fails to take action as required under subsection (4) of this section within the time specified the director may abate the danger or nuisance. The order issued under subsection (4) of this section may include entering the property where the danger or nuisance is located, taking the tires into public custody and providing for their processing or removal.

(6) The department may request the Attorney General to bring an action to recover any reasonable and necessary expenses incurred by the department for abatement costs, including administrative and legal expenses. The department's certification of expenses shall be prima facie evidence that the expenses are reasonable and necessary.

(7) Nothing in sections 1 to 18 of this Act shall affect the right of any person or local government unit to abate a danger or nuisance or to recover for damages to real property or personal injury related to the transportation, storage or disposal of waste tires. The department may reimburse a person or local government unit for the cost of abatement.

SECTION 16. In accordance with the applicable provisions of ORS 183.310 to 183.550, the commission shall adopt rules necessary to carry out the provisions of sections 1 to 18 of this Act.

NOTE: Section 17 was deleted by amendment. Subsequent sections were not renumbered.

SECTION 18. The provisions of sections 1 to 17 of this Act do not apply to tires from:

(1) Any device moved exclusively by human power.

(2) Any device used exclusively upon stationary rails or tracks.

(3) A motorcycle.

(4) An all-terrain vehicle.

(5) Any device used exclusively for farming purposes, except a farm truck.

SECTION 19. ORS 459.995 is amended to read:

459.995. (1) In addition to any other penalty provided by law, any person who violates ORS 459.205, 459.270 or the provisions of ORS 459.180, 459.188, 459.190, [*or*] 459.195 **or section 2 or 3 of this 1987 Act** or any rule or order of the Environmental Quality Commission pertaining to the disposal, collection, storage or reuse or recycling of solid wastes, as defined by ORS 459.005, shall incur a civil penalty not to exceed $500 a day 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.

SECTION 20. As used in sections 20 to 43 of this Act, unless the context otherwise requires:

(1) "Business" means any trade, occupation, activity or enterprise engaged in for the purpose of selling new tires in this state.

(2) "Department" means the Department of Revenue.

(3) "Place of business" means any place where new tires are sold.

(4) "Retail dealer" means every person who is engaged in the business of selling to ultimate consumers new tires.

(5) "Sale" means any transfer, exchange or barter, in any manner or by any means whatsoever, for a consideration, and includes and means all sales made by any person. It includes a gift by a person engaged in the business of selling new tires, for advertising, as a means of evading the provisions of sections 20 to 43 of this Act, or for any other purposes whatsoever.

(6) "Tire" has the meaning given that term in section 1 of this Act.

(7) "Wholesale sales price" means the established price for which a manufacturer sells a tire to a distributor, after any discount or other reduction for quantity or cash.

SECTION 21. (1) Beginning January 1, 1988, and ending June 30, 1991, a fee is hereby imposed upon the retail sale of all new replacement tires in this state of $1 per tire sold. The fee shall be imposed on retail dealers at the time the retail dealer sells a new replacement tire to the ultimate consumer.

(2) The amount remitted to the Department of Revenue by the retail dealer for each quarter shall be equal to 85 percent of the total fees due and payable by the retail dealer for the quarter.

SECTION 22. The fee imposed under sections 20 to 43 of this Act shall not apply to new tires for:

(1) Any device moved exclusively by human power.

(2) Any device used exclusively upon stationary rails or tracks.

(3) A motorcycle.

(4) An all-terrain vehicle.

(5) Any device used exclusively for farming purposes, except a farm truck.

SECTION 23. (1) Except as otherwise provided in sections 20 to 43 of this Act, the fee imposed by section 21 of this Act shall be paid by each retail dealer to the department on or before the last day of January, April, July and October of each year for the preceding calendar quarter.

(2) With each quarterly payment, the retail dealer shall submit a return to the department, in such form and containing such information as the department shall prescribe.

(3) The fee, penalties and interest imposed by sections 20 to 43 of this Act shall be a personal debt, from the time liability is incurred, owed by the retail dealer to the State of Oregon until paid.

(4) The returns required of retail dealers under this section shall be filed by all such retail dealers regardless of whether any fee is owed by them.

(5) The department for good cause may extend for not to exceed one month the time for making any return and paying any fee due with a return under sections 20 to 43 of this Act. The extension may be granted at any time if a written request therefor is filed with the department within or prior to the period for which the extension may be granted. When the time for filing a return and payment of fee is extended at the request of a retail dealer, interest at the rate established under ORS 305.220, for each month, or fraction of a month, from the time the return was originally required to be filed to the time of payment, shall be added and paid.

SECTION 24. The fee imposed by section 21 of this Act does not apply with respect to any new tires which under the Constitution and laws of the United States may not be made the subject of taxation by the state.

SECTION 25. Every person desiring to engage in the sale of new tires as a retail dealer, except a person who desires merely to sell or accept orders for new tires which are to be transported from a point outside this state to a consumer within this state, shall file with the department an application, in such form as the department may prescribe, for a certificate. A retail dealer shall apply for and obtain a certificate for each place of business at which the retail dealer engages in the business of selling new tires. No fee shall be charged for such certificate.

SECTION 26. (1) If the department considers such action necessary to insure compliance with sections 20 to 43 of this Act, it may require any person subject to sections 20 to 43 of this Act to place with the department such security as the department may determine.

(2) The amount of the security shall be fixed by the department but, except as provided in subsection (3) of this section, may not be greater than twice the estimated liability for fees of a person for the reporting period under sections 20 to 43 of this Act determined in such manner as the department considers proper.

(3) In the case of a person who, pursuant to section 28 of this Act, has been given notice of proposed revocation or suspension of certificate, the amount of the security may not be greater than twice the liability of the person for the reporting period under sections 20 to 43 of this Act determined in such manner as the department considers proper, up to $10,000.

(4) The limitations provided in this section apply regardless of the type of security placed with the department. The required amount of the security may be increased or decreased by the department subject to the limitations provided in this section.

SECTION 27. Upon receipt of a completed application and such security as may be required by the department under sections 20 to 43 of this Act, the department shall issue to the applicant a certificate as a retail dealer. A separate certificate shall be issued for each place of business of the retail dealer within the state. A certificate is valid only for engaging in business as a retail dealer at the place designated thereon, and it shall at all times be conspicuously displayed at the place for which issued. The certificate is not transferable and is valid until canceled, suspended or revoked.

SECTION 28. (1) If any person fails to comply with any provision of sections 20 to 43 of this Act relating to the fee or any rule of the department relating to the fee adopted under sections 20 to 43 of this Act, the department may suspend or revoke the certificate held by the person. The department shall not issue a new certificate after the revocation of a certificate unless it is satisfied that the former holder of the certificate will comply with the provisions of sections 20 to 43 of this Act relating to the fee and the rules of the department.

(2) If the department proposes to refuse to issue or renew a certificate, or proposes to suspend or revoke a certificate, the department shall give notice of the proposed refusal, suspension or revocation at least 30 days before the refusal, suspension or revocation will be final. Appeal following the notice of the determination may be taken to the director in the manner provided in ORS 305.275 within the time provided in ORS 305.280 (1).

(3) An appeal from the director's order sustaining a proposed refusal to issue or renew, or suspension or revocation, may be taken by the person by filing an appeal to the Oregon Tax Court following the procedure provided in ORS chapter 305 within the time prescribed under ORS 305.560.

SECTION 29. (1) Every retail dealer shall keep at each registered place of business complete and accurate records for that place of business, including itemized invoices, of new tire products held, purchased, manufactured, brought in or caused to be brought in from without the state or shipped or transported to retail dealers in this state, and of all new tire sales made to the ultimate consumer.

(2) The records required by subsection (1) of this section shall show the names and addresses of purchasers, the inventory of all new tires on hand on January 1, 1988, and other pertinent papers and documents relating to the sale of new tires.

(3) When a certified retail dealer sells new tires exclusively to the ultimate consumer at the address given in the certificate, itemized invoices shall be made of all new tires sold by that certified retail dealer.

(4)(a) All books, records and other papers and documents required by this section to be kept shall be preserved for a period of at least three years after the initial date of the books, records and other papers or documents, or the date of entries appearing therein, unless the Department of Revenue, in writing, authorizes their destruction or disposal at an earlier date.

(b) The department or its authorized representative, upon oral or written reasonable notice, may make such examinations of the books, papers, records and equipment required to be kept under this section as it may deem necessary in carrying out the provisions of sections 20 to 43 of this Act.

(c) If the department, or any of its agents or employes, are denied free access or are hindered or interfered with in making such examination, the certificate of the retail dealer at such premises shall be subject to revocation by the department.

SECTION 30. Every person who sells new tires to the ultimate consumer shall render with each sale itemized invoices showing the seller's name and address, the date of sale, the fee collected and all prices and discounts. The person shall preserve legible copies of all such invoices for three years from the date of sale.

SECTION 31. Every retail dealer shall procure itemized invoices of all tires purchased. The invoices shall show the name and address of the seller and the date of purchase. The retail dealer shall preserve a legible copy of each such invoice for three years from the date of purchase. Invoices shall be available for inspection by the Department of Revenue or its authorized agents or employes at the retail dealer's place of business.

SECTION 32. The department shall administer and enforce sections 20 to 43 of this Act. The department is authorized to establish those rules and procedures for the implementation and enforcement of sections 20 to 43 of this Act that are consistent with its provisions and as are considered necessary and appropriate.

SECTION 33. (1) No person shall:

(a) Fail to furnish any return required to be made pursuant to sections 20 to 43 of this Act;

(b) Fail to furnish a supplemental return or other data required by the department; or

(c) Render a false or fraudulent return, report or claim for refund.

(2) No person who is required to make, render, sign or verify any report or return under sections 20 to 43 of this Act shall make a false or fraudulent report or return with intent to defeat or evade the determination of an amount due required by law.

SECTION 34. (1) If there is a failure to file a return required under sections 20 to 43 of this Act or a failure to pay a fee at the time the fee becomes due, and no extension is granted under section 23 of this Act, or if the time granted as an extension has expired and there is a failure to

file a return or pay a fee, there shall be added to the amount of fee required to be shown on the return a delinquency penalty of five percent of the amount of the fee.

(2) If the failure to file a return continues for a period in excess of three months after the due date:

(a) There shall be added to the fee required to be shown on the return a failure to file penalty of 20 percent of the amount of such fee; and

(b) Thereafter, the department may send a notice and demand to the person to file a return within 30 days of the mailing of the notice. If after such notice and demand no return is filed within the 30 days, the department may determine the fee according to the best of its information and belief, assess the fee with appropriate penalty and interest, plus an additional penalty of 25 percent of the fee deficiency determined by the department, and give written notice of the determination and assessment to the person required to make the filing.

(3) A penalty equal to 100 percent of any deficiency determined by the department shall be assessed and collected if:

(a) There is a failure to file a return with intent to evade the fee; or

(b) A return was falsely prepared and filed with intent to evade the fee.

(4) Interest shall be collected on the unpaid fee at the rate established under ORS 305.220, for each month or fraction of a month, computed from the time the fee became due, during which the fee remains unpaid.

(5) Each penalty imposed under this section is in addition to any other penalty imposed under this section. However, the total amount of penalty imposed under this section with respect to any deficiency shall not exceed 100 percent of the deficiency.

SECTION 35. (1) If a person fails to file a report or return within 60 days of the time prescribed under sections 20 to 43 of this Act, the department may petition the Oregon Tax Court for an order requiring the person to show cause why the person is not required to file the report or return.

(2) Within 10 days after the filing of the petition, the tax court shall enter an order directing the person to appear and show cause why no report or return is required to be filed. The petition and order shall be served upon the person in the manner provided by law. Not later than 20 days after service, the person shall:

(a) File the requested report or return with the department;

(b) Request from the court an order granting reasonable time within which to file the requested report or return with the department; or

(c) File with the court an answer to the petition showing cause why such report or return is not required to be filed.

(3) If an answer is filed, the court shall set the matter for hearing within 20 days from the filing of the answer, and shall determine the matter in an expeditious manner, consistent with the rights of the parties.

(4) An appeal may be taken to the Supreme Court as provided in ORS 305.445, from an order of the tax court made and entered after a hearing and determination under subsection (3) of this section.

(5) Costs shall be awarded to the prevailing party.

SECTION 36. The provisions of ORS chapters 305 and 314 as to the audit and examination of returns, periods of limitations, determination of and notices of deficiencies, assessments, liens, delinquencies, claims for refund and refunds, conferences, appeals to the director of the department, appeals to the Oregon Tax Court, stay of collection pending appeal, confidentiality of returns and the penalties relative thereto, and the procedures relating thereto, shall apply to the determinations of fees, penalties and interest under sections 20 to 43 of this Act, except where the context requires otherwise.

SECTION 37. If, under sections 20 to 43 of this Act, the department is not satisfied with the return of the fee or as to the amount of fee required to be paid to this state by any person, it may compute and determine the amount required to be paid upon the basis of the facts contained in the return or upon the basis of any information within its possession or that may come into its pos-

session. One or more deficiency determinations may be made of the amount due for one or for more than one period. Notices of deficiency shall be given and interest on deficiencies shall be computed as provided in ORS 305.265. Subject to ORS 314.421 and 314.423, liens for fees or deficiencies shall arise at the time of assessment, shall continue until the fees, interest and penalties are fully satisfied and may be recorded and collected in the manner provided for the collection of delinquent income taxes.

SECTION 38. If the department believes that the collection of any fee imposed under sections 20 to 43 of this Act or any amount of the fee required to be collected and paid to the state or of any determination will be jeopardized by delay, it shall make a determination of the fee or amount of fee required to be collected, noting that fact upon the determination. The amount determined is immediately due and payable and the department shall assess the fees, notify the person and proceed to collect the fee in the same manner and using the same procedures as for the collection of income taxes under ORS 314.440.

SECTION 39. (1) If any fee imposed under sections 20 to 43 of this Act or any portion of the fee is not paid within the time provided by law and no provision is made to secure the payment of the fee by bond, deposit or otherwise, pursuant to rules adopted by the department, the department may issue a warrant under its official seal directed to the sheriff of any county of the state commanding the sheriff to levy upon and sell the real and personal property of the retail dealer found within the county, for the payment of the amount of the fee, with the added penalties, interest and the sheriff's cost of executing the warrant, and to return the warrant to the department and pay to it the money collected from the sale, within 60 days after the date of receipt of the warrant.

(2) The sheriff shall, within five days after the receipt of the warrant, record with the clerk of the county a copy of the warrant, and the clerk shall immediately enter in the County Clerk Lien Record the name of the retail dealer mentioned in the warrant, the amount of the fee or portion of the fee and penalties for which the warrant is issued and the date the copy is recorded. The amount of the warrant so recorded shall become a lien upon the title to and interest in real property of the retail dealer against whom it is issued in the same manner as a judgment duly docketed. The sheriff immediately shall proceed upon the warrant in all respects, with like effect and in the same manner prescribed by law in respect to executions issued against property upon judgment of a court of record, and shall be entitled to the same fees for services in executing the warrant, to be added to and collected as a part of the warrant liability.

(3) In the discretion of the department a warrant of like terms, force and effect may be issued and directed to any agent authorized to collect the fees imposed by sections 20 to 43 of this Act. In the execution of the warrant, the agent shall have all the powers conferred by law upon sheriffs, but is entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty.

(4) If a warrant is returned not satisfied in full, the department shall have the same remedies to enforce the claim for fees against the retail dealer as if the people of the state had recovered judgment against the retail dealer for the amount of the fee.

SECTION 40. (1) The director is authorized to enter into a tire fee refund agreement with the governing body of any Indian reservation in Oregon. The agreement may provide for a mutually agreed upon amount as a refund to the governing body of any tire fee collected under sections 20 to 43 of this Act in connection with the sale of new tires on the Indian reservation. This provision is in addition to other laws allowing refunds of fees or taxes.

(2) There is annually appropriated to the director from the suspense account established under ORS 293.445 and section 42 of this Act, the amounts necessary to make the refunds provided by subsection (1) of this section.

SECTION 41. The remedies of the state provided for in sections 20 to 43 of this Act are cumulative, and no action taken by the department or Attorney General constitutes an election by the state to pursue any remedy to the exclusion of any other remedy for which provision is made in sections 20 to 43 of this Act.

SECTION 42. All moneys received by the Department of Revenue under sections 20 to 43 of this Act shall be deposited in the State Treasury and credited to a suspense account established under ORS 293.445. After payment of administration expenses incurred by the department in the administration of sections 20 to 43 of this Act and of refunds or credits arising from erroneous overpayments, the balance of the money shall be credited to the Waste Tire Recycling Account established under section 14 of this Act.

SECTION 43. (1) The fees imposed by section 21 of this Act are in addition to all other state, county or municipal fees on the sale of new tires.

(2) Any new tire with respect to which a fee has once been imposed under section 21 of this Act shall not be subject upon a subsequent sale to the fees imposed by section 21 of this Act.

SECTION 44. (1) If a person or an officer or employe of a corporation or a member or employe of a partnership violates paragraph (a) or (b) of subsection (1) of section 33 of this Act, the Department of Revenue shall assess against the person a civil penalty of not more than $1,000. The penalty shall be recovered as provided in subsection (4) of this section.

(2) A person or an officer or employe of a corporation or a member or employe of a partnership who violates paragraph (c) of subsection (1) or (2) of section 33 of this Act, is liable to a penalty of not more than $1,000, to be recovered in the manner provided in subsection (4) of this section.

(3) If any person violates any provision of sections 20 to 43 of this Act other than section 33 of this Act, the department shall assess against the person a civil penalty of not more than $1,000, to be recovered as provided in subsection (4) of this section.

(4) Any person against whom a penalty is assessed under this section may appeal to the director as provided in ORS 305.275. If the penalty is not paid within 10 days after the order of the department becomes final, the department may record the order and collect the amount assessed in the same manner as income tax deficiencies are recorded and collected under ORS 314.430.

SECTION 45. In addition to and not in lieu of any other expenditure limitation imposed by law, the amount of $258,473 is established for the biennium beginning July 1, 1987, as the maximum limit for payment of expenses from fees collected or received by the Department of Environmental Quality for the administration of this Act.

SECTION 46. In addition to and not in lieu of any other expenditure limitation imposed by law, the amount of $189,913 is established for the biennium beginning July 1, 1987, as the maximum limit for payment of expenses from fees collected by the Department of Revenue for administration of this Act.

Passed by House May 28, 1987

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Chief Clerk of House

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Speaker of House

Passed by Senate June 12, 1987

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President of Senate

Received by Governor:

.....M., ..., 1987

Approved:

.....M., ..., 1987

.....
Governor

Filed by Office of Secretary of State:

.....M., ..., 1987

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Secretary of State

Attachment II
Agenda Item I
4/29/88, EQC Meeting

WASTE TIRE MARKET ANALYSIS

3/31/88

Foreword

This report gives an overview of the potential markets for the reuse of waste tires in Oregon.

Most materials have been prepared by members of the Reimbursement Subcommittee of DEQ's Waste Tire Task Force. The name and affiliation of the principal author appears in the front of each section. The material has been edited and supplemented by DEQ staff. Other sources relied upon are the Report to Minnesota Pollution Control Agency on Scrap Tires in Minnesota (October 1985), and "Proceedings of a Workshop on Disposal Techniques with Energy Recovery for Scrapped Vehicle Tires", U.S. Department of Energy et al, November 1987.

Introduction

Over two million waste tires are generated in Oregon each year. Perhaps half of them are re-used or processed to recover their resources of materials or energy. The remaining tires are discarded in landfills or illegal disposal sites, or stored above ground in tire stockpiles. Existing stockpiles contain over three million tires statewide.

Whole tires are expensive to landfill because they occupy large volumes and will not compact. They also tend to trap air and landfill gases when buried. This makes them buoyant, and they may float to the surface at some unpredictable point in the future. Floating is a problem because the tires rupture the landfill cap which prevents precipitation from reaching the refuse and causing leachates that contaminate ground and surface water resources. Tires stored above ground provide breeding environments for pests and disease vectors. They also present a potential for serious and hard-to-control fires.

Oregon's waste tire legislation, passed in 1987, regulates the storage and transportation of waste tires. It also creates a subsidy intended to enhance the market for waste tires. This report examines the principal market options for waste tires.

Market options include: reuse of whole tires, including retreading and various construction uses; mechanical processing into rubber chips or crumbs for use in manufactured goods; chemical or thermal processing (pyrolysis) to

reclaim rubber or generate other salable products; and incineration of tires to reclaim their energy value.

The body of the report discusses each of these options.

I. Whole Tires (Ken Sandusky, Oregon Recyclers)

Some uses may be made of whole tires with little or no processing.

A) Used Tires - When a set of tires is turned in for four new ones, some of the used tires may still have useable life. The direct resale of such used tires to consumers is a market application that is on the decline. This is due to the increasing variety of tire sizes and styles which requires that a used tire outlet carry ever larger numbers of tires to fit consumer demand. This causes increased storage and inventory costs. Also, and more importantly, the sale of used tires has declined because of the influx of inexpensive new tires from both domestic and foreign sources. There is therefore a smaller margin of difference between the cost of a new tire and a used tire, thus a smaller economic incentive to purchase used over new. Since there is already an established collection and transportation system for used tire casings to retreaders, used tires that might be suitable for direct re-sale may find their way into the retreading system.

B) Retreads - Retreading captures 10-19 percent of the 260,000,000 tires discarded annually in the U.S. This method of tire recycling is quite energy efficient in that retreading a tire reduces oil consumption and rubber use when compared to the manufacture of a new tire.

Unfortunately, this market is declining. In 1976, retreads represented 18 percent of the replacement passenger tire market. In 1985 it fell to 12 percent of the replacement passenger tire market. As with used tires, the influx of inexpensive domestic and foreign tires (due in part to the decline in the price of oil) has reduced the price difference between retreaded tires and new tires. Given the reduced economic incentive, the market has declined.

The $1 fee on new replacement tires in Oregon amounts to a $1 per tire subsidy on retreads, since they are not subject to the fee. However this amount is too small a percentage of the cost of a replacement tire for it to influence the market for retreads.

In the case of truck tires, however, the retread market has been holding its own. Replacement truck tires are 5 to 10 times more expensive than passenger tires. Given the greater margin in price

between new truck and retreaded truck tires, the market remains strong. Truck tires represent 15 percent of the total number of tires discarded annually.

C) Artificial reefs - Reefs can have a significant beneficial impact on building up a commercial and sports fishery. Approximately 100,000 tires are used annually in the U.S. in artificial reef applications; this represents 4 hundredths of 1 percent of the tires discarded. This extremely small usage is due to high cost. It is estimated that the cost per tire to put a reef application in place is $1.65 to $3.00 per tire.

Oregon is virtually devoid of reefs. Dr. Charles K. Sollitt, Chairman of the Ocean Engineering Program at OSU, has analyzed the use of tires in artificial reefs off the Oregon coast. He has developed an engineering design for such tire reefs. However, he does not believe that it is economically feasible to use tires in reefs because of the high cost. He concurs with the costs mentioned in the previous paragraph.

Further, Oregon's very hostile wave environment makes use of artificial reefs even more problematic. Oregon gets waves as high as 35 feet twice a year. In water, tires weigh only 15 percent of their weight on land; therefore they require ballast of rocks, concrete or other material to hold them in place. This constitutes the majority of the expense in using them for reefs.

The optimum depth of tire placement to avoid the hostile wave action is 27 fathoms (162 feet). At this depth, the reef has little value to the sports fishery. Needs of the crabbing industry, and the techniques of bottom dragging used in certain commercial fishing industries, also create problems for reef placement.

There is one tire reef in Oregon in Tillamook Bay, placed there in a sheltered environment by a local scuba diving club. Such sheltered locations as bays may offer better opportunities than the open ocean for artificial tire reefs.

D) Other uses - Use of tires in erosion control, breakwaters, crash barriers, planter beds, playground applications, miniature golf courses, holding down tarps, etc. generally have logistical and environmental constraints, and offer extremely limited potential.

II. Mechanical Processing of Waste Tires (C. Fred Hermann, Riedel OMNI)

Recycling waste tires into new products keeps tire rubber available for future use in another recycled form. Tires can be shredded to produce rubber chips that can be used in manufacturing, as soil conditioners, or as bulking agents for sewage treatment.

Tires can also be processed into rubber crumbs for use in new rubber goods, and asphalt rubber (see following section). However the tire-derived materials must compete with the low-cost materials currently used in many of these applications. These markets will likely have limited growth until tire processing costs decrease.

Currently, there are three companies in Oregon which use mechanically processed waste tires as a raw material in manufacturing finished goods. They all use tire buffings, shavings created by the tire retread industry in removing the old tread from the tire. The three companies are Scientific Development Inc. of Eugene, Riedel OMNI Products, Inc. of Portland, and R & B Rubber Products of McMinnville.

Outside of Oregon, very little is happening with recycling of tread rubber. Leo Sato, of the California Solid Waste Board in Sacramento, was aware of only two California companies that used waste tires as a raw material for a finished good. One company makes dock bumpers while the other manufactures rubber floor tiles for department stores.

Scientific Development Inc. (SDI) of Eugene uses tire buffings to produce wheel chocks, traffic delineators and dock bumpers. They have been in business since 1973.

The company owns a tire shredding machine which can shred several thousand tires a day, but is not being used actively now. Currently SDI has the knowledge of how to take the large pieces of shredded tires and transform them into finer particles suitable for use as a raw material in their current product line. But it would cost at least $50,000 for an additional machine to reduce the shredded tire particles down to the size of buffings. This process would double the raw material cost as compared to purchasing tire buffings from a retreader at current market prices (about $.05-.065/lb).

OMNI manufactures rubber railroad grade crossings, and items to solve highway and street maintenance problems with manholes, valve boxes, and related structures. They have three U.S. manufacturing plants in Portland, Texas and Pennsylvania. OMNI purchases buffings from independent retreaders, both on the spot market and under contract. OMNI plans on using a total of 8 million pounds of tire buffings in all their plants in 1988.

R & B Rubber Products uses tire buffings derived in the same manner as OMNI to manufacture truck bed linings. R & B is a smaller firm, and more detailed information was not available.

Limits on the supply of raw material (buffings) at a reasonable cost limit the expansion of this sector. As tire retreading declines, the competition for buffings increases, driving the price up. In order to expand, OMNI needs to maintain a steady supply of suitable tire buffings. To increase the supply of buffings, new processors would need to invest in tire reduction equipment to reduce large tire chunks into a more usable form. However, current market conditions will not support the cost of secondary shredding or buffing to reduce tire chunks or larger particles of rubber.

One experienced tire industry engineer studied the feasibility of producing "production tire buffings" as a raw material for sale. His process of cutting the sidewall from the tire and running the long flat tire carcass through a buffing machine would yield back approximately fifty percent of usable tire buffings. Crumb rubber could be produced by filtering the fines from the larger particles during the buffing process.

The sidewall, steel belting and fabric cannot be economically recycled at this time. This creates by-products which must be landfilled. However, they do not present an unstable mass as with whole tire carcasses. The cost of disposing of the above would equal what the recycled tire buffings could be sold for at today's prices.

Incentives may be necessary for initial capital investment in the development of new technology equipment to produce buffings. It is felt that assurance of cooperation from state and federal regulatory agencies is necessary for any investor to develop a system to harvest waste tires through mechanical processing. It is also felt that the investor must also be assured of access to economical disposal facilities so that he can achieve the customary 15-25 percent return on investment capital that a bank would want for venture capital.

OMNI would prefer for an independent supplier to develop the technology and produce tire buffings for its production needs. With current growth trends considered, the tire buffing manufacturers could sign long-term contracts to guarantee a sale for its product.

Future market demand for tire buffings is unknown at this time, but OMNI estimates they could quadruple their projected 1988 use of 8 million pounds of buffings with assurance of a better supply and stable price.

III. Rubber-Modified Asphalt (Mike Harrington, PaveTech Corp., manufacturer of PlusRide)

Rubber-modified asphalt is a generic term for two entirely different methods of modifying asphalt concrete with tire rubber. One method uses fine or "crumb rubber" melted to form a liquid and blended with the asphalt cement. The addition of 1 percent melted "crumb rubber" reacted with the asphalt cement creates a superior binder (binder holds mix together). This process uses 20 pounds of tire rubber per ton of asphalt, but has a high capital cost ($100,000 per plant) for equipment necessary to blend rubber and asphalt cement.

The other type of rubber-modified asphalt uses the entire tire (less tire bead) granulated to a size of 1/4" or smaller. In this process the used tire rubber is used as a resilient aggregate. That is, some smaller sizes of aggregate in a normal asphalt mix are left out and the aggregate that is used is gap graded (via mix design specifications) to allow uniform dispersion of the granulated tire particles throughout the mix. This method, commercially known as PlusRide, uses 3 percent used tire rubber by weight or 60 pounds per ton of asphalt.

The addition of the 3 percent used tire particles, from 1/4" to fine material, improves the binder characteristics. The manufacturer claims that this rubber-modified asphalt also reduces reflective cracking, is quieter to drive on, reduces hydroplaning because its surface texture promotes drainage, and reduces headlight glare. According to Alaska Department of Transportation research results, PlusRide reduces stopping distances 15 to 25 percent under icy conditions. The material has characteristics that make its use appropriate and advantageous under some highway conditions, especially where cracking is a problem, but present disadvantages in other areas.

At a rate of 3 percent used tire rubber by weight of mix, a one-mile stretch of a two lane road (36' wide) overlaid with 2" of rubber-modified asphalt (PlusRide) would use approximately 70.8 tons of used tires, or roughly 8,500 tires. At this rate Oregon's 2,000,000 used tires discarded annually could be recycled for use in about 200 miles of rubber-modified asphalt. This would replace about the same tonnage of aggregate (70.8 tons). The fine rubber raw material costs the manufacturer about $0.11 to $0.14/lb. on site. Cost estimates put the price of rubberized asphalt from 35 to 85 percent higher than that of traditional mix.

Currently, the City of Corvallis, Benton County and the Oregon Department of Transportation have test sections of PlusRide laid for evaluation. Their comments on the product have been positive (City of Corvallis - Jeff Woodward, City Engineer; Benton County - Paul Hightower, Engineer). These results confirm the research done under grants from the

Federal Highway Administration and Alaska DOT, and research by Oregon State University, Department of Civil Engineering.

The referenced, independent reports (Appendix A) indicate that this rubber-modified asphalt (PlusRide) is not only a superior asphalt material, but, based on OSU research results of a rubber-modified asphalt overlay project at Mt. St. Helens, it can also be less expensive to use than conventional asphalt based on layer equivalency. It could possibly be cost effective in high traffic areas and on mountain roads that are costly to maintain. Potential demand may be large, but the market would take years to develop.

A partial reimbursement of $.05-.10/lb to the end-user (city, county or state agency roadway owner) could encourage the initial use of rubber-modified asphalt and assist evaluation of the product in their own area. This should lead the agency to continue to use rubber-modified asphalt with or without a reimbursement after the evaluation period. However, regulations requiring the use of these materials by the state might have a much more direct impact.

IV. Chemical/Thermal Tire Processing Applications (Mark Hope, Waste Recovery, Inc.)

-- Rubber Reclaiming. Rubber reclaiming involves chemical or thermal devulcanization of the rubber structure, thereby breaking its chemical bonds. The resulting devulcanized rubber may be blended with virgin rubber in new products. However, the reclaiming industry has been declining since 1960, as styrene-butadiene rubber has replaced natural rubber. Its economic advantage continues to decline in comparison to the properties of new rubber and other substitute materials. Reclaim now accounts for no more than 5 percent of the market.

-- Pyrolysis. Pyrolysis is the thermal decomposition of complex organic compounds such as rubber into lower molecular weight components. It has been used since the early 19th century. It represents an "engineer's dream" because it allows recovery of theoretically useful compounds from waste materials. When applied to scrap tires, the products include a gas stream used to fuel the process, a liquid stream which is blended to yield a salable fuel oil, and a solid or char stream containing a mixture of products including zinc oxide and multiple types of carbon. In general, a ton of waste tires will produce 125 gallons of oil and 700 pounds of carbon black.

Pyrolysis has been studied extensively. Over the last 20 years, a number of process, equipment and operating variations have been developed for scrap tires. Tremendous financial and technical

resources have been applied to the development of viable pyrolysis systems. A U.S. Department of Energy report ("Scrap Tires: A Resource and Technology Evaluation of Tire Pyrolysis and Other Selected Alternate Technologies") identified 31 projects involving pyrolysis. Of these, 15 had been abandoned for technical and/or economic reasons by January 1983, including extensive projects sponsored by companies such as Firestone, Goodyear/Tosco, Occidental, Uniroyal and Nippon. The remaining projects that were in design, construction or operation, failed to identify any commercial-scale facilities that are currently operating on a viable basis.

The reasons for project failure include:

1. Operating problems. Plants have encountered high maintenance expense, had product quality variations decreasing product value, or encountered fires or explosions from air infiltration.

2. Feed availability. The minimum capacity of an economical pyrolysis facility has been assumed to be about 1 million tires per year, with some projects requiring up to 10 million. New technology may reduce this size. Collection of these quantities at low cost within a service radius may be a problem. Obtaining properly shredded raw material has also been a problem.

3. Product quality/markets. Pyrolysis attempts to produce three product streams (gas, oil, char) from a scrap raw material containing mixtures of many components. Changes in operating conditions that improve the quality or yield of one component often have a negative impact on one of the others. It is difficult to optimize quality and yield of both major revenue products (oil, char). The oil is a fair fuel or refinery feedstock, although it must compete with conventional fuels recovered from crude petroleum. In the past, pyrolysis has not been economically competitive with crude oil at $25/30 per barrel. An economic analysis by Paul Petzrick, Energy and Waste Management Consultant (in DOE Workshop Report) calculated that with a $.45/tire tipping fee, a new pyrolysis plant could produce oil for .$32/gallon in the first year. Costs go down over time. With no tipping fee, the cost of derived oil would be $.68/gallon. In addition, the char contains multiple grades of carbon black, zinc oxide, titanium dioxide, and other trace components, resulting in low value and limited markets. There may be a Portland market for quality carbon black at $0.11 to $.14/lb. If markets cannot be found, it would have to be disposed of in landfills.

All of the above factors may have a negative impact on a pyrolysis project. The combination of high capital, operating, and maintenance costs, combined with low revenue resulting from downtime and poor product quality/market value, have resulted in the failure of many projects.

V. Direct Incineration. (Gary Vosler, Willamette Industries, Inc.; and Bob Wheeler, Smurfit Newsprint Corporation)

Scrap tires have a high energy content. A refined scrap tire used for direct incineration is called tire derived fuel (TDF). TDF is a scrap tire that is shredded and processed into a rubber chip with a range in size of one to four inches. It may also be processed to remove bead and radial wire. It has an energy content from 14,000 to 5,500 Btus/lb. Other fuel sources such as coal and wood generate less heat per pound. TDF's low moisture content (1 percent) and high volatility have proven to enhance energy utilization and combustion efficiency, displacing 5 to 25 percent of the amount of coal, wood, gas or oil needed in solid fuel boilers.

Incineration for heat recovery is a growing commercial use for large quantities of scrap tires, accounting for about half of the waste tires generated annually in Oregon. Processing tires for fuel applications may not achieve the goal of re-use into other products, but does offer recovery for their heat value. Alternative fuel markets may provide the best potential for immediately solving a scrap tire disposal problem while other markets are developed into viable options.

Industries that have tried and/or are currently using TDF include tire retreading (Les Schwab plant in Prineville - uses whole tires), pulp and paper (in Oregon, Willamette Industries and Smurfit), cement (widely used in Europe and Japan), and electrical utilities (new Modesto plant in California). Where TDF is being used, it is sold at a price competitive with existing fuels such as coal or wood waste.

The use of TDF presents environmental concerns. The high amount of fixed carbon (27.9%) suggests particulate concerns, and of ash (4.78%) suggests solid waste concerns. Other elements of concern include sulfur (1.23%) and zinc (1.52%). Efficient stack controls and specifically designed material metering systems are required to overcome environmental concerns of particulate control. Facilities using TDF install metering units to provide direct control of the TDF feed rate.

In Germany and Japan, 15 to 20 percent whole scrap tires are substituted for conventional fuel (coal) in cement kilns. As far as is known, no cement kiln now uses TDF in Oregon, although some interest has been expressed. It would likely involve adding a special materials handling system to feed the tires, a capital-intensive investment. The steel from

the tires replaces the ferrous oxide which is normally added to manufacture cement. A baghouse collects the particulate matter. There is no firm evidence of serious environmental problems, but the perception of a problem is a factor. Economically, TDF must compete with coal. Because of its higher Btu content, TDF is competitive if it costs from 15 to 20 percent a ton more than coal.

TDF is currently used in Oregon to supplement wood residue-based fuel in industrial boilers. Together, two paper mills use approximately fifty percent of available TDF from waste tires. Adding 1 to 3 percent rubber has a definite stabilizing effect on the boiler, especially when the wood fuel is wet. No significant negative effects have become apparent. The two Oregon facilities have wet scrubber-equipped boilers for pollution control.

Willamette Industries has used rubber in its waste wood boiler as an additional source of fuel since 1981. At the permitted rate of TDF consumption, no measurable impact to the environment due to the burning of rubber has occurred. During a typical year, the Albany Mill will use:

-- Over 190,000 tons of wood fuel ("hogged fuel", or HF); and

-- Over 3,500 tons of chipped rubber (TDF), or approximately 200,000 tires.

The average costs of these fuels are:

-- HF: approximately $5-$8/ton as received
($0.50 - $0.80/mm Btu)

-- TDF: approximately $40/ton
($1.30/mm Btu)

Due to recent exceptionally good market conditions for building materials, HF is in a surplus condition resulting in an unusually low price. It is reasonable to assume that market swings will occur in the near future which will reduce the HF surplus. This would cause HF prices to average closer to a typical cost of $13/ton ($1.30/mm Btu) as received. If HF surpluses were to continue keeping prices low, additional boilers would be built. This would then consume any surplus, and also drive up the price of HF.

In terms of fuel heat content ($/Btu), the cost of TDF and HF would be approximately equal if the ratio of prices were 1.8:1.0 (TDF:dry wood), or 3.25:1.0 (TDF:wet wood). If the current cost of TDF were cut in half, it would be directly competitive. This would require a subsidy of about $0.01 per pound of TDF.

In the pulp and paper industry TDF currently replaces HF. The alternative fuels, when HF is in short supply, are oil and natural gas. These cost four to five times as much as HF. If the rate of rubber incineration in Oregon were to double, thus consuming practically all of the potentially available TDF material, this would have only an insignificant impact on HF surpluses. This would not result in additional solid waste (surplus HF) being landfilled.

The risk of high cost HF has kept Willamette Industries in the rubber business. It does not appear that TDF will be competitive with HF in the foreseeable future. Waste tire disposal through incineration could be secured in the near term while other potential long-term markets develop. The subsidy from the $1 tire fee could reduce the cost of TDF to a point where it would be competitive with HF, thus allowing the mills to continue to burn the material.

Larger percentages of TDF could also be used by Smurfit. However the resulting zinc oxide particulate emissions would exceed allowable limits unless sophisticated particulate control devices (baghouse or electrostatic precipitator) were installed.

Deanna Mueller-Crispin:b
SB7433.2

Attachment III
Agenda Item I
4/29/88, EQC Meeting

Waste Tire Task Force

A task force has been assembled to help the Department of Environmental Quality (DEQ) develop rules for the waste tire program. Members include representatives of the major groups affected by the new law, and public representatives. Three working subcommittees have been formed to deal with the major areas of the program:

(1) permitting and cleanup of waste tire storage sites;

(2) permitting of waste tire carriers; and

(3) the reimbursement to users of waste tires.

A list of members follows.

	Group represented
Mike Doyle Les Schwab Tires Prineville, OR	retail tire dealers retreaders tire carriers
Mark Hope Waste Recovery, Inc. Portland, OR	tire-derived fuel manufacturer
Dave Phillips Clackamas County Department of Transportation & Development Oregon City, OR	county solid waste
Joyce Martinak Tangent, OR	League of Women Voters (public interest)
Ken Sandusky Lane County Waste Management Division Eugene, OR	county solid waste, and recyclers
Cecilia DeSantis-Urbani Salem City Planning Department Salem, OR	city planner
Doug Carothers Carother's Tire Hillsboro, OR	tire carrier
Paul Henry Public Utility Commission Salem, OR	transportation regulatory agency

Gary Vosler Willamette Industries Albany, OR	user of tire-derived fuel
Bob Wheeler Smurfit Newberg, OR	user, tire-derived fuel
Fred Hermann Riedel/Omni Products, Inc. Portland, OR	manufacturer, using rubber crumbs
Dennis Mulvihill Metro Portland, OR	landfill operator
Marilyn Adams Commercial Retread Salem, OR	retreader
Beverly Johnson Oregon Department of Revenue Salem, OR	tire fee collection program
Keith Rowbotham Northwest Tire Dealers Association Ellensburg, WA	retail tire dealers
Mike Harrington Pave Tech Corporation Seattle, WA	manufacturer, rubberized asphalt
Ken Erickson, County Engineer Douglas County Courthouse Roseburg, OR	solid waste regulator
Brad Prior Jackson County Medford, OR	solid waste regulator

Attachment IV
Agenda Item I
4/29/88, EQC Meeting

WASTE TIRE TASK FORCE

Meeting Schedule

Group	Place	Date
Full Task Force	Portland	February 2, 1988
Site Permitting Subcom.	Bend	February 11
Carrier Permitting Subcom.	Salem	February 17
Reimbursement Subcom.	Salem	February 17
Site Permitting Subcom.	Eugene	February 22
Full Task Force	Portland	March 8
Reimbursement Subcom.	Portland	March 24
Site Permitting Subcom.	Portland	March 30
Full Task Force	Portland	April 6

SB7433.TF

Attachment V
Agenda Item I
4/29/88, EQC Meeting

D R A F T R U L E

WASTE TIRE PROGRAM
4/13/88

Purpose

340-62-005 The purpose of these rules is to prescribe requirements, limitations and procedures for storage, collection, transportation, and disposal of waste tires. [To come later: The rules also prescribe how to apply for financial help to clean up waste tire sites. They also prescribe how to apply for a partial reimbursement for using waste tires. The purpose of the reimbursement is to promote the use of waste tires by enhancing markets for waste tires or similar materials.]

Definitions

340-62-010 As used in these rules unless otherwise specified:

(1) "Commission" -- the Environmental Quality Commission.

(2) "Department" -- the Department of Environmental Quality.

(3) "Director" -- the Director of the Department of Environmental Quality.

(4) "Dispose" -- to deposit, dump, spill or place any waste tire on any land or into any water as defined by ORS 468.700.

(5) "Financial assurance" -- a performance bond, letter of credit, cash deposit, insurance policy or other instrument acceptable to the department.

(6) "Land disposal site" -- a disposal site in which the method of disposing of solid waste is by landfill, dump, pit, pond or lagoon.

(7) "Person" -- 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.

(8) "Retreader" -- a person engaged in the business of recapping tire casings to produce recapped tires for sale to the public.

(9) "Rick" -- to horizontally stack tires securely by overlapping so that the center of a tire fits over the edge of the tire below it.

(10) "Store" or "storage" -- the placing of waste tires in a manner that does not constitute disposal of the waste tires.

(11) "Tire" -- a continuous solid or pneumatic rubber covering encircling the wheel of a vehicle in which a person or property is transported or by which they may be drawn on a highway. This does not include tires on the following:

(a) A device moved only by human power.

(b) A device used only upon fixed rails or tracks.

(c) A motorcycle.

(d) An all-terrain vehicle.

(e) A device used only for farming, except a farm truck.

(12) "Tire carrier" -- a person who picks up or transports waste tires for the purpose of storage or disposal. This does not include the following:

(a) Solid waste collectors operating under a license or franchise from a local government unit and who transport fewer than 10 tires at a time.

(b) Persons who transport fewer than five tires with their own solid waste for disposal.

(13) "Tire processor" -- a person engaged in the processing of waste tires.

(14) "Tire retailer" -- a person in the business of selling new replacement tires.

(15) "Tire derived products" -- tire chips or other usable materials produced from the physical processing of a waste tire.

(16) "Waste tire" -- a tire that is no longer suitable for its original intended purpose because of wear, damage or defect, and is fit only for:

(a) Remanufacture into something else, including a recapped tire; or

(b) Some other use which differs substantially from its original use.

Waste Tire Storage Permit Required

340-62-015 (1) After July 1, 1988, a site where more than 100 waste tires are stored is required to have a waste tire storage permit from the department. The following are exempt from the permit requirement:

(a) A tire retailer with not more than 1,500 waste tires in storage.

(b) A tire retreader with not more than 3,000 waste tires stored outside.

(2) Piles of tire derived products are not subject to regulation as waste tire storage sites if they have an economic value.

(3) If tire derived products have been stored for over six months, the department shall assume they have no economic value, and the site operator must either:

(a) Apply for a waste tire storage site permit; or

(b) Demonstrate to the department's satisfaction that the tire derived products do have an economic value by presenting receipts, orders, etc. for the tire derived products.

(4) After July 1, 1988, a permitted solid waste disposal site which stores more than 100 waste tires, is required to have a permit modification addressing the storage of tires from the department.

(5) The department may issue a waste tire storage permit in two stages to persons required to have such a permit by July 1, 1988. The two stages are a "first-stage" or limited duration permit, and a "second-stage" or regular permit.

(6) Owners or operators of existing sites not exempt from the waste tire storage site permit requirement shall apply to the department by June 1, 1988 for a "first-stage" permit to store waste tires. A person who wants to establish a new waste tire storage site shall apply to the department at least 90 days before the planned date of facility construction. A person applying for a waste tire storage site permit on or after September 1, 1988 shall apply for a "second-stage" or regular permit.

(7) The department may grant an exemption to the requirement to obtain a waste tire storage site permit for whole waste tires if the applicant can demonstrate to the Department's satisfaction that:

(a) The applicant is using the tires for a permanent useful purpose with a documented economic value; and

(b) The waste tires used in this way will meet vector control, health, fire control, safety and other environmental concerns which the storage standards in this rule address; and

(c) The use otherwise complies with local ordinances and state and Federal laws and administrative rules.

"First-Stage" or Limited Duration Permit

340-62-018 (1) An application for a "first-stage" permit shall include such information as required by the department, including but not limited to:

(a) A management plan for the operation of the site, including:

(A) The person to be responsible for the operation of the site;

(B) The proposed method of tire disposal; and

(C) The proposed emergency measures to be provided at the site, together with the name and phone number of the appropriate fire district.

(b) A description of the facilities on the site and how many tires are to be stored;

(c) The location of the site, including legal description; and

(d) The name and address of all tire carriers that the applicant has on record who have deposited waste tires at the site during the past 12 months.

(2) A "first-stage" permit shall be valid for a period not to exceed six months, or until December 31, 1988, whichever comes first.

(3) No later than September 1, 1988, a holder of a "first-stage" permit shall either:

(a) Inform the department in writing that the "first-stage" permit holder will remove all waste tires from the site and properly dispose of them before the expiration of the "first-stage" permit; or

(b) Apply for a "second-stage" or regular waste tire storage permit pursuant to OAR 340-62-020.

"Second-Stage" or Regular Permit

340-62-020 (1) An application for a "second-stage" or regular waste tire storage site permit shall:

(a) Include such information as shall be required by the department, including but not limited to:

(A) A description of the need for the waste tire storage site;

(B) The zoning designation of the site, and a written statement of compatibility of the proposed waste tire storage site with the acknowledged local comprehensive plan and zoning requirements from the local government unit(s) having jurisdiction.

(C) A description of the land uses within a one-quarter mile radius of the facility, identifying any buildings and surface waters.

(D) A management program for operation of the site, which includes but is not limited to:

(i) Anticipated maximum number of tires to be stored at the site for any given one year period.

(ii) Present and proposed method of disposal, and timetable.

(iii) How the facility will meet the technical tire storage standards in OAR 340-62-035 for both tires currently stored on the site, and tires to be accepted.

(iv) How the applicant proposes to control mosquitoes and rodents, considering the likelihood of the site becoming a public nuisance or health hazard, proximity to residential areas, etc.

(E) A proposed contingency plan to minimize damage from fire or other accidental or intentional emergencies at the site. It shall include but not be limited to procedures to be followed by facility personnel, including measures to be taken to minimize the occurrence or spread of fires and explosions.

(F) The following maps:

(i) A site location map showing section, township, range and site boundaries.

(ii) A site layout drawing, showing size and location of all pertinent man-made and natural features of the site (including roads, fire lanes, ditches, berms, waste tire storage areas, structures, wetlands, floodways and surface waters).

(iii) A topographic map using a scale of no less than one inch equals 200 feet.

(b) Submit proof that the applicant holds financial assurance acceptable to the department in an amount determined by the department to be necessary for waste tire removal processing, fire suppression or other

measures to protect the environment and the health, safety and welfare, pursuant to OAR 340-62-025 and 340-62-035.

(c) Submit an application fee of $250. Fifty dollars ($50) of the application fee shall be non-refundable. The rest of the application fee may be refunded in whole or in part when submitted with an application if either of the following conditions exists:

(A) The department determines that no permit will be required;

(B) The applicant withdraws the application before the department has granted or denied the application.

(2) A "second-stage" permit may be issued for up to five years.

(3) The department may waive any of the requirements in paragraph (1)(a)(E) (contingency plan), (1)(a)(F) (maps) or (1)(b) (financial assurance) of this section for a waste tire storage site in existence on or before January 1, 1988, if it is determined by the department that the site is not likely to create a public nuisance, health hazard, air or water pollution or other environmental problem. This waiver shall primarily be considered for storage sites which are no longer receiving additional tires, and are under a closure schedule approved by the department. The site must still meet operational standards in OAR 340-62-035.

Financial Assurance

340-62-022 (1) The department shall determine for each applicant the amount of financial assurance required under ORS 459.720(c) and OAR 340-62-020 (1)(b). The department shall base the amount on the estimated cost of cleanup for the maximum number of waste tires allowed by the permit to be stored at the storage site.

(2) The department will accept as financial assurance only those instruments listed in OAR 340-61-034(3)(c)(A) through (G).

(3) Any deposit of cash or negotiable securities shall remain in effect until the department notifies the applicant in writing that the department has approved closure of the site pursuant to OAR 340-62-045, except as provided in subsection (4) of this section. A claim against such security deposits must be submitted in writing to the department, together with an authenticated copy of:

(a) The court judgment or order requiring payment of the claim; or

(b) Written authority by the depositor for the department to pay the claim.

(4) When proceedings under ORS 459.730 have begun while the security required is in effect, such security shall be held until final disposition of the proceedings is made. At that time claims will be referred for consideration of payment from the security so held.

Permittee Obligations

340-62-025 (1) Each person who is required by ORS 459.715 and 459.725, and OAR 340-62-015 and 340-62-055, to obtain a permit shall:

(a) Comply with these rules and any other pertinent department requirements; and

(b) Inform the department in writing within 30 days of company changes that affect the permit, such as business name change, change from individual to partnership and change in ownership.

(c) Allow to the department, after reasonable notice, necessary access to the site and to its records, including those required by other public agencies, in order for the monitoring, inspection and surveillance program developed by the department to operate.

(2) Each waste tire storage site permittee whose site accepts waste tires after the effective date of these rules shall also do the following as a condition to holding the permit:

(a) Submit to the department by February 1 of each year an annual compliance fee for the coming calendar year in the amount of $250, effective February 1, 1989.

(b) Maintain records on approximate numbers of waste tires received and shipped, and tire carriers transporting the tires so as to be able to fulfill the reporting requirements in section (c) of this rule. The permittee shall issue written receipts upon receiving loads of waste tires. Quantities may be measured by aggregate loads or cubic yards, if the permittee documents the approximate number of tires included in each. These records shall be maintained for a period of three years, and shall be available for inspection by the department after reasonable notice.

(c) Submit a report containing the following information annually by February 1 of 1990 and each year thereafter:

(A) Number of waste tires received at the site during the year covered by the report;

(B) Number of waste tires shipped from the site during the year covered by the report;

(C) The name (and tire carrier permit number, if applicable) of the tire carriers delivering waste tires to the site and shipping waste tires from the site, together with the quantity of waste tires shipped with those carriers.

(D) The number of waste tires located at the site at the time of the report.

(d) If required by the department, prepare for approval by the department and then implement:

(A) A plan to remove some or all of the waste tires stored at the site. The plan shall follow standards for site closure pursuant to OAR 340-62-045. The plan may be phased in, with department approval.

(B) A plan to process some or all of the waste tires stored at the site. The plan shall comply with ORS 459.705 through 459.790 and OAR 340-62-035.

(e) Maintain the financial assurance required under OAR 340-62-020(1)(b) and 340-62-022.

(g) Maintain any other plans and exhibits pertaining to the site and its operation as determined by the department to be reasonably necessary to protect the public health, welfare or safety or the environment.

(3) The department may waive any of the requirements of subsections (2)(b) through (2)(c)(D) of this section for a waste tire storage site in existence on or before January 1, 1988. This waiver shall be considered for storage sites which are no longer receiving additional tires and are under a closure schedule approved by the department.

(4) If the owner or operator of a waste tire storage site fails to conduct waste tire storage, disposal and transportation according to the conditions, limitations, or terms of a permit or these rules, it is a violation of these rules. If the owner or operator of an affected site fails to obtain a permit, it is a violation of these rules. Violations of these rules shall be cause for the assessment of civil penalties for each violation as provided in OAR 340-62-070, or for any other enforcement action provided by law. Each day that a violation occurs is a separate violation and may be the subject of separate penalties.

Department Review of Applications for Waste Tire Storage Sites

340-62-030 (1) Applications for waste tire storage permits shall be processed in accordance with the Procedures for Issuance, Denial, Modification and Revocation of Permits as set forth in OAR Chapter 340, Division 14, except as otherwise provided in OAR Chapter 340, Division 62.

(2) Applications for permits shall be complete only if they:

(a) Are submitted on forms provided by the department, accompanied by all required exhibits, and the forms are completed in full and are signed by the property owner or person in control of the premises;

(b) Include plans and specifications as required by OAR 340-62-018 and 340-62-020;

(c) Include the appropriate application fee pursuant to OAR 340-62-020(1)(c).

(3) Following the submittal of a complete waste tire storage site permit application, the director shall cause notice to be given in the county where the proposed site is located in a manner reasonably calculated to notify interested and affected persons of the permit application.

(4) The notice shall contain information regarding the location of the site and the type and amount of waste tires intended for storage at the site. In addition, the notice shall give any person substantially affected by the proposed site an opportunity to comment on the permit application.

(5) The department may conduct a public hearing in the county where a proposed waste tire storage site is located.

(6) Upon receipt of a completed application, the department may deny the permit if:

(a) The application contains false information.

(b) The application was wrongfully accepted by the department.

(c) The proposed waste tire storage site would not comply with these rules or other applicable rules of the department.

(d) The proposed site does not have a written statement of compatibility with acknowledged local comprehensive land and zoning requirements from the local government unit(s) having jurisdiction; or

(e) There is no clearly demonstrated need for the proposed new, modified or expanded waste tire storage site.

(7) Based on the department's review of the waste tire storage site application, and any public comments received by the department, the director shall issue or deny the permit. The director's decision shall be subject to appeal to the commission and judicial review under ORS 183.310 to 183.550.

Standards for Waste Tire Storage Sites

340-62-035 (1) All permitted waste tire storage sites must comply with the technical and operational standards in this part.

(2) The holder of a "first-stage" waste tire storage permit shall comply with the technical and operational standards in this part if the site receives any waste tires after the effective date of these rules.

(3) A waste tire storage site shall not be constructed or operated in a wetland, waterway, floodway, 25-year floodplain, or any area where it may be subjected to submersion in water.

(4) Operation. A waste tire storage site shall be operated in compliance with the following standards:

(a) A waste tire pile shall have no greater than the following maximum dimensions:

(A) Width: 50 feet.

(B) Area: 15,000 square feet.

(C) Height: 6 feet.

(b) A 50-foot fire lane shall be placed around the perimeter of each waste tire pile. Access to the fire lane for emergency vehicles must be unobstructed at all times.

(c) Waste tires to be stored for one month or longer shall be ricked.

(d) A sign shall be posted at the entrance of the storage site stating operating hours, cost of disposal and site rules if the site receives tires from persons other than the operator of the site.

(e) No operations involving the use of open flames or blow torches shall be conducted within 25 feet of a waste tire pile.

(f) An approach and access road to the waste tire storage site shall be maintained passable for any vehicle at all times. Access to the site shall be controlled through the use of fences, gates, or other means of controlling access.

(g) If required by the department, the site shall be screened from public view.

(h) An attendant shall be present at all times the waste tire storage site is open for business, if the site receives tires from persons other than the operator of the site.

(i) The site shall be bermed or given other adequate protection if necessary to keep any liquid runoff from potential tire fires from entering waterways.

(j) If pyrolytic oil is released at the waste tire storage site, the permittee shall remove contaminated soil in accordance with applicable rules governing the removal, transportation and disposal of the material.

(5) The department may approve exceptions to the preceding technical and operational standards for a company processing waste tires if:

(a) The average time of storage for a waste tire on that site is one month or less; and

(b) The department and the local fire marshall are satisfied that the permittee has sufficient fire suppression equipment and/or materials on site to extinguish any potential tire fire within an acceptable length of time.

Closure

340-62-040 (1) The owner or operator of a waste tire storage site shall cease to accept waste tires and shall immediately close the site in compliance with any special closure conditions established in the permit and these rules, if:

(a) The owner or operator declares the site closed;

(b) The storage permit expires and renewal of the permit is not applied for, or is denied or revoked;

(c) A commission order to cease operations is issued; or

(d) A permit compliance schedule specifies closure is to begin.

(2) The owner or operator of a waste tire storage site may be required by the department to submit to the department a closure plan with the permit application.

(3) The closure plan shall include:

(a) When or under what circumstances the site will close, including any phase-in of the closure;

(b) How all waste tires and tire-derived products will be removed from the site or otherwise properly disposed of upon closure;

(c) A schedule for the applicable closure procedures, including the time period for completing the closure procedures.

(d) A plan for site rehabilitation, if deemed necessary by the department.

Closure Procedures

340-62-045 (1) In closing the storage site, the permittee shall:

(a) Close public access to the waste tire storage site for tire storage;

(b) Post a notice indicating to the public that the site is closed and, if the site had accepted waste tires from the public, indicating the nearest site where waste tires can be deposited;

(c) Notify the department and local government of the closing of the site;

(d) Remove all waste tires and tire-derived products to a waste tire storage site, solid waste disposal site authorized to accept waste tires, or other facility approved by the department;

(e) Remove any solid waste to a permitted solid waste disposal site; and

(f) Notify the department when the closure activities are completed.

(2) After receiving notification that site closure is complete, the department may inspect the storage site. If all procedures have been correctly completed, the department shall approve the closure in writing. Any financial assurance not needed for the closure shall be released to the permittee.

Modification of Solid Waste Disposal Site Permit Required

340-62-050 (1) After July 1, 1988, a solid waste disposal site permitted by the department shall not store over 100 waste tires unless the permit has been modified by the department to authorize the storage of waste tires.

(2) A solid waste disposal permittee who accumulates fewer than 1,500 waste tires at any given time and has a contract with a tire carrier to transport for proper disposal all such tires whenever sufficient tires have been accumulated to make up a truckload, is not subject to the permit modification required by section (1). However, such permittee's solid waste operating plan shall be modified to include such activity. Nevertheless, if

such permittee stores over 100 tires on-site for more than six months, permit modification pursuant to section (3) shall be required to allow such storage.

(3) A solid waste disposal permittee shall apply to the department by June 1, 1988 for a permit modification to store over 100 waste tires.

(4) The permittee shall apply to store a maximum number of waste tires which shall not be exceeded in one year.

(5) In storing waste tires, the permittee shall comply with all rules for waste tire storage sites in OAR 340-62-015 through 340-62-025, and 340-62-035 through 340-62-045, including a management plan for the waste tires, record keeping for waste tires received and sent, contingency plan for emergencies, and financial assurance requirements.

(6) Modification of an existing solid waste permit to allow waste tire storage does not require submission of a solid waste permit filing fee or application processing fee under OAR 340-61-115.

(7) The solid waste permittee should consider storing the waste tires or tire-derived products in a manner that will not preclude their future recovery and use, should that become economically feasible.

Chipping Standards for Solid Waste Disposal Sites

340-62-052 (1) After July 1, 1989, a person may not dispose of waste tires in a land disposal site permitted by the department unless:

(a) The waste tires are chipped in accordance with the standards in subsection (2) of this rule; or

(b) The waste tires were located for disposal at that site before July 1, 1989; or

(c) The commission finds that the reuse or recycling of waste tires is not economically feasible; or

(d) The waste tires are received from a person exempt from the requirement to obtain a waste tire carrier permit under OAR 340-62-055 (3)(a) and (b).

(2) To be landfilled under subsection (1)(a) of this rule, waste tires must be processed to meet the following criteria:

(a) The volume of 100 unprepared randomly selected tires in one continuous test period must be reduced by at least 65 percent of the

original volume. No single void space greater than 125 cubic inches may remain in the randomly placed processed tires; or

(b) The tires shall be reduced to an average chip size of no greater than 8 inches square in any randomly selected sample of 10 tires or more.

(3) The test to comply with (2)(a) shall be as follows:

(a) Unprocessed tire volume shall be calculated by multiplying the circular area, with a diameter equal to the outside diameter of the tire, by the maximum perpendicular width of the tire. The total test volume shall be the sum of the individual, unprocessed tire volumes; and

(b) Processed tire volume shall be determined by randomly placing the processed tire test quantity in a rectangular container and leveling the surface. It shall be calculated by multiplying the depth of processed tires by the bottom area of the container.

Waste Tire Carrier Permit Required

340-62-055 (1) Any person engaged in picking up or transporting waste tires for the purpose of storage or disposal is required to obtain a waste tire carrier permit from the department.

(2) After January 1, 1989, any person who contracts or arranges with another person to transport waste tires for storage or disposal shall only deal with a carrier holding a waste tire carrier permit from the department.

(3) The following persons are exempt from the requirement to obtain a waste tire carrier permit:

(a) Solid waste collectors operating under a license or franchise from any local government unit and who transport fewer than 10 tires at any one time.

(b) Persons transporting fewer than five tires.

(c) Persons transporting tire-derived products to a market.

(d) Persons who use company-owned vehicles to transport tire casings for the purposes of retreading or repair between:

(A) Company-owned retail tire outlets and retail tire customers; or

(B) Company-owned retail tire outlets and company-owned retread facilities.

(4) Any person who transports waste tires must obtain and display a waste tire carrier identification number issued by the department when transporting waste tires. Only permitted waste tire carriers shall receive such identification numbers.

(5) A combined tire carrier/storage site permit may be applied for by tire carriers who:

(a) Are subject to the carrier permit requirement;

(b) Are not tire retailers or retreaders; and

(c) Whose business includes an affected site which is subject to the waste tire storage permit requirement.

(6) The department shall supply a combined tire carrier/storage site application to such persons. Persons applying for the combined tire carrier/storage site permit shall comply with all other regulations concerning storage sites and tire carriers established in these rules.

Requirements for Tire Carrier Permit

340-62-060 (1) Persons who transport waste tires for the purpose of storage or disposal must apply to the department for a waste tire carrier permit within 90 days of the effective date of this rule. Persons who want to begin transporting waste tires for the purpose of storage or disposal must apply to the department for a waste tire carrier permit at least 90 days before beginning to transport the tires.

(2) Applications shall be made on a form provided by the department. The application shall include such information as required by the department. It shall include but not be limited to:

(a) A description, license number and registered vehicle owner for each truck used for transporting waste tires.

(b) The PUC authority number under which each truck is registered.

(c) Where the waste tires will be stored or disposed of.

(d) Any additional information required by the department.

(3) A corporation which has several separate business locations may submit one application which includes all the locations. However all the information required in subsection (2) of this section shall be supplied by location for each individual location. The corporation shall be responsible for amending the corporate application whenever any of the required information changes at any of the covered locations.

(4) An application for a tire carrier permit shall include a $25 non-refundable application fee.

(5) An application for a combined tire carrier/storage site permit shall include a $250 application fee, $50 of which shall be non-refundable. The rest of the application fee may be refunded in whole or in part when submitted with an application if either of the following conditions exists:

(a) The department determines that no permit will be required;

(b) The applicant withdraws the application before the department has granted or denied the application.

(6) The application shall also include a bond in the sum of $5,000 in favor of the State of Oregon. In lieu of the bond, the applicant may submit financial assurance acceptable to the department.

(7) The bond or other financial assurance required under subsection (6) of this section shall comply with requirements in OAR 340-71-600(5)(a) through (c). The bond shall be filed with the department and shall provide that:

(a) In performing services as a waste tire carrier, the applicant shall comply with the provisions of ORS 459.705 through 459.790 and of this rule; and

(b) Any person injured by the failure of the applicant to comply with the provisions of ORS 459.705 through 459.790 or this rule shall have a right of action on the bond in the name of the person. Such right of action shall be made to the principal or the surety company within two years after the injury.

(8) The type of financial assurance acceptable to the department and conditions thereof shall be the same as in OAR 340-62-022.

(9) A waste tire carrier permit or combined tire carrier/storage site permit shall be valid for up to three years. Permits shall expire on March 1. Permittees who want to renew their permit must apply to the department for permit renewal by February 15 of the year the permit expires.

Waste Tire Carrier Permittee Obligations

340-62-063 (1) Each person required to obtain a waste tire carrier permit shall:

(a) Comply with OAR 340-62-025(1) and (4).

(b) Display a current decal with their waste tire carrier identification number issued by the department when transporting waste tires. The decal shall be displayed on the side of the front doors of each truck used to transport tires.

(c) Maintain the financial assurance required under ORS 459.730(2).

(2) When a waste tire carrier permit expires or is revoked, the applicant shall immediately remove all waste tire permit decals from their vehicles.

(3) A waste tire carrier shall leave for storage or dispose of the waste tires only in a permitted waste tire storage site, at a solid waste disposal site with a permit from the department allowing them to store waste tires; or at another site approved by the department.

(4) Waste tire carrier permittees shall record and maintain the following information regarding their activities for each month of operation:

(a) The approximate quantity of waste tires collected. Quantities may be measured by aggregate loads or cubic yards, if the carrier documents the approximate number included in each load;

(b) Where or from whom the waste tires were collected;

(c) Where the waste tires were deposited. The waste tire carrier shall keep receipts or other written materials documenting where all tires were stored or disposed of.

(5) Waste tire carrier permittees shall submit to the department an annual report that summarizes the information accumulated under subsection (4) of this section. The information shall be broken down by quarters. This report shall be submitted to the department annually by February 28 of each year as a condition of holding a permit.

(6) A holder of a waste tire carrier permit shall pay to the department an annual fee in the following amount:

Annual compliance fee (per company or corporation)	$175
Plus annual fee per vehicle used for hauling waste tires	25

(7) A holder of a combined tire carrier/storage site permit shall pay to the department an annual fee in the following amount:

Annual compliance fee (per company or corporation)	$250

Plus annual fee per vehicle used for hauling waste tires	$ 25

(8) The annual compliance fee for the coming year (March 1 through February 28) as required by subsections (6) and (7) of this rule shall be paid by February 15 of each year.

Department Review of Waste Tire Carrier Permit Applications

340-62-065 Applications for waste tire carrier permits shall be processed in accordance with the Procedures for Issuance, Denial, Modification and Revocation of Permits as set forth in OAR Chapter 340, Division 14, except as otherwise provided in OAR Chapter 340, Division 62.

Civil Penalty

340-62-070 (1) In addition to any other penalty provided by law, any person who violates ORS 459.710 or 459.715 or any rule or order of the commission pertaining to the disposal, collection, storage or reuse or recycling of solid wastes shall incur a civil penalty not to exceed $500 a day 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.

Attachment VI
Agenda Item I
4/29/88, EQC Meeting

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Proposed Rules Related to Regulating How Waste Tires May Be Stored and Transported

Hearing Dates: 5/31/88
6/1/88
6/2/88
6/3/88
6/6/88
Comments Due: 6/7/88

WHO IS AFFECTED:

Owners and operators of sites where more than 100 waste tires are stored, and their customers. The public who dispose of waste tires. Persons hauling waste tires. Permitted solid waste disposal sites which store over 100 tires. Owners and operators of retail tire stores which have more than 1,500 waste tires in storage. Tire retreaders with more than 3,000 waste tires stored outside. Local governments. Fire marshals. Vector control districts.

WHAT IS PROPOSED:

The Department proposes to adopt new Administrative Rules, Division 340, Section 62, to establish a procedure to issue permits to store or transport waste tires; to set standards for storing waste tires; and to establish standards for chipping waste tires to be disposed of at solid waste sites. Implementation would begin July 1, 1988.

WHAT ARE THE HIGHLIGHTS:

These rules would establish a two-stage application process for people required to obtain a permit to store waste tires. Those include all persons who are storing more than 100 waste tires, except tire retailers and retreaders. They may store up to 1,500 and 3,000 tires respectively without getting a permit. The rules would set standards for how waste tires must be stored (maximum size of tire piles, etc.), and other permit requirements, such as reporting. The rules would set procedures and timelines for carriers required to obtain a waste tire carrier permit from the Department. They would set application fees for the permits. The rules contain an enforcement procedure and civil penalty for persons who fail to properly store and dispose of waste tires.

(over)

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 will be held before a hearings officer at:

7:15 p.m.
Tuesday, May 31, 1988
Blue Mountain CC/Morrow Hall 130
2411 N.W. Garden
Pendleton, OR 97801

7:15 p.m.
Wednesday, June 1, 1988
School Administration Bldg. #314
520 N.W. Wall Street
Bend, OR 97701

7:15 p.m.
Thursday, June 2, 1988
City Council Chambers
225 5th Street
Eugene/Springfield, OR 97477

7:15 p.m.
Friday, June 3, 1988
Jackson County Courthouse Auditorium
Main and Oakdale
Medford, OR 97501

7:15 p.m.
Monday, June 6, 1988
Clackamas Co. Dept. of Transportation & Development
Conference Room A
Oregon City, OR 97045

Informational meetings will be held prior to the hearings, from 3 p.m. to 6 p.m., on the same day and place.

Written or oral comments may be presented at the hearings. Written comments may also be sent to the Department of Environmental Quality, Hazardous and Solid Waste Division, 811 S.W. 6th Avenue, Portland, OR 97204, and must be received no later than 5:00 p.m., Tuesday, June 7, 1988.

Copies of the complete proposed rule package may be obtained from the DEQ Hazardous and Solid Waste Division. For further information, contact Deanna Mueller-Crispin at 229-5808.

WHAT IS THE NEXT STEP:

The Environmental Quality Commission may adopt new rules identical to the ones proposed, adopt modified rules as a result of testimony received, or may decline to adopt rules. The Commission will consider the proposed new rules at its meeting on July 8, 1988.

SB7433.P
4/1/88

Attachment VII
Agenda Item I
4/29/88, EQC Meeting

RULEMAKING STATEMENTS
for
Proposed New Rules Pertaining to the Storage of Waste Tires

OAR Chapter 340, Division 62

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

STATEMENT OF NEED:

Legal Authority

The 1987 Oregon Legislature passed the Waste Tire Act regulating the storage and transportation of waste tires. ORS 459.785 requires the Commission to adopt rules and regulations necessary to carry out the provisions of ORS 459.705 to 459.790. The Commission is adopting new rules which are necessary to carry out the provisions of the Waste Tire Act.

Need for the Rule

Improper storage and disposal of waste tires represents a significant problem throughout the State. The Waste Tire Act establishes a comprehensive program to regulate the storage, transportation and disposal of waste tires. It also establishes a Waste Tire Recycling Fund to help pay for the cleanup of some tire dumps, and to create financial incentives for people to reuse waste tires. Rules from the Commission are needed to set program procedures, requirements, standards and permit fees. The rule now proposed deals with requirements for permits for: waste tire storage sites; waste tire carriers; modification of solid waste site permits to allow waste tire storage. A rule covering use of the Waste Tire Recycling Fund will be proposed at a later date.

Principal Documents Relied Upon

a. Oregon Revised Statutes, Chapter 459.
b. Oregon Administrative Rules, Chapter 340, Division 60.
c. Report to Minnesota Pollution Control Agency on Scrap Tires in Minnesota, October 1987, prepared by Waste Recovery, Inc.
d. Used Tire Recovery and Disposal in Ohio, March 1987
e. Proceedings of a Workshop on Disposal Techniques with Energy Recovery for Scrapped Vehicle Tires, sponsored by US Dept of Energy et al, November 1987
f. Waste Tire Permitting Rules as Proposed by the Minnesota Waste Management Board, Minn. Rules Parts 9220.0200 to 9220.0835

Attachment VIII
Agenda Item I
4/29/88, EQC Meeting

FISCAL AND ECONOMIC IMPACT STATEMENT:

This action will require the Department to add two full-time equivalent employees to implement the permitting portions of the rule, and monitor, inspect and provide surveillance over permitted and non-permitted waste tire storage sites. It may also cause additional work for the Department's enforcement personnel, and Regional staff. The additional employees are included in the Department's approved budget.

This action will have an economic impact on local government, private businesses and the public.

Permit fees and financial assurance will be required of persons obtaining waste tire storage site permits, and those becoming waste tire carriers. Operators of waste tire storage sites and permitted solid waste sites may incur additional costs in complying with the standards this action establishes for waste tire storage and tire chipping, and/or in removing and properly disposing of waste tires from their site. Waste tire carriers and members of the public may incur additional costs in disposing of waste tires, as they will be required to use only permitted waste tire storage sites (or solid waste disposal sites) where fees may be higher than in the past. Ultimately the public will pay additional costs of proper waste tire disposal. The public should also benefit from not having to pay for the disposal of tires improperly and illegally dumped.

Many of the persons now storing or hauling waste tires are small businesses. Therefore the small business impact could be appreciable. The two-phase permit procedure proposed by the Department will give businesses additional time to phase out their waste tires, allowing them to avoid costs of becoming a permanent waste tire storage site.

LAND USE CONSISTENCY STATEMENT:

The proposed rules appear to affect land use and appear to be consistent with Statewide Planning Goals and Guidelines.

With regard to Goal 6 (Air, Water and Land Resources Quality), the rules provide for the proper storage and disposal of waste tires. They should help eliminate or reduce potential tire fires, a source of air pollution. Storage standards will keep waste tires out of waterways. Waste tires are often stored in conflict with local land use rules. As tire sites are identified and either permitted or cleaned up, land use compliance should improve.

With regard to Goal 11 (Public Facilities and Services), the rules provide that solid waste disposal sites store and dispose of waste tires in conformance with new standards. The standards are intended to improve the public health, safety and welfare.

The rules do not appear to conflict with other Goals.

Public comment on any land use issue involved is welcome and may be submitted in the manner described in the accompanying NOTICE OF PUBLIC HEARING.

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 brought to our attention by local, state or federal authorities.

DMC:dmc
229-5808
5/2/88
SB7433.A

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, April 29, 1988, EQC Meeting

Proposed Adoption of Amendments to Rules of Practice and Procedure, OAR Chapter 340, Division 11.

BACKGROUND

At the December 11, 1987, meeting of the Environmental Quality Commission (EQC), a public hearing was authorized on proposed modifications to the Rules of Practice and Procedure, OAR Chapter 340, Division 11. (See Attachment D, December 11, 1987, Staff Report, for discussion of the rationale for proposed Rule Amendments.)

Prior to the December 11 meeting, the existing contested case rules in OAR Chapter 340, Division 11, had been the subject of some discussion before the Commission. For two recent contested cases, the EQC had elected to adopt the AG Model Rules in lieu of the existing EQC rules. In response to the Commission's request, the Department reviewed the existing rules in Division 11, and prepared the proposed amendments which were authorized for hearing.

The proposed amendments would do the following:

1. Adopt the Attorney General's (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 corresponding provisions of the existing EQC rules.

5. Continue the existing EQC rule which delegates to the Hearings Officer the authority to enter a final order in a contested case, but make this procedure applicable only to contested cases resulting from imposition of civil penalty assessments. (The AG Model Rules which provide for a process where the Hearings officer prepares a proposed order, would be followed in all other cases.)

   The proposed rule amendments also contained new language which would codify the department's understanding of past EQC policy direction relating to the delegation of authority to the Hearings Officer in entering a final order.

6. A section was added to specifically allow non-attorney representation in contested cases as required by 1987 legislation.

7. Existing EQC rules for which there was no counterpart in the AG Model Rules were proposed to be retained as follows:

   Public Informational Hearings
   Notice of Rulemaking
   Service of Written Notice
   Answer Required: Consequences of Failure to Answer
   (with clarifying amendments)
   Subpoenas
   Power of the Director

The rulemaking hearing was scheduled for February 24, 1988, beginning at 2:00 p.m. in the 4th floor conference room at the Executive Building, 811 S. W. 6th Avenue, Portland, Oregon. February 29, 1988 was established as the deadline for submittal of written comments. Notice was given by publication in the February 1, 1988, edition of the Oregon Bulletin (published by the Secretary of State). Notice was also mailed to persons listed on the Department's general rulemaking mailing list and to persons known to be interested in the issue. (See Attachment B for Hearing Notices and Rulemaking Statements.)

No persons appeared to offer oral testimony at the hearing on February 24, 1988. Written comments were received from the following:

a. SIERRA CLUB, OREGON CHAPTER; Carol Lieberman, Chair; February 24, 1988. The Oregon Chapter supported adoption of the rules as proposed, and particularly supported adoption of the Attorney General's Uniform and Model Rules of Procedure.

b. OREGON ENVIRONMENTAL COUNCIL; John Charles, Executive Director, February 29, 1988. The Oregon Environmental Council supported the proposed adoption of the Model Rules.

In addition, a letter was received from the Attorney General's office, dated December 14, 1987, which suggested some wording changes for consideration.

The Presiding Officer's Report including written testimony received is attached. (See Attachment C.)

Subsequent discussions with the Attorney General's staff have resulted in further suggestions for wording changes for greater clarity of the rules.

ALTERNATIVES AND EVALUATION

Following is a discussion of suggested modifications in the rules as proposed in the public notice:

(1) Rule 11-098. New language proposed in the rule amendments included the following sentence: "Contested cases generally arise when a decision of the Director or Department is appealed to the Commission." The Attorney General's office noted that this wording is not technically accurate, and recommends removing it from the rule.

Comment

The Attorney General's Model Rules are written using generic terms such as "agency", "governing body", and "decision maker". To bridge the gap between these generic terms and the specific roles of the "Director", "Department", and "Commission", wording was added in rule 11-098 to distinguish between the general roles of the Director or Department, and the Commission. The sentence in question is part of that language. The Department believes that modification of the sentence to eliminate any technical accuracy is more appropriate than removing it.

The Department would propose to modify rule 11-098 to read as follows (new language is underlined, deleted language is enclosed in brackets and struck through):

340-11-098

Except as specifically provided in OAR 340-11-132, contested cases shall be governed by the Attorney General's Model Rules of Procedure, OAR 137-03-093. In general, a contested case proceeding is initiated ~~[Contested cases generally arise]~~ when a decision of the Director or Department is appealed to the Commission. Therefore, as used in the Model Rules, the terms "agency", "governing body", and "decision maker" generally should be interpreted to mean "Commission". The term "agency" may also be interpreted to be the Department where context requires.

(2) Rule 11-132. The Attorney General's office noted that the wording of the opening recital of this rule is not technically accurate, and suggests replacing the word "appeal" with the word "imposition".

Comment

The Department believes that either word conveys the intent to the ordinary reader of the rule and would therefore propose to modify the wording as suggested by the Attorney General's office to read as follows:

340-11-132

In accordance with the procedures and limitations which follow, the Commission's designated Hearing Officer is authorized to enter a final order in contested cases resulting from ~~[appeal]~~ imposition of civil penalty assessments:

(1) .....

(3) Rule 11-132(2)(a). This particular rule, as proposed, limits the right of appeal of a Hearing Officer's order to a "party" or a "member of the Commission". The Attorney General's office noted that under the rules as proposed, the Department is not included within the definition of a "party" in a contested case. Thus, some modification will be necessary if it is deemed appropriate for the Department to be able to appeal the Hearing Officer's order to the Commission.

Comment

The Department believes it appropriate to provide for appeal of the Hearing Officer's order by a "party', a "member of the Commission", or the "Department". Therefore, the wording of this rule is proposed to be modified as follows:

340-11-132

(1) .....

(2) Commencement of Appeal to the Commission:

(a) The Hearing Officer's Final Order shall be the final order of the Commission unless within 30 days from the date of mailing, or if not mailed then from the date of personal service, any of the parties, ~~[or]~~ a member of the Commission, **or the Department** files with the Commission and serves upon each party **and the Department** a Notice of Appeal. A proof of service thereof shall also be filed, but failure to file a proof of service shall not be a ground for dismissal of the Notice of Appeal.

(b) .....

(4) Rule 11-132(5). This proposed new rule is intended to codify the Department's understanding of past EQC policy direction relating to the delegation of authority to the Hearing Officer in entering a final order. The rule, as proposed for hearing reads as follows:

340-11-132

(5) In exercising the authority to enter a final order pursuant to this rule, the Hearing Officer:

(a) Shall give deference to the Director's determination of penalty amount where facts regarding the violation are not in dispute and no new information has been revealed in the contested case hearing regarding mitigating and aggravating circumstances.

(b) May mitigate a penalty based upon new information in the record regarding mitigating and aggravating circumstances, but shall not

mitigate the penalty below the minimum established in the schedule of Civil Penalties contained in Commission rules.

(c) May elect to prepare proposed findings of fact and a proposed order and refer the matter to the Commission for entry of a final order pursuant to the general procedure for contested cases prescribed under OAR 340-11-098.

The Attorney General's office suggested in their December 14, 1987, letter that the word "deference" may not be sufficiently clear to accomplish the intended purpose, and suggested more forceful wording. Subsequent discussions with the Attorney General's staff resulted in further modifications such that their suggested wording is now as follows:

(5) In exercising the authority to enter a final order pursuant to this rule, the Hearing Officer:

(a) Shall not reduce the amount of civil penalty imposed by the Director unless:

(A) The department fails to establish some or any of the facts regarding the violation; or

(B) New information is introduced at the hearing regarding mitigating and aggravating circumstances not initially considered by the Director. Under no circumstances shall the Hearing Officer reduce or mitigate a civil penalty based on new information submitted at the hearing below the minimum established in the schedule of civil penalties contained in Commission rules.

(b) May elect to prepare proposed findings of fact and a proposed order and refer the matter to the Commission for entry of a final order pursuant to the general procedure for contested cases prescribed under OAR 340-11-098.

Comment

The wording initially proposed in the rules and that suggested by the Attorney General's office are both intended to accomplish the same purpose -- codify the past EQC policy direction relating to the delegation of authority to the Hearing Officer in entering a final order. The language initially proposed in the rules reflected the department's understanding of informal Commission policy direction. The wording suggested by the Attorney General's office is "more specific" and less subject to varied interpretation. Therefore, the department supports its adoption in place of the initially proposed wording.

(5) The department intended to modify the rules to make them gender neutral throughout. At least one reference was overlooked however. It is proposed to correct this by modifying the definition of Director as follows:

340-11-005

(5) "Director" means the Director of the Department or ~~[any of his]~~ **the Director's** authorized delegates.

(6) Rule 34-011-024 This rule proposes to adopt the AG Model Rules for rulemaking by reference. The intent was to adopt all of the model rules related to rulemaking, however, the reference in the rule needs to be corrected to accomplish this. It is proposed to correct this rule as follows:

340-11-024

The rulemaking process shall be governed by the Attorney General's Model Rules, OAR ~~[137-01-017]~~ **137-01-005** through 137-01-060. As used in those rules, ...

(7) During the process of final review of rule amendments, a questions was raised regarding the potential for existing rule OAR 340-11-107 to be in conflict with the Attorney General's Model Rules and the statute. This rule is intended to expedite the hearing process and minimize costs by requiring that issues contested be raised when a contested case hearing is requested. The first concern is that the recent amendments to the model rules requires that a hearing be requested within 21 days after notice, whereas the existing EQC rule provides 20 days. The second concern raised is that the wording of subsection (2)(d) of this rule (which restricts the taking of evidence in a hearing on issues not raised in the notice and answer) could be interpreted to preclude compliance with ORS 183.415(10) which

requires the Hearing Officer to develop a full and fair record. After review, the Attorney General's office recommended clarification of the rule by amending it as follows:

Answer Required: Consequences of Failure to Answer

340-11-107

(1) Unless waived in the notice of opportunity for a hearing, and except as otherwise provided by statute or rule, a party who has been served written notice of opportunity for a hearing shall have twenty <u>one (21)</u> ~~[(20)]~~ days from the date of mailing or personal delivery of the notice in which to file with the Director a written answer and application for hearing.

(2) In the answer, the party shall admit or deny all factual matters and shall affirmatively allege any and all affirmative claims or defenses the party may have and the reasoning in support thereof. Except for good cause shown:

(a) Factual matters not controverted shall be presumed admitted;

(b) Failure to raise a claim or defense shall be presumed to be waiver of such claim or defense;

(c) New matters alleged in the answer shall be presumed to be denied unless admitted in subsequent pleading or stipulation by the Department or Commission; and

(d) <u>Subject to ORS 183.415(10),</u> ~~[E]~~<u>e</u>vidence shall not be taken on any issue not raised in the notice and the answer unless such issue is specifically raised by a subsequent petitioner for party status and is determined to be within the scope of the proceeding by the presiding officer.

(3) In the absence of a timely answer, the Director on behalf of the Commission or Department may issue a default order and judgment, based upon a prima facie case made on the record, for the relief sought in the notice.

The Department concurs with the further amendment recommended by the Attorney General.

(8) When the proposed rules were authorized for hearing, it was noted that the Attorney General was in the process of updating the Uniform and Model Rules. It was noted that if the Commission elects to adopt the Model Rules, a further proceeding would be necessary to adopt later updates of the model rules. However, pursuant to ORS 183.341, adoption of the model rules by reference may be accomplished without complying with the notice and hearing procedures required by ORS 183.335.

On March 3, 1988, the Attorney General completed the process of adopting amendments to the Model Rules (by filing them with the Secretary of State). In addition to minor editorial clarifications, the significant changes to the Model Rules are as follows:

a. OAR 137-01-010 This is a new rule added to specify the preferred form for displaying proposed rule amendments.

b. OAR 137-03-001 This rule describes contested case notice requirements. The amendment adds a requirement that the notice include a statement that if a request for a hearing is not received by the agency within 21 days of service, the right to a hearing is waived.

c. OAR 137-03-005 This rule relates to requests for party status. The amendments generally clarify the procedures and provide that party status petitions should be filed at least 21 days before the hearing rather than the prior requirement of " 14 business" days.

d. OAR 137-03-008 This is a new rule to implement the provisions of new legislation enacted in 1987 which allows a person to be represented in a contested case by either an attorney or an authorized representative.

e. OAR 137-03-010 This rule relates to immediate suspension or refusal to renew a license. The amendments are extensive and clarify the nature of the proceeding, the rights of the licensee, and the opportunity and process for hearing.

f. OAR 137-03-055 This rule relates to Ex Parte Communications. The amendment clarifies that communication with staff or counsel about facts in the record is not considered to be Ex Parte Communication.

These rule amendments appear to be consistent with the proposed modifications of EQC rules. To carry out the intent to adopt the Model Rules, it is appropriate to make sure that the reference to the model rules embraces the latest version. To accomplish this, the following additional amendments are appropriate:

1. Add a specific reference to the rules for the version of the Attorney General's Uniform and Model Rules that is being adopted by reference. To do this, it is proposed to add a new definition in OAR 340-11-005 as follows:

   (7) "Model Rules" or "Uniform Rules" means the Attorney General's Uniform and Model Rules of Procedure, OAR 137-01-005 through 137-04-010 as amended and in effect on April 29, 1988.

2. Amend OAR 340-11-102 to specifically reference the new Model Rule relating to representation in a contested case by an authorized representative as follows:

   340-11-102

   Pursuant to the provisions of Section 3 of Chapter 833, Oregon Laws 1987, **and the Attorney General's Model Rule OAR 137-03-008,** a person may be represented by an attorney or by an authorized representative in a contested case proceeding before the Commission or Department.

In order to better understand the nature of the amendments proposed for adoption by the EQC, and the relationship to the Attorney General's Uniform and Model Rules, as recently amended, a side-by-side comparison has been prepared. This comparison is found in Attachment E to this report.

SUMMATION

1. At the December 11, 1987, EQC Meeting, the Commission authorized a public hearing on proposed amendments to the Rules of Practice and Procedure, OAR Chapter 340, Division 11.

2. Notice of the rulemaking hearing was published in the Oregon Bulletin on February 1, 1988. Notice was also mailed to persons listed on the Department's general mailing list for rulemaking actions and to others known to be interested in the proposed rule amendments.

3. A rulemaking hearing was held on February 24, 1988, at 2:00 p.m. in the 4th floor conference room at the Executive Building, 811 S. W. 6th Ave., Portland, Oregon. No persons appeared to testify at that hearing. Written testimony was received from 2 organizations and the Attorney General's office before the record closed on February 29, 1988.

4. Testimony received has been evaluated. Modifications to the rules taken to hearing have been recommended by the Attorney General's office, and are not recommended to the Commission for consideration.

DIRECTOR'S RECOMMENDATION

Based on the summation, the Director recommends that the Commission adopt amendments to the Rules of Practice and Procedure, OAR Chapter 340, Division 11, as presented in Attachment A.

Lydia D. Taylor for
Fred Hansen

Attachments

A. Proposed Amendments to the Rules of Practice and Procedure, OAR Chapter 340, Division 11.

B. Hearing Notices and Rulemaking Statements

1. Hearing Notice mailed to mailing lists.
2. Rulemaking Statements
3. Hearing Notice for Oregon Bulletin

C. Presiding Officer's Report (including written testimony submitted)

D. December 11, 1987, EQC Staff Report.

E. Side-by-side display of Proposed Amended EQC rules and Attorney General's Uniform and Model Rules (showing recent amendments).

Harold L. Sawyer:h
229-5776
April 12, 1988

ATTACHMENT A

PROPOSED AMENDMENTS

Oregon Administrative Rules
Chapter 340, Division 11

RULES OF PRACTICE AND PROCEDURE

Definitions

340-11-005 **The words and phrases used in this Division have the same meaning given them in ORS 183.310. Additional terms are defined as follows unless context requires otherwise:** ~~[Unless otherwise required by context, as used in this Division:]~~

(1) "Adoption" means the carrying of a motion by the Commission with regard to the subject matter or issues of an intended agency action.

(2) "Agency Notice" means publication in OAR and mailing to those on the list as required by ORS 183.335(6).

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

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

(5) "Director" means the Director of the Department or ~~[any of his]~~ **the Director's** authorized delegates.

(6) "Filing" means receipt in the office of the Director. Such filing is adequate where filing is required of any document with regard to any matter before the Commission, Department or Director, except a claim of personal liability.

~~[(7) "License" has the same meaning as given in ORS 183.310.~~

~~(8) "Order" has the same meaning as given in ORS 183.310.~~

~~(9) "Party" has the same meaning as given in ORS 183.310 and includes the Department in all contested case hearings before the Commission or Department or any of their presiding officers.~~

~~(10) "Person" has the same meaning as given in ORS 183.310.]~~

(7) "Model Rules" or "Uniform Rules" means the Attorney General's Uniform and Model Rules of Procedure, OAR 137-01-005 through 137-04-010 as amended and in effect on April 29, 1988.

~~(11)~~ (8) "Presiding Officer" or "Hearing Officer" means the Commission, its Chairman, the Director, or any individual designated by the Commission or the Director to preside in any contested case, public, or other hearing. Any employee of the Department who actually presided in any such hearing is presumptively designated by the Commission or Director, such presumptive designation to be overcome only by a written statement to the contrary bearing the signature of the Commission Chairman or the Director.

~~[(12) "Rule" has the same meaning as given in ORS 183.310.]~~

Public Informational Hearings

340-11-007

(1) Whenever there is required or permitted a hearing which is neither a contested case hearing nor a rule making hearing as defined in ORS Chapter 183, the Presiding Officer shall follow any applicable procedural law, including case law and rules, and take appropriate procedural steps to accomplish the purpose of the hearing. Interested persons may, on their own motion or that of the Presiding Officer, submit written briefs or oral argument to assist the Presiding Officer in ~~[his]~~ resolution of the procedural matters set forth herein.

(2) Prior to the submission of testimony by members of the general public, the Presiding Officer shall present and offer for the record a summary of the questions the resolution of which, in the Director's preliminary opinion, will determine the matter at issue. ~~[He]~~The Presiding Officer shall also present so many of the facts relevant to the resolution of these questions as ~~[he then possesses]~~ are available and which can practicably be presented in that forum.

(3) Following the public information hearing, or within a reasonable time after receipt of the report of the Presiding Officer, the Director or Commission shall take action upon the matter. Prior to or at the time of such action, the Commission or Director shall address separately each substantial distinct issue raised in the hearings record. This shall be in writing if taken by the Director or shall be noted in the minutes if taken by the Commission in a public forum.

RULEMAKING

Notice of Rulemaking

340-11-010

(1) Notice of intention to adopt, amend, or repeal any rule(s) shall be in compliance with applicable state and federal laws and rules, including ORS Chapter 183 and sections (2) and (3) of this rule.

(2) In addition to the news media on the list established pursuant to ORS 183.335(6), a copy of the notice shall be furnished to such news media as the Director may deem appropriate.

(3) In addition to meeting the requirements of ORS 183.335(1), the notice shall contain the following:

(a) Where practicable and appropriate, a copy of the rule proposed to be adopted;

(b) Where the proposed rule is not set forth verbatim in the notice, a statement of the time, place, and manner in which a copy of the proposed rule may be obtained and a description of the subject and issues involved in sufficient detail to inform a person that his interest may be affected;

(c) Whether the Presiding Officer will be a hearing officer or a member of the Commission;

(d) The manner in which persons not planning to attend the hearing may offer for the record written testimony on the proposed rule.

Rulemaking Process

340-11-024

The rulemaking process shall be governed by the Attorney General's Model Rules, OAR 137-01-005 through 137-01-060. As used in those rules, the terms "agency", "governing body", and "decision maker" generally should be interpreted to mean "Commission". The term "agency" may also be interpreted to be the "Department" where context requires.

~~[Conduct of Rulemaking Hearing~~

~~340-11-025~~

~~(1) The hearing shall be conducted before the Commission, with the Chairman as Presiding Officer, or before any member of the Commission or other Presiding Officer.~~

~~(2) At the commencement of the hearing, any person wishing to be heard shall advise the Presiding Officer of his name and address and affiliation on a provided form for listing witnesses, and such other information as the Presiding Officer may deem appropriate. Additional persons may be heard at the discretion of the Presiding Officer.~~

~~(3) At the opening of the hearing the Presiding Officer shall state, or have stated, the purpose of the hearing.~~

~~(4) The Presiding Officer shall thereupon describe the manner in which persons may present their views at the hearing.~~

~~(5) The Presiding Officer shall order the presentations in such manner as he deems appropriate to the purpose of the hearing.~~

~~(6) The Presiding Officer and any member of the Commission shall have the right to question or examine any witness making a statement at the hearing. The Presiding Officer may, at his discretion, permit other persons to examine witnesses.~~

~~(7) There shall be no rebuttal or additional statements given by any witness except as requested by the Presiding Officer. However, when such additional statement is given, the Presiding Officer may allow an equal opportunity for reply by those whose statements were rebutted.~~

~~(8) The hearing may be continued with recesses as determined by the Presiding Officer until all listed witnesses present and wishing to make a statement have had an opportunity to do so.~~

~~(9) The Presiding Officer shall, where practicable and appropriate, receive all physical and documentary exhibits presented by witnesses. Unless otherwise required by law or rule, the exhibits shall be preserved by the Department for a period of one year, or, at the discretion of the Commission or Presiding Officer, returned to the persons who submitted them.~~

~~(10) The Presiding Officer may, at any time during the hearing, impose reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious, or immaterial matter. Persons with a concern distinct from those of citizens in general, and those speaking for groups, associations, or governmental entities may be accorded preferential time limitations as may be extended also to any witness who, in the judgment of the Presiding Officer, has~~

~~such expertise, experience, or other relationship to the subject matter of the hearing as to render his testimony of special interest to the agency.~~

~~(11) A verbatim oral, written, or mechanical record shall be made of all the hearing proceedings, or, in the alternative, a record in the form of minutes. Question and answer periods or other informalities before or after the hearing may be excluded from the record. The record shall be preserved for three years, unless otherwise required by law or rule.~~

~~**Presiding Officer's Report**~~

~~340-11-030~~

~~(1) Where the hearing has been conducted before other than the full Commission, the Presiding Officer, within a reasonable time after the hearing, shall provide the Commission with a written summary of statements given and exhibits received, and a report of his observations of physical experiments, demonstrations, or exhibits. The Presiding Officer may also make recommendations to the Commission based upon the evidence presented, but the Commission is not bound by such recommendations.~~

~~(2) At any time subsequent to the hearing, the Commission may review the entire record of the hearing and make a decision based upon the record. Thereafter, the Presiding Officer shall be relieved of his duty to provide a report thereon.~~

~~**Action of the Commission**~~

~~340-11-035 Following the rulemaking hearing by the Commission, or after receipt of the report of the Presiding Officer, the Commission may adopt, amend, or repeal rules within the scope of the notice of intended action.]~~

Petition to Promulgate, Amend, or Repeal Rule: Contents of Petition, Filing of Petition

340-11-046

The filing of petitions for rulemaking and action thereon by the Commission shall be in accordance with the Attorney General's Uniform Rule of Procedure set forth in OAR 137-01-070. As used in that rule, the term "agency" generally refers to the Commission but may refer to the Department if context requires.

~~[340-11-047~~

~~(1) Any Person may petition the Commission requesting the adoption (promulgation), amendment, or repeal of a rule. The petition shall be in writing, signed by or on behalf of the petitioner, and shall contain a detailed statement of:~~

~~(a) The rule petitioner requests the Commission to promulgate, amend, or repeal. Where amendment of the existing rule is sought, the rule shall be set forth in the petition in full with matter proposed to be deleted therefrom enclosed in brackets and proposed additions thereto shown by underlining or bold face;~~

~~(b) Ultimate facts in sufficient detail to show the reasons for adoption, amendment, or repeal of the rule;~~

~~(c) All propositions of law to be asserted by petitioner;~~

~~(d) Sufficient facts to show how petitioner will be affected by adoption, amendment, or repeal of the rule;~~

~~(e) The name and address of petitioner and of another persons known by petitioner to have special interest in the rule sought to be adopted, amended, or repealed.~~

~~(2) The petition, either in typewritten or printed form, shall be deemed filed when received in correct form by the Department. The Commission may require amendments to petitions under this section but shall not refuse any reasonably understandable petition for lack of form.~~

~~(3) Upon receipt of the petition:~~

~~(a) The Department shall mail a true copy of the petition together with a copy of the applicable rules of practice to all interested persons named in the petition. Such petition shall be deemed served on the date of mailing to the last known address of the person being served;~~

~~(b) The Department shall advise the petitioner that he has fifteen (15) days in which to submit written views;~~

~~(c) The Department may schedule oral presentation of petitions if the petitioner makes a request therefore and the Commission desires to hear the petitioner orally;~~

~~(d) The Commission shall, within 30 days after the date of submission of the properly drafted petition, either deny the petition or initiate rule making proceedings in~~

~~accordance with applicable procedures for Commission rulemaking.~~

~~(4) In the case of a denial of a petition to adopt, amend, or repeal a rule, the Commission shall issue an order setting forth its reasons in detail for denying the petition. The order shall be mailed to the petitioner and all other persons upon whom a copy of the petition was served.~~

~~(5) Where procedures set forth in this section are found to conflict with those prescribed by the Attorney General, the latter shall govern upon motion of any party other than the Commission or Department.]~~

Temporary Rules

340-11-052

The Commission may adopt temporary rules and file the same, along with supportive findings, pursuant to ORS 183.335(5) and 183.355(2) and the Attorney General's Model Rule OAR 137-01-080.

Periodic Rule Review

340-11-053

Periodic review of agency rules shall be accomplished once every 3 years in accordance with ORS 183.545 and the Attorney General's Model Rule OAR 137-01-085.

Declaratory Rulings: Institution of Proceedings, Consideration of Petition and Disposition of Petition

340-11-061

The declaratory ruling process shall be governed by the Attorney General's Uniform Rules of Procedure, OAR 137-02-010 through 137-02-060. As used in those rules, the terms "agency", "governing body", and "decision maker" generally should be interpreted to mean "Commission". The term "agency" may also be interpreted to be the "Department" where context requires.

~~[340-11-062~~

~~(1) Pursuant to the provisions of ORS 183.410 and the rules prescribed thereunder by the Attorney General, and upon the petition of any person, the Commission may, in its discretion, issue a declaratory ruling with respect to the applicability to any person, property, or state of facts or~~

~~any rule or statute enforceable by the Department or Commission.~~

~~(2) The petition to institute proceedings for a declaratory ruling shall contain:~~

~~(a) A detailed statement of the facts upon which petitioner requests the Commission to issue its declaratory ruling;~~

~~(b) The rule or statute for which petitioner seeks declaratory ruling;~~

~~(c) Sufficient facts to show how petitioner will be affected by the requested declaratory ruling;~~

~~(d) All propositions of law or contentions to be asserted by the petitioner;~~

~~(e) The question presented for decision by the Commission;~~

~~(f) The specific relief requested;~~

~~(g) The name and address of petitioner and of any other person known by the petitioner to have special interest in the requested declaratory ruling.~~

~~(3) The petition shall be typewritten or printed and in the form provided in Appendix 1 to this rule 340-11-062. The Commission may require amendments to petitions under this rule but shall not refuse any reasonably understandable petition for lack of form.~~

~~(4) The petition shall be deemed filed when received by the Department.~~

~~(5) The Department shall, within thirty (30) days after the petition is filed, notify the petitioner of the Commission's decision not to issue a ruling or the Department shall, within the same thirty days, serve all specially interested persons in the petition by mail:~~

~~(a) A copy of the petition together with a copy of the Commission's rules of practice; and~~

~~(b) A notice of the hearing at which the petition will be considered. This notice shall have the contents set forth in section (6) of this rule.~~

~~(6) The notice of hearing at which time the petition will be considered shall set forth:~~

(a) A copy of the petition requesting the declaratory ruling;

(b) The time and place of hearing;

(c) A statement that the Commission will conduct the hearing or a designation of the Presiding Officer who will preside at and conduct the hearing.

(7) The hearing shall be conducted by and shall be under the control of the Presiding Officer. The Presiding Officer may be the Chairman of the Commission, any Commissioner, the Director, or any other person designated by the Commission or its Chairman.

(8) At the hearing, petitioner and any other party shall have the right to present oral argument. The Presiding Officer may impose reasonable time limits on the time allowed for oral argument. Petitioner and other parties may file with the agency briefs in support of their respective positions. The Presiding Officer shall fix the time and order of filing briefs.

(9) In those instances where the hearing was conducted before someone other than the Commission, the Presiding Officer shall prepare an opinion in form and in content as set forth in section (11) of this rule.

(10) The Commission is not bound by the opinion of the Presiding Officer.

(11) The Commission shall issue its declaratory ruling within sixty (60) days of the close of the hearing, or, where briefs are permitted to be filed subsequent to the hearing, within sixty (60) days of the time permitted for the filing of briefs. The ruling shall be in the form of a written opinion and shall set forth:

(a) The facts being alleged by petitioner;

(b) The statute or rule being applied to those facts;

(c) The Commission's conclusions as to the applicability of the statute or rule to those facts;

(d) The Commission's conclusion as to the legal effect or result of applying the statute or rule to those facts;

(e) The reasons relied upon by the agency to support its conclusions.

~~(12) A declaratory ruling issued in accordance with this section is binding between the Commission, the Department, and the petitioner on the state of facts alleged, or found to exist, unless set aside by a court.~~

~~(13) Where procedures set forth in this section are found to conflict with those prescribed by the Attorney General, the latter shall govern upon motion by any party other than the Commission or Department.]~~

CONTESTED CASES

Service of Written Notice

340-11-097

(1) Whenever a statute or rule requires that the Commission or Department serve a written notice or final order upon a party other than for purposes of ORS 183.335 or for the purposes of notice to members of the public in general, the notice or final order shall be personally delivered or sent by registered or certified mail.

(2) The Commission or Department perfects service of a written notice when the notice is posted, addressed to, or personally delivered to:

(a) The party; or

(b) Any person designated by law as competent to receive service of a summons or notice for the party; or

(c) Following appearance of Counsel for the party, the party's counsel.

(3) A party holding a license or permit issued by the Department or Commission or an applicant therefore, shall be conclusively presumed able to be served at the address given in his application, as it may be amended from time to time, until the expiration date of the license or permit.

(4) Service of written notice may be proven by a certificate executed by the person effecting service.

(5) In all cases not specifically covered by this section, a rule, or a statute, a writing to a person if mailed to said person at his last known address, is rebuttably presumed to have reached said person in a timely fashion, notwithstanding lack of certified or registered mailing.

Contested Case Proceedings Generally

340-11-098

Except as specifically provided in OAR 340-11-132, contested cases shall be governed by the Attorney General's Model Rules of Procedure, OAR 137-03-001 through 137-03-093. In general, a contested case proceeding is initiated when a decision of the Director or Department is appealed to the Commission. Therefore, as used in the Model Rules, the terms "agency", "governing body", and "decision maker" generally should be interpreted to mean "Commission". The term "agency" may also be interpreted to be Department where context requires.

~~[Written Notice of Opportunity for a Hearing~~

~~340-11-100~~

~~(1) Except as otherwise provided in ORS 183.430 and ORS 670.285, before the Commission or Department shall by order suspend, revoke, refuse to renew, or refuse to issue a license, or enter a final order in any other contested case as defined in ORS Chapter 183, it shall afford the licensee, the license applicant or other party to the contested case an opportunity for hearing after reasonable written notice.~~

~~(2) Written notice of opportunity for a hearing, in addition to the requirements of ORS 183.415(2), may include:~~

~~(a) A statement that an answer will or will not be required if the party requests a hearing, and, if so, the consequence of failure to answer. A statement of the consequence of failure to answer may be satisfied by serving a copy of rule 340-11-107 upon the party;~~

~~(b) A statement that the party may elect to be represented by legal counsel;~~

~~(c) A statement of the party or parties who, in the contention of the Department or Commission, would have the burden of coming forward with evidence and the burden of proof in the event of a hearing.]~~

Non-Attorney Representation

340-11-102

Pursuant to the provisions of Section 3 of Chapter 833, Oregon Laws 1987, and the Attorney General's Model Rule OAR 137-03-008, a

person may be represented by an attorney or by an authorized representative in a contested case proceeding before the Commission or Department.

Answer Required: Consequences of Failure to Answer

340-11-107

(1) Unless waived in the notice of opportunity for a hearing, and except as otherwise provided by statute or rule, a party who has been served written notice of opportunity for a hearing shall have twenty one (21) ~~[(20)]~~ days from the date of mailing or personal delivery of the notice in which to file with the Director a written answer and application for hearing.

(2) In the answer, the party shall admit or deny all factual matters and shall affirmatively allege any and all affirmative claims or defenses the party may have and the reasoning in support thereof. Except for good cause shown:

(a) Factual matters not controverted shall be presumed admitted;

(b) Failure to raise a claim or defense shall be presumed to be waiver of such claim or defense;

(c) New matters alleged in the answer shall be presumed to be denied unless admitted in subsequent pleading or stipulation by the Department or Commission; and

(d) Subject to ORS 183.415(10), ~~[E]~~evidence shall not be taken on any issue not raised in the notice and the answer unless such issue is specifically raised by a subsequent petitioner for party status and is determined to be within the scope of the proceeding by the presiding officer.

(3) In the absence of a timely answer, the Director on behalf of the Commission or Department may issue a default order and judgment, based upon a prima facie case made on the record, for the relief sought in the notice.

Subpoenas ~~[and Depositions]~~

340-11-116 Subpoenas

(1) Upon a showing of good cause and general relevance any party to a contested case shall be issued subpoenas to compel the

(2) Subpoenas may be issued by:

(a) A hearing officer; or

(b) A member of the Commission; or

(c) An attorney of record of the party requesting the subpoena.

(3) Each subpoena authorized by this section shall be served personally upon the witness by the party or any person over 18 years of age.

(4) Witnesses who are subpoenaed, other than parties or officers or employees of the Department or Commission, shall receive the same fees and mileage as in civil actions in the circuit court.

(5) The party requesting the subpoena shall be responsible for serving the subpoena and tendering the fees and mileage to the witness.

(6) A person present in a hearing room before a hearing officer during the conduct of a contested case hearing may be required, by order of the hearing officer, to testify in the same manner as if he were in attendance before the hearing officer upon a subpoena.

(7) Upon a showing of good cause a hearing officer or the Chairman of the Commission may modify or withdraw a subpoena.

(8) Nothing in this section shall preclude informal arrangements for the production of witnesses or documents, or both.

~~[Conduct of Hearing~~

~~340-11-120~~

~~(1) (a) Contested case hearings before the Commission shall be held under the control of the chairman as Presiding Officer, or any Commission member, or other person designated by the Commission or Director to be Presiding Officer.~~

~~(b) Contested case hearings before the Department shall be held under the control of the Director as Presiding Officer or other person designated by the Director to be Presiding Officer.~~

~~(2) The Presiding Officer may schedule and hear any preliminary matter, including a pre-hearing conference, and shall schedule the hearing on the merits. Reasonable written notice of the date, time, and place of such hearings and conferences shall be given to all parties.~~

~~Except for good cause shown, failure of any party to appear at a duly scheduled pre-hearing conference or the hearing on the merits shall be presumed to be a waiver of right to proceed any further, and, where applicable:~~

~~(a) A withdrawal of the answer;~~

~~(b) An admission of all the facts alleged in the notice of opportunity for a hearing; and~~

~~(c) A consent to the entry of a default order and judgment for the relief sought in the notice of opportunity for a hearing.~~

~~(3) At the discretion of the Presiding Officer, the hearing shall be conducted in the following manner:~~

~~(a) Statement and evidence of the party with the burden of coming forward with evidence in support of his proposed action;~~

~~(b) Statement and evidence of defending party in support of his alleged position;~~

~~(c) Rebuttal evidence, if any;~~

~~(d) Surrebuttal evidence, if any.~~

~~(4) Except for good cause shown, evidence shall not be taken on any issue not raised in the notice and the answer.~~

~~(5) All testimony shall be taken upon oath or affirmation of the witness from whom received. The officer presiding at the hearing shall administer oaths of affirmations to witnesses.~~

~~(6) The following persons shall have the right to question, examine, or cross-examine any witness:~~

~~(a) The Presiding Officer;~~

~~(b) Where the hearing is conducted before the full Commission, any member of the Commission;~~

~~(c) Counsel for the Commission or the Department;~~

(d) Where the Commission or the Department is not represented by counsel, a person designated by the Commission or the Director;

(e) Any party to the contested case or such party's counsel.

(7) The hearing may be continued with recesses as determined by the Presiding Officer.

(8) The Presiding Officer may set reasonable time limits for oral presentation and shall exclude or limit cumulative, repetitious, or immaterial matter.

(9) The Presiding Officer shall, where appropriate and practicable, receive all physical and documentary evidence presented by parties and witnesses. Exhibits shall be marked, and the markings shall identify the person offering the exhibits. The exhibits shall be preserved by the Department as part of the record of the proceeding. Copies of all documents offered in evidence shall be provided to all other parties, if not previously supplied.

(10) A verbatim oral, written, or mechanical record shall be made of all motions, evidentiary objections, rulings, and testimony.

(11) Upon request of the Presiding Officer or upon a party's own motion, a party may submit a pre-hearing brief, or a post-hearing brief, or both.]

[The Record

340-11-121 The Presiding Officer shall certify such part of the record as defined by ORS 183.415(7) as may be necessary for review of final orders and proposed final orders. The Commission or Director may review tape recordings of proceedings in lieu of a prepared transcript.]

[Evidentiary Rules

340-11-125

(1) In applying the standard of admissibility of evidence set forth in ORS 183.450, the Presiding Officer may refuse to admit hearsay evidence inadmissible in the courts of this state where he is satisfied that the declarant is reasonably available to testify and the declarant's reported statement is significant, but would not commonly be found reliable

~~because of its lack of corroboration in the record or its lack of clarity and completeness.~~

~~(2) All offered evidence, not objected to, will be received by the Presiding Officer subject to his power to exclude or limit cumulative, repetitious, irrelevant, or immaterial matter.~~

~~(3) Evidence objected to may be received by the Presiding Officer with rulings on its admissibility or exclusion to be made at the time a final order is issued.]~~

~~[Appeal of Hearing Officer's Final Order]~~

Alternative Procedure for Entry of a Final Order in Contested Cases Resulting from Appeal of Civil Penalty Assessments

340-11-132

In accordance with the procedures and limitations which follow, the Commission's designated Hearing Officer is authorized to enter a final order in contested cases resulting from imposition of civil penalty assessments:

(1) Hearing Officer's Final Order: In a contested case if a majority of the members of the Commission have not heard the case or considered the record, the Hearing Officer shall prepare a written Hearing Officer's Final Order including findings of fact and conclusions of law. The original of the Hearing Officer's Final Order shall be filed with the Commission and copies shall be served upon the parties in accordance with rule 340-11-097 (regarding service of written notice).

(2) Commencement of Appeal to the Commission:

(a) The Hearing Officer's Final Order shall be the final order of the Commission unless within 30 days from the date of mailing, or if not mailed then from the date of personal service, any of the parties, ~~[or]~~ a member of the Commission, or the Department files with the Commission and serves upon each party and the Department a Notice of Appeal. A proof of service thereof shall also be filed, but failure to file a proof of service shall not be a ground for dismissal of the Notice of Appeal.

(b) The timely filing and service of a Notice of Appeal is a jurisdictional requirement for the commencement of an appeal to the Commission and cannot be waived; a Notice of Appeal which is filed or served date shall not be

considered and shall not affect the validity of the Hearing Officer's Final Order which shall remain in full force and effect.

(c) The timely filing and service of a sufficient Notice of Appeal to the Commission shall automatically stay the effect of the Hearing Officer's Final Order.

(3) Contents of Notice of Appeal. A Notice of Appeal shall be in writing and need only state the party's or a Commissioner's intent that the Commission review the Hearing Officer's Final Order.

(4) Procedures on Appeal:

(a) Appellant's Exceptions and Brief -- Within 30 days from the date of service or filing of his Notice of Appeal, whichever is later, the Appellant shall file with the Commission and serve upon each other party written exceptions, brief and proof of service. Such exceptions shall specify those findings and conclusions objected to and reasoning, and shall include proposed alternative findings of fact, conclusions of law, and order with specific references to those portions to the record upon which the party relies. Matters not raised before the Hearing Officer shall not be considered except when necessary to prevent manifest injustice. In any case where opposing parties timely serve and file Notices of Appeal, the first to file shall be considered to be the appellant and the opposing party the cross appellant.

(b) Appellee's Brief -- Each party so served with exceptions and brief shall then have 30 days from the date of service or filing, whichever is later, in which to file with the Commission and serve upon each other party an answering brief and proof of service.

(c) Reply Brief -- Except as provided in subsection (d) of this section, each party served with an answering brief shall have 20 days from the date of service or filing, whichever is later, in which to file with the Commission and serve upon each other party a reply brief and proof of service.

(d) Cross Appeals -- Should any party entitled to file an answering brief so elect, he may also cross appeal to the Commission the Hearing Officer's Final Order by filing with the Commission and serving upon each other party in addition to an answering brief a Notice of Cross Appeal, exceptions (described in subsection (a) of this section), a brief on cross appeal and proof of service, all within the same time allowed for an

answering brief. The appellant-cross appellee shall then have 30 days in which to serve and file his reply brief, cross answering brief and proof of service. There shall be no cross reply brief without leave of the Chairman or the Hearing Officer.

(e) Briefing on Commission Invoked Review -- Where one or more members of the Commission commence an appeal to the Commission pursuant to subsection (2)(a) of this rule, and where no party to the case has timely served and filed a Notice of Appeal, the Chairman shall promptly notify the parties of the issue that the Commission desires the parties to brief and the schedule for filing and serving briefs. The parties shall limit their briefs to those issues. Where one or more members of the Commission have commenced an appeal to the Commission and a party has also timely commenced such a proceeding, briefing shall follow the schedule set forth in subsections (a), (b), (c), (d), and (f) of this section.

(f) Extensions -- The Chairman or a Hearing Officer, upon request, may extend any of the time limits contained in this section. Each extension shall be made in writing and be served upon each party. Any request for an extension may be granted or denied in whole or in part.

(g) Failure to Prosecute -- The Commission may dismiss any appeal or cross appeal if the appellant or cross appellant fails to timely file and serve any exceptions or brief required by these rules.

(h) Oral Argument -- Following the expiration of the time allowed the parties to present exceptions and briefs, the Chairman may at his discretion schedule the appeal for oral argument before the Commission.

(i) Scope of Review -- In an appeal to the Commission of a Hearing Officer's Final Order, the Commission may, substitute its judgment for that of the Hearing Officer in making any particular finding of fact, conclusion of law, or order. As to any finding of fact made by the Hearing Officer the Commission may make an identical finding without any further consideration of the record.

(j) Additional Evidence -- In an appeal to the Commission of a Hearing Officer's Final Order the Commission may take additional evidence. Requests to present additional evidence shall be submitted by motion and shall be supported by a statement specifying the reason for the failure to present it at the hearing before the Hearing

Officer. If the Commission grants the motion, or so decides of its own motion, it may hear the additional evidence itself or remand to a Hearing Officer upon such conditions as it deems just.

(5) In exercising the authority to enter a final order pursuant to this rule, the Hearing Officer:

(a) Shall not reduce the amount of civil penalty imposed by the Director unless:

(A) The department fails to establish some or any of the facts regarding the violation; or

(B) New information is introduced at the hearing regarding mitigating and aggravating circumstances not initially considered by the Director. Under no circumstances shall the Hearing Officer reduce or mitigate a civil penalty based on new information submitted at the hearing below the minimum established in the schedule of civil penalties contained in Commission rules.

(b) May elect to prepare proposed findings of fact and a proposed order and refer the matter to the Commission for entry of a final order pursuant to the general procedure for contested cases prescribed under OAR 340-11-098.

~~[Presiding Officer's Proposed Order in Hearing Before the Department~~

~~340-11-134~~

~~(1) In a contested case before the Department, the Director shall exercise powers and have duties in every respect identical to those of the Commission in contested cases before the Commission.~~

~~(2) Notwithstanding section (1) of this rule, the Commission may, as to any contested case over which it has final administrative jurisdiction, upon motion of its Chairman or a majority of its members, remove to the Commission any contested case before the Department at any time during the proceedings in a manner consistent with ORS Chapter 183.]~~

~~[Final Orders in Contested Cases Notification~~

~~340-11-135~~

~~(1) Final orders in contested cases shall be in writing or stated in the record, and may be accompanied by an opinion.~~

~~(2) Final orders shall include the following:~~

~~(a) Rulings on admissibility of offered evidence if not already in the record;~~

~~(b) Findings of fact, including those matters which are agreed as fact, a concise statement of the underlying facts supporting the findings as to each contested issue of fact and each ultimate fact, required to support the Commission's or the Department's order;~~

~~(c) Conclusions of law;~~

~~(d) The Commission's or the Department's Order.~~

~~(3) The Department shall serve a copy of the final order upon every party or, if applicable, his attorney of record.]~~

Power of the Director

340-11-136

(1) Except as provided by rule 340-12-075, the Director, on behalf of the Commission, may execute any written order which has been consented to in writing by the parties adversely affected thereby.

(2) The Director, on behalf of the Commission, may prepare and execute written orders implementing any action taken by the Commission on any matter.

(3) The Director, on behalf of the Commission, may prepare and execute orders upon default where:

(a) The adversely affected parties have been properly notified of the time and manner in which to request a hearing and have failed to file a proper, timely request for a hearing; or

(b) Having requested a hearing, the adversely affected party has failed to appear at the hearing or at any duly scheduled prehearing conference.

(4) Default orders based upon failure to appear shall issue only upon the making of a prima facie case on the record.

Miscellaneous Provisions

~~[340-11-140-~~

~~OAR-Chapter-340,-rules-340-11-010-to-340-11-140,-as-amended-and adopted-June-25,-1976,-shall-take-effect-upon-prompt-filing-with the-Secretary-of-State.--They-shall-govern-all-further administrative-proceedings-then-pending-before-the-Commission-or Department-except-to-the-extent-that,-in-the-opinion-of-the Presiding-Officer,-their-application-in-a-particular-action-would not-be-feasible-or-would-work-an-injustice,-in-which-event,-the procedure-in-former-rules-designated-by-the-Presiding-Officer shall-apply.]~~

Procedures for Conduct of Contested Case on Order of Environmental Quality Commission Selecting a Land Fill Disposal Site Under Authority of 1985 Oregon Laws, Chapter 679.

340-11-141 Rules/Applicability.

(a) The Environmental Quality Commission hereby adopts the Attorney General's Model Rules numbered OAR 137-03-001 through 137-03-093 and OAR 137-04-010 (Model Rules) for application to any contested case conducted by or for the Commission on its order selecting a landfill disposal site pursuant to 1985 Oregon Laws, chapter 679.

(b) The Model Rules shall only apply to the contested case (or cases) described in subsection 340-11-141(a). The Commission's rules for conduct of contested cases, OAR 340-11-097 through 340-11-140, shall continue to apply in all other cases. These rules shall become effective upon filing of the adopted rule with the Secretary of State.

Procedures for Conduct of Contested Case on Denial Pursuant to OAR 340-48-035 of 401 Certification of the Proposed Salt Caves Hydroelectric Project.

340-11-142 Rules/Applicability.

(1) The Environmental Quality Commission hereby adopts the Attorney General's Model Rules numbered OAR 137-03-001 through 137-03-093 and OAR 137-04-010 (Model Rules) for application to any contested case conducted by or for the Commission on denial pursuant to OAR 340-48-035 of 401 certification of the proposed Salt Caves Hydroelectric Project.

(2) The Model Rules shall only apply to the contested case (or cases) described in subsection 340-11-142(1). The Commission's rules for conduct of contested cases, OAR 340-11-097 through 340-11-140, shall continue to apply in all other cases. These rules shall become effective upon filing of the adopted rule with the Secretary of State.

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

AMENDMENTS TO RULES OF PRACTICE AND PROCEDURE

Hearing Date: February 24, 1988
Comments Due: February 29, 1988

WHO IS AFFECTED:

Persons who wish to participate in rulemaking processes before the Environmental Quality Commission (EQC); persons who are a party to or have an interest in a contested case hearing before the EQC.

WHAT IS PROPOSED:

The EQC is proposing to adopt amendments to Rules of Practice and Procedure (OAR Chapter 340, Division 11). These rules govern administrative procedures before the EQC relative to rulemaking, declaratory rulings, and contested cases.

WHAT ARE THE HIGHLIGHTS:

The Attorney General's Uniform and Model Rules of Procedure will be adopted in lieu of existing EQC procedural rules for rulemaking, declaratory rulings, and contested cases. Several existing EQC rules will be maintained including rules regarding notice in rulemaking and an alternative procedure for entering a final order in contested cases involving appeals of civil penalty assessments.

A new rule is proposed to allow a person to appear in a contested case by an authorized representative pursuant to Chapter 833, Oregon Laws 1987.

HOW TO COMMENT:

Copies of the proposed rule amendments can be obtained from:

Department of Environmental Quality
Attn: Receptionist -- 6th Floor
811 S. W. Sixth Avenue
Portland, Oregon 97204
Telephone: 229-5696
Toll-Free Telephone: 1-800-452-4011

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

11/1/86

FOR FURTHER INFORMATION:

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

Written comments should be sent to the same address before the close of business on February 29, 1988.

Verbal comments may be given during the public hearing scheduled as follows:

2:00 pm
February 24, 1988
4th Floor Conference Room
Executive Building
811 S. W. 6th Avenue
Portland, Oregon 97204

WHAT IS THE NEXT STEP: After the public hearing, the Environmental Quality Commission may adopt rules identical to those proposed, modify the rules or decline to act. The Commission's deliberations will be scheduled as a part of the agenda at a regularly scheduled commission meeting as soon as practicable after the hearing.

ATTACHMENTS: Rulemaking Statements (Need, Fiscal Impact, Land Use Consistency)

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF AMENDING RULES OF PRACTICE AND PROCEDURE: OAR CHAPTER 340, DIVISION 11	))))	RULEMAKING STATEMENTS

Statutory Authority

Authority to adopt and amend rules of practice and procedure (administrative procedures) is contained in ORS Chapter 183 and ORS 468.020.

Need for Rule Amendments

Existing rules of administrative practice and procedure need to be amended to reflect requirements of the Attorney General's Uniform Rules of Procedure, and to conform to legislation passed during the 1987 legislative session. In addition, amendment is appropriate to properly reflect the discretionary policy decisions of the Environmental Quality Commission.

Principal Documents Relied Upon

Oregon Attorney General's Administative Law Manual and Uniform and Model Rules of Procedure under the Administrative Procedures Act; March 1986.

OAR Chapter 340, Division 11;

ORS Chapter 183.

Chapter 833, Oregon Laws 1987.

Fiscal and Economic Impact

Amendment of rules of practice and procedure is not expected to have a significant fiscal or economic affect.

Adoption of the Attorney General's Uniform and Model Rules may have some benefit to persons or small businesses by standardizing procedures used in rulemaking and contested cases. However, since most people do not get involved in the rulemaking process or in a contested case hearing, the economic benefits of using standardized rules of procedure are expected to be very small.

Adoption of a rule to allow a person to appear by authorized representative at contested case hearings before the EQC may create the ability for some persons or small businesses to reduce their costs associated with a contested case hearing.

Land Use Consistency

This proposal affects administrative procedures for rulemaking, declaratory rulings and contested cases only and does not affect land use.

NOTICE OF PROPOSED RULEMAKING HEARING

AGENCY: Department of Environmental Quality

The above named agency gives notice of hearing.

HEARING TO BE HELD:

Date:	**Time:**	**Location:**
February 24, 1988	2:00 p.m.	Executive Building 4th Floor Conference Room 811 S. W. 6th Avenue Portland, Oregon 97204

Hearings Officer: Harold Sawyer

Pursuant to the Statutory Authority of ORS 468.020 and ORS Chapter 183, **the following action is proposed:**

AMEND: OAR Chapter 340, Division 11 -- Rules of Practice and Procedure.

SUMMARY:

The Environmental Quality Commission is proposing to adopt amendments to the Rules of Practice and Procedure which govern administrative procedures before the Commission relative to rulemaking, declaratory rulings, and contested cases. The Attorney General's Uniform and Model Rules of Procedure are proposed to be adopted in lieu of existing EQC procedural rules for rulemaking, declaratory rulings, and contested cases. Several existing EQC rules will be maintained including rules regarding notice in rulemaking and an alternative procedure for entering a final order in contested cases involving appeals of civil penalty assessments. A new rule is proposed to allow a person to appear in a contested case by an authorized representative pursuant to Chapter 833, Oregon Laws 1987.

Interested persons may comment on the proposed rules orally or in writing at the hearing. Written comments received by February 29, 1988 **will also be considered. Written comments should be sent to and copies of the proposed rulemaking may be obtained from:**

AGENCY: Department of Environmental Quality
ADDRESS: 811 S. W. 6th Avenue
Portland, Oregon 97204

ATTN: Receptionist (for copies); or
Harold Sawyer (for questions or comments)
PHONE: 229-5696 or Toll Free 1-800-452-4011

Harold Sawyer — 1/19/88

Signature **Date**

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMORANDUM

DATE: March 2, 1988

TO: Environmental Quality Commission

FROM: Harold L. Sawyer

SUBJECT: Presiding Officer's Report:

February 24, 1988, Hearing on Proposed Modifications to the Rules of Practice and Procedure, OAR Chapter 340, Division 11.

A public hearing on proposed modifications to the Rules of Practice and Procedure (OAR Chapter 340, Division 11) was authorized by the Environmental Quality Commission at the December 11, 1987 Meeting.

The hearing was scheduled for February 24, 1988, beginning at 2:00 p.m. in the 4th floor conference room at the Executive Building, 811 S. W. 6th Ave, Portland, Oregon. February 29, 1988 was established as the deadline for submittal of written comments. Notice was given by publication in the February 1, 1988, edition of the Oregon Bulletin (published by the Secretary of State). Notice was also mailed to persons listed on the Department's general rulemaking mailing list and to persons known to be interested in the issue.

The hearing was convened at 2:00 p.m. on February 24, 1988.

No persons appeared to offer oral testimony. The opportunity for oral comment was ended at 3:00 p.m.

Written comments were received from the following:

a. SIERRA CLUB, OREGON CHAPTER; Carol Lieberman, Chair; February 24, 1988. The Oregon Chapter supported adoption of the rules as proposed, and particularly supported adoption of the Attorney General's Uniform and Model Rules of Procedure.

b. OREGON ENVIRONMENTAL COUNCIL; John Charles, Executive Director, February 29, 1988. The Oregon Environmental Council supported the proposed adoption of the Model Rules.

In addition, a letter was received from Assistant Attorney General Arnold Silver, dated December 14, 1987, which suggested some wording changes for consideration.

Written testimony received is attached.

Respectfully submitted:

Harold L. Sawyer
Presiding Officer

Harold L. Sawyer:h
229-5776

Attachments (3)

HLS

SIERRA CLUB

Oregon Chapter

February 24, 1988

Department of Environmental Quality
811 SW Sixth Avenue
Portland, Oregon 97204

IN THE MATTER OF AMENDING RULES OF PRACTICE
AND PROCEDURE: OAR CHAPTER 340, DIVISION 11

The Oregon Chapter of the Sierra Club supports adoption of amendments to Rules of Practice and Procedure (OAR Chapter 350, Division 11) as proposed.

The Sierra Club is particularly supportive of the adoption of the Attorney General's Uniform and Model Rules of Procedure. We believe that adoption of the Model Rules will bring a desirable consistency to state agency practice. We also believe that the Model Rules are more equitable, particularly in respect to rules governing party status, than the existing more restrictive rules.

We assume that the special procedure sections 340-11-141 and 142 do not limit the application of the Model Rules to "Selection of a Land Fill Disposal Site" or to the Salt Caves 401 Certification contested case.

Thank you for this opportunity to comment.

Sincerely,

Carol Lieberman

Carol Lieberman, Chair
2506 NE Halsey
Portland, OR 97232

OREGON ENVIRONMENTAL COUNCIL

2637 S.W. Water Avenue, Portland, Oregon 97201
Phone: 503/222-1963

February 29, 1988

Mr. James Petersen
Chair, Environmental Quality Commission
811 SW Sixth Avenue
Portland, OR 97204

RE: Rules of Practice and Procedure

Dear Chairman Petersen,

OEC's legal committee has reviewed the EQC proposal to adopt the Attorney General's Uniform and Model Rules of Procedure. We believe that adoption of the Model Rules would be very beneficial for the Commission and we support the proposal.

Sincerely,

John A. Charles
Executive Director

DAVE FROHNMAYER
ATTORNEY GENERAL

WILLIAM F. GARY
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE

PORTLAND OFFICE
500 Pacific Building
520 S.W. Yamhill
Portland, Oregon 97204
Telephone: (503) 229-5725

December 14, 1987

Harold Sawyer
Department of Environmental
Quality
Executive Building
811 S.W. 6th Avenue
Portland, OR 97201

Re: Revision of Practice and Procedure Rules

Dear Harold:

I have reviewed the department's proposed revision of its practice and procedure rules. You have stated that you desire the revision to substantially follow the Attorney General's Uniform and Model Rules of Procedure. I have advised you the Attorney General's Rules are themselves presently being revised. The final product will probably not be adopted until around the first of the year. As a result, you may wish to make future changes in the department rules depending on the revised Attorney General Rules.

I have noted several issues in the attachment that need consideration in the department's proposed revision. I am continuing to examine the revisions and will call you if additional modification is necessary.

Sincerely

Arnold B. Silver
Assistant Attorney General

ABS:aa
Attachment
#128/hsl

A recital is made that "contested cases generally arise when a decision of the director or department is appealed to the commission." This recital is not accurate. Contested cases arise because of statutory definition. ORS 183.310(2). Additionally, the actual contested case usually "arises" before the hearings officer and not because of the appeal to the commission. I would suggest taking the quoted language out of the rule.

11-132 - HEARINGS OFFICER ORDER - CIVIL PENALTY - Page C-16

There are several topics that will need clarification.

(1) The opening recital speaks of the hearings officer's final order resulting from "appeal of civil penalty assessments." The assessment of the initial civil penalty does not prompt an "appeal." The assessment causes a person to request a contested case before the hearings officer. The appeal, if any, is later and to the commission. I would suggest taking out "appeal" and inserting "imposition of a" civil penalty assessment.

(2) Under your revision, the department will no longer be a "party" to a contested case before the hearings officer. Under the rule, only a "party" can appeal a hearings officer's order to the commission. Thus, the department, as a non-party, will be unable to appeal the hearings officer's order. There are at least two ways to handle this issue. (a) Re-define party in 11-005(9), page C-1, to include the department for purposes of an appeal under 11-132, or (b) state the same concept in 11-132.

(3) In new subsection (5), I would suggest the concept be made more forceful, i.e., mandatory. The word "deference" means "respect" or "consideration." A hearings officer could give "respect" or "deference" to the director and still overrule the determination of civil penalty amount. Unless you mean "respect" or "consideration," I would suggest the language be modified. For example, the hearing officer:

> Shall not reduce the amount of civil penalty imposed by the Director unless:
>
> (a) The department fails to establish some or any or the factors considered by the Director in setting the civil penalty amount; or
>
> (b) The respondent introduces new information at the hearing regarding mitigating and aggravating circumstances not initially considered by the Director. Under no circumstances shall the hearings officer reduce or mitigate a civil penalty based on new information submitted at the hearing below the minimum established in the schedule of civil penalties contained in commission rules. (Combination of (5)(a), (b).)

#128/aa/hs2

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 E, December 11, 1987, EQC Meeting

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

Problem Statement

The Rules of Practice and Procedure in OAR Chapter 340, Division 11, generally address the following topics:

- -- Public Informational Hearings
- -- Rulemaking
- -- Petition to Promulgate, Amend, or Repeal a Rule
- -- Declaratory Rulings
- -- Contested Cases

The present rules were initially adopted in March 1974. Amendments were adopted in September 1974, June 1976, August 1976, and June 1979. In 1987, the Commission has elected in two instances to adopt the Attorney General's Model Rules for Contested Cases in lieu of the existing EQC Rules of Practice and Procedure.

The existing EQC Rules of Practice and Procedure need to be reviewed and revised as appropriate based on the following actions or concerns:

1. The 1987 Legislature amended the Administrative Procedures Act with respect to fiscal impact statements in rulemaking and representation by counsel in contested case proceedings (Chapters 833 and 861, Oregon Laws 1987).

2. The Attorney General's "Uniform and Model Rules of Procedure under the Administrative Procedures Act"

DEQ-46

adopted in March 1986 designated certain rules to be "uniform" rules which cannot be varied by agency decision. These include rules regarding petitions to amend rules and petitions for declaratory rulings. Agencies with their own rules of procedure on petitions to amend rules and on declaratory ruling processes were advised to repeal those rules. To date, this has not been done.

3. The EQC has adopted the Attorney General's Model Rules for Contested Cases to be applicable in two specific instances in part because the existing EQC contested case rules do not adequately address issues regarding petitions for party status and are somewhat less flexible than the model rules.

4. The Assistant Attorney General representing the Department has identified significant concerns regarding the existing EQC contested case rules. The rules define the Department to be a party in a contested case proceeding before the Commission or it's Hearings Officer. This establishes an artificial (or fictional) distinction between the Commission and the Department that is not contemplated by statute or the Attorney General's Model Rules. This makes it extremely difficult for the Attorney General's office to provide the statutorily required representation of both the Department and the Commission in contested case matters without being in violation of professional ethical standards.

Following is a discussion of the requirements for adoption of procedural rules, background on the existing EQC Rules of Practice and Procedure, comparison of the existing EQC rules and the Attorney General's Uniform and Model Rules, discussion of significant issues, and finally a proposal for modification of the EQC Rules of Practice and Procedure to address current requirements and concerns.

Requirements for Procedural Rules

The Administrative Procedures Act (APA) establishes basic requirements for agencies to follow when exercising delegated legislative and adjudicative powers (commonly referred to as "administrative" responsibilities). Rules of Procedure governing these administrative actions are intended to inhibit governmental arbitrariness, assure advance information to affected individuals, protect individual interests, and assure timely action.

The Attorney General is required by the APA to adopt "uniform rules" of procedure related to agency declaratory rulings and to rulemaking petitions filed by interested persons. The Attorney General is further required to adopt "model rules" of procedure with respect to rulemaking and contested cases.

Each agency is then required to adopt specific rules of procedure as follows:

a. Agencies must use the Attorney General's Uniform Rules for Declaratory Rulings and Petitions for Rulemaking. Agency rules should not conflict with or appear to preempt the Attorney General's uniform rules.

b. Agencies must adopt by rule a specific process for notice in rulemaking proceedings. The agency's rule must assure a reasonable opportunity for interested persons to be notified of the agency's intention to adopt, amend, or repeal rules. Each agency must tailor its notice rule to identify its own particular constituencies. The Assistant Attorney General assigned to an agency must approve the agency's rules pertaining to notice requirements. All rulemaking procedures of the APA must be followed when adopting the required notice rule.

c. Agencies must adopt rules of procedure for use in Rulemaking and in Contested Cases. Agencies are strongly encouraged to adopt the Model Rules prepared by the Attorney General. However, since the model rules may not address specific requirements of individual agency enabling legislation, agencies may adopt modifications of the model rules or may adopt alternative rules of procedure for rulemaking and contested cases. An agency may adopt all or part of the model rules by reference without compliance with the notice requirements of the APA. Any amendment of the model rules by an agency requires compliance with all rulemaking procedures.

Background on Existing EQC Rules of Practice and Procedure

In March 1974 (Temporary) and May 1974 (Permanent), the EQC rules of Practice and Procedure were replaced with a totally new set of rules. The agenda item before the EQC at that time does not include any rationale for the specific provisions of the new rules. No testimony was received regarding the proposed rules.

Amendments were subsequently adopted in September 1974, June 1976, August 1976, and June 1979. Amendments proposed in 1974 included no explanation of the rationale for changes. Staff reports for the 1976 and 1979 amendments include a discussion of the rationale for proposed changes.

In 1974 and 1976, there was significant testimony offered by Environmental Organizations regarding proposed rule amendments. In general, they sought to maintain and enhance access by citizens through the informational hearings process and through the rulemaking and declaratory ruling process. In 1979, the only testimony offered was by the Attorney General's office.

Attachment A provides a more detailed background chronology of the current procedural rules.

Comparison of Existing EQC Rules and the Attorney General's Uniform and Model Rules

Attachment B presents a side-by-side comparison of the existing EQC Rules of Practice and Procedure, and the Attorney General's Uniform and Model Rules. Explanatory notes are included where appropriate.

Following is a brief summary of the major similarities and differences in the two sets of rules:

EQC Procedure Rules	AG Uniform & Model Rules
Definitions	
Rule 11-005 defines 12 terms. Definitions for "license", "order", "person", and "rule" refer to statutory definitions in ORS 183.310. The definition for "party" refers to ORS 183.310 but goes on to add the department to the definition. Definitions for "adoption", "agency notice", "Commission", "Department", "Director", "filing", and "presiding officer" are included.	Rule 01-005 makes reference to the statutory definitions in ORS 183.310. Statutorily defined terms include "agency", "contested case", "economic effect", "license", "order", "party", "person", "rule", and "small business".

EQC Procedure Rules	AG Uniform & Model Rules
Public Informational Hearings	
Rule 11-007 establishes general procedures for hearings that are neither a rulemaking hearing nor a contested case hearing.	(No comparable provision)
Rulemaking	
Rules 11-010, 11-025, 11-030, and 11-035 address the following topics: --Notice of Rulemaking --Conduct of Rulemaking Hearing --Presiding Officer's Report --Action of the Commission Although worded differently, the content of these rules is not significantly different from the comparable provisions of the AG Model Rules.	Rules 01-017, 01-030, 01-040, 01-050, and 01-060 address the following topics: --Limitation of Economic Effect on Small Businesses --Conduct of Hearing --Presiding Officer's Report --Action of Agency --Notice of Agency Action; Certification to Secretary of State EQC rules to not address two of these topics: economic effect on small business, and certification to the Secretary of State. The model rules do not address "notice of rulemaking" because each agency is required to adopt rules to address this issue.

EQC Procedure Rules	AG Uniform & Model Rules
Petition to Promulgate, Amend, or Repeal Rule; Contents of Petition, Filing of Petition	
Rule 11-047 is generally similar in content to the AG Uniform Rule but is worded differently. It requires the Department to mail a copy of the petition to interested persons named in the petition. If further requires that an order be entered and served upon the petitioner if a petition is denied. A provision is included to default to the AG Model Rules if a conflict occurs.	Rule 01-070 establishes the requirements for content of a petition. It provides that the agency may provide a copy of the petition to all persons named in the petition. It requires that action be taken on a petition within 30 days of receipt. This 30 day time limit is established in statute (ORS 183.390).
Temporary Rulemaking	
Rule 11-052 refers to procedures established in statute [ORS 183.335(5) and 183.355(2)].	Rule 01-080 establishes requirements for notice relative to adoption of a temporary rule when no notice was given prior to adoption.
Periodic Rule Review	
(No provision addressing this topic)	Rule 01-085 defines minimum process for the general rule review required by statute to be undertaken every three years.

EQC Procedure Rules	AG Uniform & Model Rules
Declaratory Rulings	
Rule 11-062 establishes process for acting upon petitions for declaratory rulings. The process is generally consistent with the AG Uniform Rules, but is worded differently and contains a tighter time table. The time schedule established in the rule allows: --30 days to decide whether or not to issue a ruling. --60 days to issue a decision following completion of the proceeding (hearing and briefs). A provision states that the AG Model Rules will prevail in the event of a conflict with EQC rules.	Coverage of this topic is divided into 6 logical rules: 02-001, 02-020, 02-030, 02-040, 02-050, and 02-060. Rule establishes time limits for acting on a petition: --60 days to decide whether or not to issue a ruling; --60 days to issue a decision following completion of the proceeding (hearing and briefs).
CONTESTED CASES	
Notice	
Rule 11-097 establishes a process for service of written notice or a final order upon a party. Rule 11-100 establishes additional requirements for content of a notice.	Rule 03-001 refers to statute (ORS 183.415(2)) for notice requirements. Rule 03-002 defines rights of parties in contested cases. These rights must, in part, be communicated in a notice.

EQC Procedure Rules	AG Uniform & Model Rules
Answer Required	
Rule 11-107 generally requires a party served with a notice of the opportunity to request a contested case hearing to file an answer and hearing request within 20 days. The rule further describes the required content of the answer, and the result of failure to file.	(No similar provision)
Request by Person to Participate as a Party or Limited Party	
(No provision covering this topic)	Rule 03-005 establishes a procedure and standards for acting upon petitions for party status.
Request by Agency to Participate as a Party or an Interested Agency	
(No provision covering this topic)	Rule 03-007 establishes a procedure for acting upon an agency request.
Immediate Suspension or Refusal to Renew a License	
(This topic is covered in Rule 11-100 on notice of opportunity for a hearing.)	Rule 03-010 establishes procedures for immediate suspension or refusal to renew a license, including notice and opportunity for hearing.
Subpoenas and Depositions	
Rule 11-116 establishes procedures and responsibilities for subpoenas and witness fees.	(No similar provision)

EQC Procedure Rules	AG Uniform & Model Rules
Conduct of Hearing	
Rules 11-120 and 11-121 establish procedures for conduct of a contested case hearing. These procedures are generally more detailed and less flexible than the procedures established in the AG Model Rules.	Rule 03-040 establishes procedures for conduct of a contested case hearing.
Evidentiary Rules	
Rule 11-125 establishes procedures for determining the admissibility of evidence.	Rule 03-050 establishes procedures for determining the admissibility of evidence. This rule goes further than the EQC rule to clarify procedures for submitting affidavits, certificates, or other documents as evidence and requesting opportunity to cross-examine the preparers or custodians of such evidence.
Ex Parte Communications	
(No provision covering this topic)	Rule 03-055 defines ex parte communication and establishes procedures for disclosure, response, and inclusion in the record of the contested case.

EQC Procedure Rules	AG Uniform & Model Rules
Proposed Orders in Contested Cases, Filing of Exceptions, Argument, and Adoption of Order	
(No provision covering this topic; EQC rules have the Hearings Officer enter a final order appealable to the Commission)	Rule 03-060 establishes the process to follow when a majority of the decision makers are not present at the contested case hearing. A proposed order is prepared by the Hearings Officer and served upon the parties, parties may file exceptions, and an opportunity is provided for argument to the decision makers before a final order is entered.
Hearing Officer's Final Order; Appeal to the Commission	
Rule 11-132 establishes a process for the Hearing Officer to enter a Final Order, and serve copies upon the parties. The Hearing Officer's Final Order is stayed if the Final Order is appealed to the EQC within 30 days. The rule further sets forth a very detailed procedure for the appeal to the EQC.	(No similar provisions)
Presiding Officer's Proposed Order in Hearing Before the Department	
Rule 11-134 establishes a process for a contested case hearing when conducted before the Department rather than the Commission.	(No similar provision)

EQC Procedure Rules	AG Uniform & Model Rules
Final Orders	
Rule 11-135 describes the content of a final order as well as the requirement to serve the final order upon all parties.	Rule 03-070 describes the content of a final order. It differs from the EQC rule by requiring the order to include a citation of the statutes under which the order may be appealed.
Default Orders	
(No provision covering this topic)	Rule 03-075 establishes procedures for entering a default order.
Reconsideration and Rehearing	
(No provision covering this topic)	Rule 03-080 establishes procedures for filing and acting upon petitions for reconsideration and rehearing of a final order.
Request for Stay	
(No provision covering this topic)	Rules 03-090, 30-091, 03-092, and 03-093 establish procedures for filing and acting upon a request for stay of a final order.
Power of the Director	
Rule 11-136 authorizes the Director to execute written orders on behalf of the EQC.	(No similar Provision)
Miscellaneous Provisions	
Rule 11-140 provides for implementation of rule amendments adopted in 1976.	(No similar provision)

EQC Procedure Rules	AG Uniform & Model Rules
(No similar provision)	Rule 04-010 provides that any person may be expelled from an agency proceeding for disruptive conduct.
Rules 11-141 and 11-142 enact the AG Model Rules in lieu of the EQC rules for specifically named contested case proceedings.	(No similar provision)

Discussion of Significant Issues

A number of issues are raised by the preceding discussion on background on the existing EQC rules and the comparison with the AG Model Rules. These issues are identified and discussed in the following sections.

STYLE

The Department has historically drafted rules so that the statutory requirements are repeated and interpreted within the rule. This style has the benefit of giving the reader a complete picture of the requirements in a single document. The disadvantage of this style is that rules are longer, and there is a risk of misinterpretation when the statutory requirements are summarized or paraphrased.

The Attorney General's Uniform and Model Rules were drafted using a style which avoids repeating the statute in the rules. This requires the reader to simultaneously read the Administrative Procedures Act and the rules in order to fully understand the requirements.

As rules are modified, a conscious decision should be made on the style to be pursued. The Department has reprinted and distributed the rules as published by the Secretary of State. If it were concluded that rules should reference appropriate statutes rather than restating those statutes, it would be possible to print the rules in a format that reproduces the quoted statute as a note or footnote so that a complete picture of the requirements can be obtained from the distributed rule copy.

It is desirable to minimize the length of the rules and the potential for incorrect paraphrasing of statute into the rules. However, it is also important to take steps to assure that the

public understands the rules. Therefore, it is suggested that statutory requirements be referenced rather than quoted or paraphrased except in special situations. It is further suggested that the Department print it's rules with key statutory references attached as footnotes where appropriate.

PETITIONS FOR RULEMAKING AND DECLARATORY RULINGS.

Existing EQC rules on petitions for rulemaking and petitions for declaratory rulings differ from the Attorney General's Uniform Rules of Procedure. The EQC rules are generally similar in content to the AG Uniform Rules, but are slightly more stringent in the timetable for response on a declaratory ruling petition, and somewhat less flexible in the process for rulemaking petitions.

The Attorney General advises that individual agency rules on these topics are not allowed by law and should be repealed to avoid confusion.

The Department recommended repealing these sections in favor of the AG Model Rules in 1976. Environmental organizations objected because the AG Model Rules were not actually adopted as rules and thus were not enforceable unless specifically codified into the agency rules. At that time, the issue was resolved by adding the provision to state that the AG Model Rules would prevail upon a party's request if a conflict occurred.

At present, the AG Uniform Rules are clearly adopted as rule and are enforceable for all agencies. Therefore, the apparent reason for continuation of separate EQC rules on these topics appears to no longer exist.

It appears appropriate to repeal the existing EQC rules on these topics and clarify the intent to use the Attorney General's prescribed Uniform Rules of Procedure.

PROCEDURAL RULES FOR RULEMAKING AND CONTESTED CASES -- AG MODEL RULES OR SPECIAL EQC RULES

In a very general sense, many of the procedures in the AG Model Rules and the existing EQC rules are similar. The most significant differences are:

** The AG Model Rules for rulemaking contain sections on "Economic Impact on Small Businesses", "Filing with the

Secretary of State", and "Periodic Rule Review" for which there is not counter part in existing EQC rules.

** The EQC contested case rules contain sections on "Answer Required", "Subpoenas", "Hearing Officer's Final Order", and "Powers of the Director" for which there is no counter part in the AG Model Rules.

** The AG Model Rules for contested cases contain sections on "Party Status", "Ex Parte Communications", "Presiding Officer's Proposed Order", "Default Order", "Reconsideration or Rehearing" and "Request for Stay" for which there is no counter part in the EQC rules.

The primary issue is whether the EQC should follow the AG Model Rules where such rules exist, or whether distinctly separate rules should be maintained.

Use of the AG Model Rules to the maximum extent practicable seems desirable to minimize confusion and potential litigation that could grow out of different rules. Use of the AG Model Rules would also assure that topics not covered in current EQC rules would be addressed (party status, ex parte communications, default orders, reconsideration and rehearing, request for stay). It is recognized that it may be appropriate or necessary to supplement the rules is special cases to address issues unique to DEQ.

CONTESTED CASE PROCEDURAL ISSUES

General Procedures not Covered in AG Model Rules

Existing EQC rules have provisions under the following headings that do not have a counterpart in the AG Model Rules:

Service of Written Notice
Answer Required: Consequences of Failure to Answer
Subpoenas
Power of the Director

These section do not appear to conflict with the AG Model Rules but instead clarify issues not otherwise addressed. The "Answer Required" rule is intended to speed the contested case process and reduce the cost to the Department by narrowing the scope of the contested case hearing to issues specifically raised in the hearing notice and the answer by the person requesting the contested case hearing. It is proposed to amend the rule, however, to clarify that the presiding officer may expand the

scope of a contested case hearing beyond issues raised in the notice and answer if such issues are raised in a subsequent petition for party status and deemed appropriate issues to be addressed in the proceeding.

It seems reasonable to continue these sections with clarifying amendments.

Contested Cases before the Department

The EQC rules were amended in 1974 to distinguish between contested cases before the Department and the Commission. In practice, contested cases arise when actions of the Director are appealed to the Commission. EQC rules governing civil penalties, permit denial, 401 certification denial, etc. provide for this process.

The AG Model Rules use the term "agency". A contested case arises from the actions of an agency and the contested case is before the agency. ORS 183.310 provides that "Agency" means any state board, commission, department, or division thereof, or officer authorized by law to make rules or issue orders, except those in the legislative or judicial branch. Thus, the "agency" in the model rules could be either the Commission or the Department, depending on context and other statutory authorities and requirements.

If the AG Model Rules are adopted, there does not appear to be a need to distinguish in the rules between contested cases before the Commission and the Department.

Final Order in Contested Cases

If the EQC were using the AG Model Rules for contested cases, and they were not hearing the contested case themselves, they would designate a presiding officer (hearing officer) to conduct the hearing, prepare findings and a proposed order (decision) and serve it upon the parties. The parties would then have an opportunity to file exceptions to the proposed order. The Commission then has an opportunity to review the proposed order, the exceptions, and hear arguments before it makes a final decision which is included in a final order.

By rule amendment adopted in 1979, existing EQC rules establish a process whereby the Hearing Officer enters a final order. This final order can be appealed to the Commission by one of the

parties. The Commission is not involved in the decision unless the Hearing Officer's final order is appealed. This is a significant delegation of authority from the Commission to the Hearing Officer. Under this process, and the definition of "party" adopted in 1974, the Department is considered to be a "party" and may appeal the Hearing Officer's final order to the Commission.

Legal Counsel has expressed concern regarding the existing definition of "party" because there is not a fundamental distinction in statute between the Department and the Commission that would allow the Department to be a "party" in a proceeding before the Commission. Counsel argues that in a contested case proceeding, the Department functions in a manner similar to the parties in the case, but is distinguished from them by being part of the decision making "agency". Counsel suggests the current definition of "party" be deleted in favor of the definition in the Administrative Procedures Act.

The process for entering a final order was in large part a result of experience with contested cases growing out of civil penalty assessments. The procedure removed a significant number of cases from the Commission agenda because the Hearing Officer's decision was accepted.

It is noteworthy that the procedure for the Hearing Officer entering a final order has not been followed in a number of contested cases that do not involve civil penalty assessments. In these cases, the EQC has either adopted the AG Model Rules on a case by case basis, or alternative procedures have been established by agreement with the party requesting the contested case hearing.

It seems appropriate and in the public interest for the Commission to make the final determinations and enter the final order in cases where significant program or policy issues are involved. This is often the case in contested cases growing out of denial of permits or approvals.

It also seems appropriate to continue the current process for contested cases growing out of civil penalty assessments. The Commission has previously given informal guidance to the Hearing Officer regarding mitigation of penalties. It may be appropriate to add a section to the rule to reflect Commission guidance on the limits of the authority of the Hearing Officer. Potential rule language to accomplish this is included in Attachment C on pages C-18 (bottom) and C-19 (top).

CHANGES NECESSITATED BY 1987 LEGISLATION

Legislation enacted in 1987 specifically provides that a person may be represented in a contested case before the Commission or Department by an attorney or an authorized representative. Specific limitations are included in the statute. However, the EQC must first adopt a rule allowing a person to appear by an authorized representative. Provisions regarding fiscal impact statements in rulemaking were also modified.

The department has not identified any changes to existing rules that need to be made to comply with these new statutory requirements regarding fiscal impact statements. Addition of a rule to authorize a person to appear in a contested case hearing by an authorized representative is proposed.

CHANGES IN THE ATTORNEY GENERAL'S UNIFORM AND MODEL RULES

The Attorney General is currently in the process of updating the Uniform and Model Rules to reflect 1987 legislation. Rule amendments may be adopted within the next 60 to 90 days. If the Commission elects to adopt the Model Rules, a further proceeding would be necessary to adopt later updates of the model rules. However, pursuant to ORS 183.341, adoption of the model rules by reference may be accomplished without complying with the notice and hearing procedures required by ORS 183.335.

Alternatives and Evaluation

Based on the preceding discussion, it is apparent that some revision of the existing EQC Rules of Practice and Procedure is necessary to be consistent with statutory requirements of the Administrative Procedures Act.

There appear to be two basic alternatives as follows:

1. Adopt the Attorney General's Uniform and Model Rules of Procedure and supplement those rules as required by law or as necessary and desirable to meet unique agency concerns.

2. Adopt the Attorney General's Uniform Rules of Procedure with respect to Petitions for Rulemaking and Declaratory Rulings, and continue to maintain separate EQC procedural rules for rulemaking and contested cases, with amendments as may be necessary.

For reasons cited in the preceding discussion, the Department believes there are advantages to the first alternative. Attachment C contains proposed amendments to the existing EQC rules to adopt the Attorney General's Uniform and Model Rules, repeal the appropriate sections of existing EQC rules, and make conforming amendments to the existing rules that are retained. If amendments are made to the Model Rules prior to final action by the EQC on rule amendments, the Department would recommend that the latest version of the Model Rules be adopted.

Summation

1. Existing EQC Rules of Practice and Procedure contain provisions that the Attorney General advises should be repealed because agencies are required to follow the Attorney General's Uniform Rules of Procedure rather than adopt their own rules.

2. The EQC has recently substituted the AG Model rules for contested cases in two specific cases because the existing EQC rules lack provisions dealing with party status and are less flexible than the Model Rules.

3. The Department has prepared a comparison of the existing EQC rules and the Attorney General's Uniform and Model Rules to highlight the differences between these rules.

4. The Department believes that the public interest will be best served by amending the existing EQC Rules of Practice and Procedure to incorporate the Attorney General's Uniform and Model Rules, repeal appropriate existing EQC rule provisions, and making conforming amendment to the existing rules that are maintained.

Director's Recommendation

Based on the Summation, the Director recommends that the Commission authorize a hearing on proposed amendments to the Rules of Practice and Procedure, OAR Chapter 340, Division 11, as set forth in Attachment C.

Fred Hansen

Attachments:

Attachment A	Rule Adoption Events Chronology	(Omitted)
Attachment B	Rule Comparison (side by side)	(Omitted)
Attachment C	Proposed Amendments	
Attachment D	Rulemaking Statements	(Omitted)
Attachment E	Draft Public Notice	(Omitted)

Harold Sawyer:h
229-5776
November 23, 1987

PROPOSED AMENDMENTS

Oregon Administrative Rules
Chapter 340, Division 11

RULES OF PRACTICE AND PROCEDURE

Definitions

340-11-005 The words and phrases used in this Division have the same meaning given them in ORS 183.310. Additional terms are defined as follows unless context requires otherwise: ~~[Unless otherwise required by context, as used in this Division:]~~

(1) "Adoption" means the carrying of a motion by the Commission with regard to the subject matter or issues of an intended agency action.

(2) "Agency Notice" means publication in OAR and mailing to those on the list as required by ORS 183.335(6).

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

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

(5) "Director" means the Director of the Department or any of his authorized delegates.

(6) "Filing" means receipt in the office of the Director. Such filing is adequate where filing is required of any document with regard to any matter before the Commission, Department or Director, except a claim of personal liability.

~~[(7) "License" has the same meaning as given in ORS 183.310.~~

~~(8) "Order" has the same meaning as given in ORS 183.310.~~

~~(9) "Party" has the same meaning as given in ORS 183.310 and includes the Department in all contested case hearings before the Commission or Department or any of their presiding officers.~~

~~(10) "Person" has the same meaning as given in ORS 183.310.~~

~~(11)]~~(7) "Presiding Officer" or "Hearing Officer" means the Commission, its Chairman, the Director, or any individual designated by the Commission or the Director to preside in any contested case, public, or other hearing. Any employee of the Department who actually presided in any such hearing

is presumptively designated by the Commission or Director, such presumptive designation to be overcome only by a written statement to the contrary bearing the signature of the Commission Chairman or the Director.

~~[(12) "Rule" has the same meaning as given in ORS 183.310.]~~

Public Informational Hearings

340-11-007

(1) Whenever there is required or permitted a hearing which is neither a contested case hearing nor a rule making hearing as defined in ORS Chapter 183, the Presiding Officer shall follow any applicable procedural law, including case law and rules, and take appropriate procedural steps to accomplish the purpose of the hearing. Interested persons may, on their own motion or that of the Presiding Officer, submit written briefs or oral argument to assist the Presiding Officer in ~~[this]~~ resolution of the procedural matters set forth herein.

(2) Prior to the submission of testimony by members of the general public, the Presiding Officer shall present and offer for the record a summary of the questions the resolution of which, in the Director's preliminary opinion, will determine the matter at issue. ~~[He]~~The Presiding Officer shall also present so many of the facts relevant to the resolution of these questions as ~~[he then possesses]~~ are available and which can practicably be presented in that forum.

(3) Following the public information hearing, or within a reasonable time after receipt of the report of the Presiding Officer, the Director or Commission shall take action upon the matter. Prior to or at the time of such action, the Commission or Director shall address separately each substantial distinct issue raised in the hearings record. This shall be in writing if taken by the Director or shall be noted in the minutes if taken by the Commission in a public forum.

Rulemaking

Notice of Rulemaking

340-11-010

(1) Notice of intention to adopt, amend, or repeal any rule(s) shall be in compliance with applicable state and federal laws

and rules, including ORS Chapter 183 and sections (2) and (3) of this rule.

(2) In addition to the news media on the list established pursuant to ORS 183.335(6), a copy of the notice shall be furnished to such news media as the Director may deem appropriate.

(3) In addition to meeting the requirements of ORS 183.335(1), the notice shall contain the following:

(a) Where practicable and appropriate, a copy of the rule proposed to be adopted;

(b) Where the proposed rule is not set forth verbatim in the notice, a statement of the time, place, and manner in which a copy of the proposed rule may be obtained and a description of the subject and issues involved in sufficient detail to inform a person that his interest may be affected;

(c) Whether the Presiding Officer will be a hearing officer or a member of the Commission;

(d) The manner in which persons not planning to attend the hearing may offer for the record written testimony on the proposed rule.

Rulemaking Process

340-11-024

The rulemaking process shall be governed by the Attorney General's Model Rules, OAR 137-01-017 through 137-01-060. As used in those rules, the terms "agency", "governing body", and "decision maker" generally should be interpreted to mean "Commission". The term "agency" may also be interpreted to be the "Department" where context requires.

~~[Conduct of Rulemaking Hearing~~

~~340-11-025~~

~~(1) The hearing shall be conducted before the Commission, with the Chairman as Presiding Officer, or before any member of the Commission or other Presiding Officer.~~

~~(2) At the commencement of the hearing, any person wishing to be heard shall advise the Presiding Officer of his name and address and affiliation on a provided form for listing~~

witnesses, and such other information as the Presiding Officer may deem appropriate. Additional persons may be heard at the discretion of the Presiding Officer.

(3) At the opening of the hearing the Presiding Officer shall state, or have stated, the purpose of the hearing.

(4) The Presiding Officer shall thereupon describe the manner in which persons may present their views at the hearing.

(5) The Presiding Officer shall order the presentations in such manner as he deems appropriate to the purpose of the hearing.

(6) The Presiding Officer and any member of the Commission shall have the right to question or examine any witness making a statement at the hearing. The Presiding Officer may, at his discretion, permit other persons to examine witnesses.

(7) There shall be no rebuttal or additional statements given by any witness except as requested by the Presiding Officer. However, when such additional statement is given, the Presiding Officer may allow an equal opportunity for reply by those whose statements were rebutted.

(8) The hearing may be continued with recesses as determined by the Presiding Officer until all listed witnesses present and wishing to make a statement have had an opportunity to do so.

(9) The Presiding Officer shall, where practicable and appropriate, receive all physical and documentary exhibits presented by witnesses. Unless otherwise required by law or rule, the exhibits shall be preserved by the Department for a period of one year, or, at the discretion of the Commission or Presiding Officer, returned to the persons who submitted them.

(10) The Presiding Officer may, at any time during the hearing, impose reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious, or immaterial matter. Persons with a concern distinct from those of citizens in general, and those speaking for groups, associations, or governmental entities may be accorded preferential time limitations as may be extended also to any witness who, in the judgment of the Presiding Officer, has such expertise, experience, or other relationship to the subject matter of the hearing as to render his testimony of special interest to the agency.

(11) A verbatim oral, written, or mechanical record shall be made of all the hearing proceedings, or, in the alternative, a record in the form of minutes. Question and answer periods or other informalities before or after the hearing may be

~~excluded from the record. The record shall be preserved for three years, unless otherwise required by law or rule.~~

~~Presiding Officer's Report~~

~~340-11-030~~

~~(1) Where the hearing has been conducted before other than the full Commission, the Presiding Officer, within a reasonable time after the hearing, shall provide the Commission with a written summary of statements given and exhibits received, and a report of his observations of physical experiments, demonstrations, or exhibits. The Presiding Officer may also make recommendations to the Commission based upon the evidence presented, but the Commission is not bound by such recommendations.~~

~~(2) At any time subsequent to the hearing, the Commission may review the entire record of the hearing and make a decision based upon the record. Thereafter, the Presiding Officer shall be relieved of his duty to provide a report thereon.~~

~~Action of the Commission~~

~~340-11-035 Following the rulemaking hearing by the Commission, or after receipt of the report of the Presiding Officer, the Commission may adopt, amend, or repeal rules within the scope of the notice of intended action.]~~

Petition to Promulgate, Amend, or Repeal Rule: Contents of Petition, Filing of Petition

340-11-046

The filing of petitions for rulemaking and action thereon by the Commission shall be in accordance with the Attorney General's Uniform Rule of Procedure set forth in OAR 137-01-070. As used in that rule, the term "agency" generally refers to the Commission but may refer to the Department if context requires.

~~[340-11-047~~

~~(1) Any Person may petition the Commission requesting the adoption (promulgation), amendment, or repeal of a rule. The petition shall be in writing, signed by or on behalf of the petitioner, and shall contain a detailed statement of:~~

~~(a) The rule petitioner requests the Commission to promulgate, amend, or repeal. Where amendment of the existing rule is sought, the rule shall be set forth in the petition in full with matter proposed to be deleted therefrom enclosed in brackets and proposed additions thereto shown by underlining or bold face;~~

~~(b) Ultimate facts in sufficient detail to show the reasons for adoption, amendment, or repeal of the rule;~~

~~(c) All propositions of law to be asserted by petitioner;~~

~~(d) Sufficient facts to show how petitioner will be affected by adoption, amendment, or repeal of the rule;~~

~~(e) The name and address of petitioner and of another persons known by petitioner to have special interest in the rule sought to be adopted, amended, or repealed.~~

~~(2) The petition, either in typewritten or printed form, shall be deemed filed when received in correct form by the Department. The Commission may require amendments to petitions under this section but shall not refuse any reasonably understandable petition for lack of form.~~

~~(3) Upon receipt of the petition:~~

~~(a) The Department shall mail a true copy of the petition together with a copy of the applicable rules of practice to all interested persons named in the petition. Such petition shall be deemed served on the date of mailing to the last known address of the person being served;~~

~~(b) The Department shall advise the petitioner that he has fifteen (15) days in which to submit written views;~~

~~(c) The Department may schedule oral presentation of petitions if the petitioner makes a request therefore and the Commission desires to hear the petitioner orally;~~

~~(d) The Commission shall, within 30 days after the date of submission of the properly drafted petition, either deny the petition or initiate rule making proceedings in accordance with applicable procedures for Commission rulemaking.~~

~~(4) In the case of a denial of a petition to adopt, amend, or repeal a rule, the Commission shall issue an order setting forth its reasons in detail for denying the petition. The order shall be mailed to the petitioner and all other persons upon whom a copy of the petition was served.~~

~~(5) Where procedures set forth in this section are found to conflict with those prescribed by the Attorney General, the latter shall govern upon motion of any party other than the Commission or Department.~~

Temporary Rules

340-11-052

The Commission may adopt temporary rules and file the same, along with supportive findings, pursuant to ORS 183.335(5) and 183.355(2) and the Attorney General's Model Rule OAR 137-01-080.

Periodic Rule Review

340-11-053

Periodic review of agency rules shall be accomplished once every 3 years in accordance with ORS 183.545 and the Attorney General's Model Rule OAR 137-01-085.

Declaratory Rulings: Institution of Proceedings, Consideration of Petition and Disposition of Petition

340-11-061

The declaratory ruling process shall be governed by the Attorney General's Uniform Rules of Procedure, OAR 137-02-010 through 137-02-060. As used in those rules, the terms "agency", "governing body", and "decision maker" generally should be interpreted to mean "Commission". The term "agency" may also be interpreted to be the "Department" where context requires.

~~[340-11-062~~

~~(1) Pursuant to the provisions of ORS 183.410 and the rules prescribed thereunder by the Attorney General, and upon the petition of any person, the Commission may, in its discretion, issue a declaratory ruling with respect to the applicability to any person, property, or state of facts or any rule or statute enforceable by the Department or Commission.~~

~~(2) The petition to institute proceedings for a declaratory ruling shall contain:~~

~~(a) A detailed statement of the facts upon which petitioner requests the Commission to issue its declaratory ruling;~~

~~(b) The rule or statute for which petitioner seeks declaratory ruling;~~

~~(c) Sufficient facts to show how petitioner will be affected by the requested declaratory ruling;~~

~~(d) All propositions of law or contentions to be asserted by the petitioner;~~

~~(e) The question presented for decision by the Commission;~~

~~(f) The specific relief requested;~~

~~(g) The name and address of petitioner and of any other person known by the petitioner to have special interest in the requested declaratory ruling.~~

~~(3) The petition shall be typewritten or printed and in the form provided in Appendix 1 to this rule 340-11-062.--The Commission may require amendments to petitions under this rule but shall not refuse any reasonably understandable petition for lack of form.~~

~~(4) The petition shall be deemed filed when received by the Department.~~

~~(5) The Department shall, within thirty (30) days after the petition is filed, notify the petitioner of the Commission's decision not to issue a ruling or the Department shall, within the same thirty days, serve all specially interested persons in the petition by mail:~~

~~(a) A copy of the petition together with a copy of the Commission's rules of practice; and~~

~~(b) A notice of the hearing at which the petition will be considered.--This notice shall have the contents set forth in section (6) of this rule.~~

~~(6) The notice of hearing at which time the petition will be considered shall set forth:~~

~~(a) A copy of the petition requesting the declaratory ruling;~~

~~(b) The time and place of hearing;~~

~~(c) A statement that the Commission will conduct the hearing or a designation of the Presiding Officer who will preside at and conduct the hearing.~~

~~(7) The hearing shall be conducted by and shall be under the control of the Presiding Officer. The Presiding Officer may be the Chairman of the Commission, any Commissioner, the Director, or any other person designated by the Commission or its Chairman.~~

~~(8) At the hearing, petitioner and any other party shall have the right to present oral argument. The Presiding Officer may impose reasonable time limits on the time allowed for oral argument. Petitioner and other parties may file with the agency briefs in support of their respective positions. The Presiding Officer shall fix the time and order of filing briefs.~~

~~(9) In those instances where the hearing was conducted before someone other than the Commission, the Presiding Officer shall prepare an opinion in form and in content as set forth in section (11) of this rule.~~

~~(10) The Commission is not bound by the opinion of the Presiding Officer.~~

~~(11) The Commission shall issue its declaratory ruling within sixty (60) days of the close of the hearing, or, where briefs are permitted to be filed subsequent to the hearing, within sixty (60) days of the time permitted for the filing of briefs. The ruling shall be in the form of a written opinion and shall set forth:~~

~~(a) The facts being alleged by petitioner;~~

~~(b) The statute or rule being applied to those facts;~~

~~(c) The Commission's conclusions as to the applicability of the statute or rule to those facts;~~

~~(d) The Commission's conclusion as to the legal effect or result of applying the statute or rule to those facts;~~

~~(e) The reasons relied upon by the agency to support its conclusions.~~

~~(12) A declaratory ruling issued in accordance with this section is binding between the Commission, the Department, and the petitioner on the state of facts alleged, or found to exist, unless set aside by a court.~~

~~(13) Where procedures set forth in this section are found to conflict with those prescribed by the Attorney General, the latter shall govern upon motion by any party other than the Commission or Department.~~

Service of Written Notice

340-11-097

(1) Whenever a statute or rule requires that the Commission or Department serve a written notice or final order upon a party other than for purposes of ORS 183.335 or for the purposes of notice to members of the public in general, the notice or final order shall be personally delivered or sent by registered or certified mail.

(2) The Commission or Department perfects service of a written notice when the notice is posted, addressed to, or personally delivered to:

(a) The party; or

(b) Any person designated by law as competent to receive service of a summons or notice for the party; or

(c) Following appearance of Counsel for the party, the party's counsel.

(3) A party holding a license or permit issued by the Department or Commission or an applicant therefore, shall be conclusively presumed able to be served at the address given in his application, as it may be amended from time to time, until the expiration date of the license or permit.

(4) Service of written notice may be proven by a certificate executed by the person effecting service.

(5) In all cases not specifically covered by this section, a rule, or a statute, a writing to a person if mailed to said person at his last known address, is rebuttably presumed to have reached said person in a timely fashion, notwithstanding lack of certified or registered mailing.

Contested Case Proceedings Generally

340-11-098

Except as specifically provided in OAR 340-11-132, contested cases shall be governed by the Attorney General's Model Rules of Procedure, OAR 137-03-001 through 137-03-093. Contested cases generally arise when a decision of the Director or Department is appealed to the Commission. Therefore, as used in the Model

Rules, the terms "agency", "governing body", and "decision maker" generally should be interpreted to mean "Commission". The term "agency" may also be interpreted to be Department where context requires.

~~[Written Notice of Opportunity for a Hearing~~

~~340-11-100~~

~~(1) Except as otherwise provided in ORS 183.430 and ORS 670.285, before the Commission or Department shall by order suspend, revoke, refuse to renew, or refuse to issue a license, or enter a final order in any other contested case as defined in ORS Chapter 183, it shall afford the licensee, the license applicant or other party to the contested case an opportunity for hearing after reasonable written notice.~~

~~(2) Written notice of opportunity for a hearing, in addition to the requirements of ORS 183.415(2), may include:~~

~~(a) A statement that an answer will or will not be required if the party requests a hearing, and, if so, the consequence of failure to answer. A statement of the consequence of failure to answer may be satisfied by serving a copy of rule 340-11-107 upon the party;~~

~~(b) A statement that the party may elect to be represented by legal counsel;~~

~~(c) A statement of the party or parties who, in the contention of the Department or Commission, would have the burden of coming forward with evidence and the burden of proof in the event of a hearing.]~~

Non-Attorney Representation

340-11-102

Pursuant to the provisions of Section 3 of Chapter 833, Oregon Laws 1987, a person may be represented by an attorney or by an authorized representative in a contested case proceeding before the Commission or Department.

Answer Required: Consequences of Failure to Answer

340-11-107

(1) Unless waived in the notice of opportunity for a hearing, and except as otherwise provided by statute or rule, a party who

has been served written notice of opportunity for a hearing shall have twenty (20) days from the date of mailing or personal delivery of the notice in which to file with the Director a written answer and application for hearing.

(2) In the answer, the party shall admit or deny all factual matters and shall affirmatively allege any and all affirmative claims or defenses the party may have and the reasoning in support thereof. Except for good cause shown:

(a) Factual matters not controverted shall be presumed admitted;

(b) Failure to raise a claim or defense shall be presumed to be waiver of such claim or defense;

(c) New matters alleged in the answer shall be presumed to be denied unless admitted in subsequent pleading or stipulation by the Department or Commission; and

(d) Evidence shall not be taken on any issue not raised in the notice and the answer unless such issue is specifically raised by a subsequent petitioner for party status and is determined to be within the scope of the proceeding by the presiding officer.

(3) In the absence of a timely answer, the Director on behalf of the Commission or Department may issue a default order and judgment, based upon a prima facie case made on the record, for the relief sought in the notice.

Subpoenas ~~[and Depositions]~~

340-11-116 Subpoenas

(1) Upon a showing of good cause and general relevance any party to a contested case shall be issued subpoenas to compel the attendance of witnesses and the production of books, records and documents.

(2) Subpoenas may be issued by:

(a) A hearing officer; or

(b) A member of the Commission; or

(c) An attorney of record of the party requesting the subpoena.

(3) Each subpoena authorized by this section shall be served

personally upon the witness by the party or any person over 18 years of age.

(4) Witnesses who are subpoenaed, other than parties or officers or employees of the Department or Commission, shall receive the same fees and mileage as in civil actions in the circuit court.

(5) The party requesting the subpoena shall be responsible for serving the subpoena and tendering the fees and mileage to the witness.

(6) A person present in a hearing room before a hearing officer during the conduct of a contested case hearing may be required, by order of the hearing officer, to testify in the same manner as if he were in attendance before the hearing officer upon a subpoena.

(7) Upon a showing of good cause a hearing officer or the Chairman of the Commission may modify or withdraw a subpoena.

(8) Nothing in this section shall preclude informal arrangements for the production of witnesses or documents, or both.

~~[Conduct of Hearing~~

~~340-11-120~~

~~(1) (a) Contested case hearings before the Commission shall be held under the control of the chairman as Presiding Officer, or any Commission member, or other person designated by the Commission or Director to be Presiding Officer.~~

~~(b) Contested case hearings before the Department shall be held under the control of the Director as Presiding Officer or other person designated by the Director to be Presiding Officer.~~

~~(2) The Presiding Officer may schedule and hear any preliminary matter, including a pre-hearing conference, and shall schedule the hearing on the merits. Reasonable written notice of the date, time, and place of such hearings and conferences shall be given to all parties.~~

~~Except for good cause shown, failure of any party to appear at a duly scheduled pre-hearing conference or the hearing on the merits shall be presumed to be a waiver of right to proceed any further, and, where applicable:~~

~~(a) A withdrawal of the answer;~~

~~(b) An admission of all the facts alleged in the notice of opportunity for a hearing; and~~

~~(c) A consent to the entry of a default order and judgment for the relief sought in the notice of opportunity for a hearing.~~

~~(3) At the discretion of the Presiding Officer, the hearing shall be conducted in the following manner:~~

~~(a) Statement and evidence of the party with the burden of coming forward with evidence in support of his proposed action;~~

~~(b) Statement and evidence of defending party in support of his alleged position;~~

~~(c) Rebuttal evidence, if any;~~

~~(d) Surrebuttal evidence, if any.~~

~~(4) Except for good cause shown, evidence shall not be taken on any issue not raised in the notice and the answer.~~

~~(5) All testimony shall be taken upon oath or affirmation of the witness from whom received. The officer presiding at the hearing shall administer oaths of affirmations to witnesses.~~

~~(6) The following persons shall have the right to question, examine, or cross-examine any witness:~~

~~(a) The Presiding Officer;~~

~~(b) Where the hearing is conducted before the full Commission, any member of the Commission;~~

~~(c) Counsel for the Commission or the Department;~~

~~(d) Where the Commission or the Department is not represented by counsel, a person designated by the Commission or the Director;~~

~~(e) Any party to the contested case or such party's counsel.~~

~~(7) The hearing may be continued with recesses as determined by the Presiding Officer.~~

~~(8) The Presiding Officer may set reasonable time limits for oral~~

~~presentation and shall exclude or limit cumulative, repetitious, or immaterial matter.~~

~~(9) The Presiding Officer shall, where appropriate and practicable, receive all physical and documentary evidence presented by parties and witnesses. Exhibits shall be marked, and the markings shall identify the person offering the exhibits. The exhibits shall be preserved by the Department as part of the record of the proceeding. Copies of all documents offered in evidence shall be provided to all other parties, if not previously supplied.~~

~~(10) A verbatim oral, written, or mechanical record shall be made of all motions, evidentiary objections, rulings, and testimony.~~

~~(11) Upon request of the Presiding Officer or upon a party's own motion, a party may submit a pre-hearing brief, or a post-hearing brief, or both.]~~

~~[The Record~~

~~340-11-121 The Presiding Officer shall certify such part of the record as defined by ORS 183.415(7) as may be necessary for review of final orders and proposed final orders. The Commission or Director may review tape recordings of proceedings in lieu of a prepared transcript.]~~

~~[Evidentiary Rules~~

~~340-11-125~~

~~(1) In applying the standard of admissibility of evidence set forth in ORS 183.450, the Presiding Officer may refuse to admit hearsay evidence inadmissible in the courts of this state where he is satisfied that the declarant is reasonably available to testify and the declarant's reported statement is significant, but would not commonly be found reliable because of its lack of corroboration in the record or its lack of clarity and completeness.~~

~~(2) All offered evidence, not objected to, will be received by the Presiding Officer subject to his power to exclude or limit cumulative, repetitious, irrelevant, or immaterial matter.~~

~~(3) Evidence objected to may be received by the Presiding Officer with rulings on its admissibility or exclusion to be made at the time a final order is issued.]~~

~~[Appeal of Hearing Officer's Final Order]~~

Alternative Procedure for Entry of a Final Order in Contested Cases Resulting from Appeal of Civil Penalty Assessments

340-11-132

In accordance with the procedures and limitations which follow, the Commission's designated Hearing Officer is authorized to enter a final order in contested cases resulting from appeal of civil penalty assessments:

(1) Hearing Officer's Final Order: In a contested case if a majority of the members of the Commission have not heard the case or considered the record, the Hearing Officer shall prepare a written Hearing Officer's Final Order including findings of fact and conclusions of law. The original of the Hearing Officer's Final Order shall be filed with the Commission and copies shall be served upon the parties in accordance with rule 340-11-097 (regarding service of written notice).

(2) Commencement of Appeal to the Commission:

(a) The Hearing Officer's Final Order shall be the final order of the Commission unless within 30 days from the date of mailing, or if not mailed then from the date of personal service, any of the parties or a member of the Commission files with the Commission and serves upon each party a Notice of Appeal. A proof of service thereof shall also be filed, but failure to file a proof of service shall not be a ground for dismissal of the Notice of Appeal.

(b) The timely filing and service of a Notice of Appeal is a jurisdictional requirement for the commencement of an appeal to the Commission and cannot be waived; a Notice of Appeal which is filed or served date shall not be considered and shall not affect the validity of the Hearing Officer's Final Order which shall remain in full force and effect.

(c) The timely filing and service of a sufficient Notice of Appeal to the Commission shall automatically stay the effect of the Hearing Officer's Final Order.

(3) Contents of Notice of Appeal. A Notice of Appeal shall be in writing and need only state the party's or a Commissioner's intent that the Commission review the Hearing Officer's Final Order.

(4) Procedures on Appeal:

(a) Appellant's Exceptions and Brief -- Within 30 days from the date of service or filing of his Notice of Appeal, whichever is later, the Appellant shall file with the Commission and serve upon each other party written exceptions, brief and proof of service. Such exceptions shall specify those findings and conclusions objected to and reasoning, and shall include proposed alternative findings of fact, conclusions of law, and order with specific references to those portions to the record upon which the party relies. Matters not raised before the Hearing Officer shall not be considered except when necessary to prevent manifest injustice. In any case where opposing parties timely serve and file Notices of Appeal, the first to file shall be considered to be the appellant and the opposing party the cross appellant.

(b) Appellee's Brief -- Each party so served with exceptions and brief shall then have 30 days from the date of service or filing, whichever is later, in which to file with the Commission and serve upon each other party an answering brief and proof of service.

(c) Reply Brief -- Except as provided in subsection (d) of this section, each party served with an answering brief shall have 20 days from the date of service or filing, whichever is later, in which to file with the Commission and serve upon each other party a reply brief and proof of service.

(d) Cross Appeals -- Should any party entitled to file an answering brief so elect, he may also cross appeal to the Commission the Hearing Officer's Final Order by filing with the Commission and serving upon each other party in addition to an answering brief a Notice of Cross Appeal, exceptions (described in subsection (a) of this section), a brief on cross appeal and proof of service, all within the same time allowed for an answering brief. The appellant-cross appellee shall then have 30 days in which to serve and file his reply brief, cross answering brief and proof of service. There shall be no cross reply brief without leave of the Chairman or the Hearing Officer.

(e) Briefing on Commission Invoked Review -- Where one or more members of the Commission commence an appeal to the Commission pursuant to subsection (2)(a) of this rule, and where no party to the case has timely served and filed a Notice of Appeal, the Chairman shall promptly notify the parties of the issue that the Commission desires the parties to brief and the schedule for filing

and serving briefs. The parties shall limit their briefs to those issues. Where one or more members of the Commission have commenced an appeal to the Commission and a party has also timely commenced such a proceeding, briefing shall follow the schedule set forth in subsections (a), (b), (c), (d), and (f) of this section.

(f) Extensions -- The Chairman or a Hearing Officer, upon request, may extend any of the time limits contained in this section. Each extension shall be made in writing and be served upon each party. Any request for an extension may be granted or denied in whole or in part.

(g) Failure to Prosecute -- The Commission may dismiss any appeal or cross appeal if the appellant or cross appellant fails to timely file and serve any exceptions or brief required by these rules.

(h) Oral Argument -- Following the expiration of the time allowed the parties to present exceptions and briefs, the Chairman may at his discretion schedule the appeal for oral argument before the Commission.

(i) Scope of Review -- In an appeal to the Commission of a Hearing Officer's Final Order, the Commission may, substitute its judgment for that of the Hearing Officer in making any particular finding of fact, conclusion of law, or order. As to any finding of fact made by the Hearing Officer the Commission may make an identical finding without any further consideration of the record.

(j) Additional Evidence -- In an appeal to the Commission of a Hearing Officer's Final Order the Commission may take additional evidence. Requests to present additional evidence shall be submitted by motion and shall be supported by a statement specifying the reason for the failure to present it at the hearing before the Hearing Officer. If the Commission grants the motion, or so decides of its own motion, it may hear the additional evidence itself or remand to a Hearing Officer upon such conditions as it deems just.

(5) In exercizing the authority to enter a final order pursuant to this rule, the Hearing Officer:

(a) Shall give deference to the Director's determination of penalty amount where facts regarding the violation are not in dispute and no new information has been revealed in the contested case hearing regarding mitigating and aggravating circumstances.

(b) May mitigate a penalty based upon new information in the record regarding mitigating and aggravating circumstances, but shall not mitigate the penalty below the minimum established in the schedule of Civil Penalties contained in Commission rules.

(c) May elect to prepare proposed findings of fact and a proposed order and refer the matter to the Commission for entry of a final order pursuant to the general procedure for contested cases prescribed under OAR 340-11-098.

~~[Presiding Officer's Proposed Order in Hearing Before the Department~~

~~340-11-134~~

~~(1) In a contested case before the Department, the Director shall exercise powers and have duties in every respect identical to those of the Commission in contested cases before the Commission.~~

~~(2) Notwithstanding section (1) of this rule, the Commission may, as to any contested case over which it has final administrative jurisdiction, upon motion of its Chairman or a majority of its members, remove to the Commission any contested case before the Department at any time during the proceedings in a manner consistent with ORS Chapter 183.]~~

~~[Final Orders in Contested Cases Notification~~

~~340-11-135~~

~~(1) Final orders in contested cases shall be in writing or stated in the record, and may be accompanied by an opinion.~~

~~(2) Final orders shall include the following:~~

~~(a) Rulings on admissibility of offered evidence if not already in the record;~~

~~(b) Findings of fact, including those matters which are agreed as fact, a concise statement of the underlying facts supporting the findings as to each contested issue of fact and each ultimate fact, required to support the Commission's or the Department's order;~~

~~(c) Conclusions of law;~~

~~(d) The Commission's or the Department's Order.~~

~~(3) The Department shall serve a copy of the final order upon every party or, if applicable, his attorney of record.]~~

Power of the Director

340-11-136

(1) Except as provided by rule 340-12-075, the Director, on behalf of the Commission, may execute any written order which has been consented to in writing by the parties adversely affected thereby.

(2) The Director, on behalf of the Commission, may prepare and execute written orders implementing any action taken by the Commission on any matter.

(3) The Director, on behalf of the Commission, may prepare and execute orders upon default where:

(a) The adversely affected parties have been properly notified of the time and manner in which to request a hearing and have failed to file a proper, timely request for a hearing; or

(b) Having requested a hearing, the adversely affected party has failed to appear at the hearing or at any duly scheduled prehearing conference.

(4) Default orders based upon failure to appear shall issue only upon the making of a prima facie case on the record.

Miscellaneous Provisions

~~[340-11-140~~

~~OAR Chapter 340, rules 340-11-010 to 340-11-140, as amended and adopted June 25, 1976, shall take effect upon prompt filing with the Secretary of State. They shall govern all further administrative proceedings then pending before the Commission or Department except to the extent that, in the opinion of the Presiding Officer, their application in a particular action would not be feasible or would work an injustice, in which event, the procedure in former rules designated by the Presiding Officer shall apply.]~~

Procedures for Conduct of Contested Case on Order of

Environmental Quality Commission Selecting a Land Fill Disposal Site Under Authority of 1985 Oregon Laws, Chapter 679.

340-11-141 Rules/Applicability.

(a) The Environmental Quality Commission hereby adopts the Attorney General's Model Rules numbered OAR 137-03-001 through 137-03-093 and OAR 137-04-010 (Model Rules) for application to any contested case conducted by or for the Commission on its order selecting a landfill disposal site pursuant to 1985 Oregon Laws, chapter 679.

(b) The Model Rules shall only apply to the contested case (or cases) described in subsection 340-11-141(a). The Commission's rules for conduct of contested cases, OAR 340-11-097 through 340-11-140, shall continue to apply in all other cases. These rules shall become effective upon filing of the adopted rule with the Secretary of State.

Procedures for Conduct of Contested Case on Denial Pursuant to OAR 340-48-035 of 401 Certification of the Proposed Salt Caves Hydroelectric Project.

340-11-142 Rules/Applicability.

(1) The Environmental Quality Commission hereby adopts the Attorney General's Model Rules numbered OAR 137-03-001 through 137-03-093 and OAR 137-04-010 (Model Rules) for application to any contested case conducted by or for the Commission on denial pursuant to OAR 340-48-035 of 401 certification of the proposed Salt Caves Hydroelectric Project.

(2) The Model Rules shall only apply to the contested case (or cases) described in subsection 340-11-142(1). The Commission's rules for conduct of contested cases, OAR 340-11-097 through 340-11-140, shall continue to apply in all other cases. These rules shall become effective upon filing of the adopted rule with the Secretary of State.

Agenda Item D

DISCUSSION ISSUES

Adoption of Proposed Amendments
to
Rules of Practice and Procedure
OAR Chapter 340, Division 11

The only public testimony offered in the rulemaking proceeding supported the adoption of the proposed rules.

Arnold Silver, Assistant Attorney General, raised several "technicality" issues regarding wording. These are discussed in the staff report. The most significant is the choice of wording for the rule codifying the Commission policy direction to the Hearing Officer.

The question is -- should the department make a specific recommendation on this matter? The current draft of the staff report presents two options to the Commission -- without recommendation.

Issue not raised in Hearing

We expected Environmental groups to renew their longstanding request that the rules be amended to grant them the right to request a contested case hearing. They did not -- (a suprise). Commissioner Hutchison also seemed interested in this matter when the hearing was authorized.

The question is -- should the staff report contain any discussion of this issue. It currently does not.

Proposed Amended EQC Procedure Rules	Attorney General's Model Rules as Amended	Notes

Definitions

340-11-005 **The words and phrases used in this Division have the same meaning given them in ORS 183.310. Additional terms are defined as follows unless context requires otherwise:** ~~[Unless otherwise required by context, as used in this Division:]~~

(1) "Adoption" means the carrying of a motion by the Commission with regard to the subject matter or issues of an intended agency action.

(2) "Agency Notice" means publication in OAR and mailing to those on the list as required by ORS 183.335(6).

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

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

(5) "Director" means the Director of the Department or ~~[any of his]~~ **the Director's** authorized delegates.

(6) "Filing" means receipt in the office of the Director. Such filing is adequate where filing is required of any document with regard to any matter before the Commission, Department or Director, except a claim of personal liability.

~~[(7) "License" has the same meaning as given in ORS 183.310;~~

~~(8) "Order" has the same meaning as given in ORS 183.310;~~

~~(9) "Party" has the same meaning as given in ORS 183.310 and includes the Department in all contested case hearings before the Commission or Department or any of their presiding officers;~~

~~(10) "Person" has the same meaning as given in ORS 183.310;]~~

(7) "Model Rules" or "Uniform Rules" means the Attorney General's Uniform and Model Rules of Procedure, OAR 137-01-005 through 137-04-010 as amended and in effect on April 29, 1988.

~~[(11)]~~**(8)** "Presiding Officer" **or "Hearing Officer"** means the Commission, its Chairman, the Director, or any individual designated by the Commission or the

ORS 183.310 defines the following terms:

Agency
Contested case
Economic effect
License
Order
Party
Person
Rule
Small business

Director to preside in any contested case, public, or other hearing. Any employee of the Department who actually presided in any such hearing is presumptively designated by the Commission or Director, such presumptive designation to be overcome only by a written statement to the contrary bearing the signature of the Commission Chairman or the Director.

~~[(12) "Rule" has the same meaning as given in ORS 183.310.]~~

Public Informational Hearings

340-11-007

(1) Whenever there is required or permitted a hearing which is neither a contested case hearing nor a rule making hearing as defined in ORS Chapter 183, the Presiding Officer shall follow any applicable procedural law, including case law and rules, and take appropriate procedural steps to accomplish the purpose of the hearing. Interested persons may, on their own motion or that of the Presiding Officer, submit written briefs or oral argument to assist the Presiding Officer in ~~[this]~~ resolution of the procedural matters set forth herein.

(2) Prior to the submission of testimony by members of the general public, the Presiding Officer shall present and offer for the record a summary of the questions the resolution of which, in the Director's preliminary opinion, will determine the matter at issue. ~~[He]~~ **The Presiding Officer** shall also present so many of the facts relevant to the resolution of these questions as ~~[he then possesses]~~ **are available** and which can practicably be presented in that forum.

(3) Following the public information hearing, or within a reasonable time after receipt of the report of the Presiding Officer, the Director or Commission shall take action upon the matter. Prior to or at the time of such action, the Commission or Director shall address separately each substantial distinct issue raised in the hearings record. This shall be in writing if taken by the Director or shall be noted in the minutes if taken by the Commission in a public forum.

Proposed Amended EQC Procedure Rules	Attorney General's Model Rules as Amended	Notes
RULEMAKING		
Notice of Rulemaking		Each agency is required to adopt a notice rule to address statutory requirements that may be unique to the agency. The agency rule must be approved by the Attorney General.
340-11-010		
(1) Notice of intention to adopt, amend, or repeal any rule(s) shall be in compliance with applicable state and federal laws and rules, including ORS Chapter 183 and sections (2) and (3) of this rule.		
(2) In addition to the news media on the list established pursuant to ORS 183.335(6), a copy of the notice shall be furnished to such news media as the Director may deem appropriate.		
(3) In addition to meeting the requirements of ORS 183.335(1), the notice shall contain the following:		
(a) Where practicable and appropriate, a copy of the rule proposed to be adopted;		
(b) Where the proposed rule is not set forth verbatim in the notice, a statement of the time, place, and manner in which a copy of the proposed rule may be obtained and a description of the subject and issues involved in sufficient detail to inform a person that his interest may be affected;		
(c) Whether the Presiding Officer will be a hearing officer or a member of the Commission;		
(d) The manner in which persons not planning to attend the hearing may offer for the record written testimony on the proposed rule.		
Rulemaking Process	**Permanent Rulemaking -- Definitions**	
340-11-024	137-01-005	
The rulemaking process shall be governed by the Attorney General's Model Rules, OAR 137-01-005 through 137-01-060. As used in those rules, the terms "agency", "governing body", and "decision maker" generally should be interpreted to mean "Commission". The term "agency" may also be interpreted to be the "Department" where context requires.	The words and phrases used in 137-01-005 to 137-03-092 have the same meaning given them in ORS 183.310. (ORS 183.310)	

Rule Amendment Form

137-01-010

(1) When amendment of an existing rule is proposed by the agency, the affected portion of the rule shall be set forth in full with matter proposed to be deleted enclosed in brackets and proposed additions shown by underlining or bold face.

(2) The agency may use other forms, such as marginal notes, as a supplement or substitute for the forms described in section (1) of this rule.

Limitation of Economic Effect on Small Businesses

137-01-017

(1) Based upon its economic effect analysis or upon comments made in response to its rulemaking notice, the agency shall, before adoption of a rule, determine whether the economic effect upon small business is significantly adverse; and

(2) If the agency determines there is a significant adverse effect, it shall, as provided in ORS 183.540, limit the rule's economic impact on small business to the extent consistent with the public health and safety purposes of the rule.

(ORS 183.540)

Proposed Amended EQC Procedure Rules	Attorney General's Model Rules as Amended	Notes
[Conduct of Rulemaking Hearing	**Conduct of Hearing**	
340-11-025	137-01-030	
[(1) The hearing shall be conducted before the Commission with the Chairman as Presiding Officer, or before any member of the Commission or other Presiding Officer.	(1) The hearing to consider a rule shall be conducted by and shall be under the control of the presiding officer. The presiding officer may be the chief administrative officer of the agency, a member of its governing body, or any other person designated by the agency.	
(2) At the commencement of the hearing, any person wishing to be heard shall advise the Presiding Officer of his name and address and affiliation on a provided form for listing witnesses, and such other information as the Presiding Officer may deem appropriate. Additional persons may be heard at the discretion of the Presiding Officer.]	(2) If the presiding officer or any decision maker has a potential conflict of interest as defined in ORS 244.020(4), that officer shall comply with the requirements of ORS chapter 244 (e.g., ORS 244.120 and 244.130).	
[(3) At the opening of the hearing the Presiding Officer shall state, or have stated, the purpose of the hearing.	(3) At the commencement of the hearing, any person wishing to be heard shall provide name, address, and affiliation to the presiding officer. Additional persons may be heard at the discretion of the presiding officer. The presiding officer [may provide an appropriate form for listing witnesses which shall] **require that the witness complete a form to** indicate the name of the witness, whether the witness favors or opposes the proposed action, and such other information as the presiding officer may deem appropriate.	
(4) The Presiding Officer shall thereupon describe the manner in which persons may present their views at the hearing.	(4) At the commencement of the hearing, the presiding officer may summarize the content of the notice provided pursuant to ORS 183.335, unless requested by a person present to read the notice in full.	
(5) The Presiding Officer shall order the presentations in such manner as he deems appropriate to the purpose of the hearing.	(5) Subject to the discretion of the presiding officer, the order of presentation shall be:	
(6) The Presiding Officer and any member of the Commission shall have the right to question or examine any witness making a statement at the hearing. The Presiding Officer may, at his discretion, permit other persons to examine witnesses.	(a) [Statement] **Statements** of proponents;	
(7) There shall be no rebuttal or additional statements given by any witness except as requested by the Presiding Officer. However, when such additional statement is given, the Presiding Officer may allow an equal opportunity for reply by those whose statements were rebutted.]	(b) [Statement] **Statements** of opponents; and	
[(8) The hearing may be continued with recesses as determined by the Presiding Officer until all listed witnesses present and wishing to make a statement have had an opportunity to do so.]	(c) Statements of [any] other [witness] **witnesses** present and wishing to be heard.	
	(6) The presiding officer or any member of the agency may question any witness making a statement at the hearing. The presiding officer may permit other persons to question witnesses.	

Proposed Amended EQC Procedure Rules	Attorney General's Model Rules as Amended	Notes
[(9) The Presiding Officer shall, where practicable and appropriate, receive all physical and documentary exhibits presented by witnesses. Unless otherwise required by law or rule, the exhibits shall be preserved by the Department for a period of one year, or, at the discretion of the Commission or Presiding Officer, returned to the persons who submitted them.	(7) There shall be no rebuttal or additional [statements] **statement** given by any witness unless requested or permitted by the presiding officer. The presiding officer may allow an opportunity for reply.	
(10) The Presiding Officer may, at any time during the hearing, impose reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious, or immaterial matter. Persons with a concern distinct from those of citizens in general, and those speaking for groups, associations, or governmental entities may be accorded preferential time limitations as may be extended also to any witness who, in the judgment of the Presiding Officer, has such expertise, experience, or other relationship to the subject matter of the hearing as to render his testimony of special interest to the agency.]	(8) The hearing may be continued with recesses as determined by the presiding officer until all listed witnesses have had an opportunity to testify. (9) The presiding officer shall, when practicable, receive [all] physical and documentary evidence presented by witnesses. Each exhibit shall be marked and shall identify the witness offering the exhibit. Any written exhibits shall be preserved by the agency pursuant to any applicable retention schedule for public records under ORS 192.001 et seq. (10) The presiding officer may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious, or immaterial matter.	
[(11) A verbatim oral, written, or mechanical record shall be made of all the hearing proceedings, or, in the alternative, a record in the form of minutes. Question and answer periods or other informalities before or after the hearing may be excluded from the record. The record shall be preserved for three years, unless otherwise required by law or rule.]	(11) The presiding officer may provide for a verbatim oral, written, or mechanical record of all the proceedings or, in the alternative, may provide for a record in the form of minutes. (ORS 183.341)	
[Presiding Officer's Report 340-11-030 (1) Where the hearing has been conducted before other than the full Commission, the Presiding Officer, within a reasonable time after the hearing, shall provide the Commission with a written summary of statements given and exhibits received, and a report of his observations of physical experiments, demonstrations, or exhibits. The Presiding Officer may also make recommendations to the Commission based upon the evidence presented, but the Commission is not bound by such recommendations. (2) At any time subsequent to the hearing, the Commission may review the entire record of the hearing and make a decision based upon the record. Thereafter, the Presiding Officer shall be relieved of his duty to provide a report thereon.]	**Presiding Officer's Report** 137-01-040 Upon request by the agency, the presiding officer shall, within a reasonable time after the hearing, provide the agency with a written summary of statements given and exhibits received and a report of the officer's observations of physical experiments, demonstrations, or exhibits. The presiding officer may make recommendations, but such recommendations are not binding upon the agency. (ORS 183.341)	

Proposed Amended EQC Procedure Rules	Attorney General's Model Rules as Amended	Notes
[Action of the Commission 340-11-035 -- Following the rulemaking hearing by the Commission, or after receipt of the report of the Presiding Officer, the Commission may adopt, amend, or repeal rules within the scope of the notice of intended action.]	**Action of Agency** 137-01-050 At the conclusion of the hearing, or after receipt of the presiding officer's requested report and recommendation, if any, the agency may adopt, amend, or repeal rules covered by the notice of intended action. The agency shall fully consider all written and oral submissions. (ORS 183.335) **Notice of Agency Action; Certification to Secretary of State** 137-01-060 (1) The agency shall file in the office of the Secretary of State a certified copy of each rule adopted, including rules that amend or repeal any rule. (2) The rule shall be effective upon filing with the Secretary of State unless a different effective date is required by statute or a later effective date is specified in the rule. (ORS 183.355)	

Proposed Amended EQC Procedure Rules	Attorney General's Model Rules as Amended	Notes
Petition to Promulgate, Amend, or Repeal Rule: Contents of Petition, Filing of Petition	**Petition to Promulgate, Amend, or Repeal Rule: Contents of Petition, Filing of Petition**	
340-11-046	137-01-070	The Attorney General's rule on this topic is a "uniform" rule -- it is applicable to all agencies. It cannot be modified by agency action.
The filing of petitions for rulemaking and action thereon by the Commission shall be in accordance with the Attorney General's Uniform Rule of procedure set forth in OAR 137-01-070. As used in that rule, the term "agency" generally refers to the Commission but may refer to the Department if context requires.	(1) An interested person may petition an agency to adopt, amend, or repeal a rule. The petition shall be legible, signed by or on behalf of the petitioner, and shall contain a detailed statement of: (a) The rule petitioner requests the agency to promulgate, amend, or repeal. When a new rule is proposed, the petition shall set forth the proposed language in full. When amendment of an existing rule is sought, the affected portion of the rule shall be set forth in the petition in full with matter proposed to be deleted enclosed in brackets and proposed additions shown by underlining or boldface. (b) Facts or arguments in sufficient detail to show the reasons for adoption, amendment, or repeal of the rule. (c) All propositions of law to be asserted by petitioner. (d) Sufficient facts to show the effect of adoption, amendment, or repeal of the rule. (e) The name and address of petitioner and of any other person known by petitioner to be interested in the rule sought to be adopted, amended, or repealed. (2) The petition shall be deemed filed when received by the agency. (3) Upon receipt of the petition, the agency: (a) May provide a copy of the petition, together with a copy of the applicable rules of practice, to all persons named in the petition. (b) May schedule oral presentations. (c) Shall, in writing, within 30 days after date of submission of the petition, either deny the petition or initiate rulemaking proceedings in accordance with 137-01-017 to 137-01-080. (ORS 183.390)	
~~E340-11-047~~ ~~(1) Any Person may petition the Commission requesting the adoption (promulgation), amendment, or repeal of a rule. The petition shall be in writing, signed by or on behalf of the petitioner, and shall contain a detailed statement of:~~ ~~(a) The rule petitioner requests the Commission to promulgate, amend, or repeal. Where amendment of the existing rule is sought, the rule shall be set forth in the petition in full with matter proposed to be deleted therefrom enclosed in brackets and proposed additions thereto shown by underlining or bold face;~~ ~~(b) Ultimate facts in sufficient detail to show the reasons for adoption, amendment, or repeal of the rule;~~ ~~(c) All propositions of law to be asserted by petitioner;~~ ~~(d) Sufficient facts to show how petitioner will be affected by adoption, amendment, or repeal of the rule;~~ ~~(e) The name and address of petitioner and of another persons known by petitioner to have special interest in the rule sought to be adopted, amended, or repealed.~~		

Proposed Amended EQC Procedure Rules	Attorney General's Model Rules as Amended	Notes

[(2) The petition, either in typewritten or printed form, shall be deemed filed when received in correct form by the Department. The Commission may require amendments to petitions under this section but shall not refuse any reasonably understandable petition for lack of form.]

[(3) Upon receipt of the petition:

(a) The Department shall mail a true copy of the petition together with a copy of the applicable rules of practice to all interested persons named in the petition. Such petition shall be deemed served on the date of mailing to the last known address of the person being served;]

[(b) The Department shall advise the petitioner that he has fifteen (15) days in which to submit written views;

(c) The Department may schedule oral presentation of petitions if the petitioner makes a request therefore and the Commission desires to hear the petitioner orally;

(d) The Commission shall, within 30 days after the date of submission of the properly drafted petition, either deny the petition or initiate rule making proceedings in accordance with applicable procedures for Commission rulemaking.

(4) In the case of a denial of a petition to adopt, amend, or repeal a rule, the Commission shall issue an order setting forth its reasons in detail for denying the petition. The order shall be mailed to the petitioner and all other persons upon whom a copy of the petition was served.

(5) Where procedures set forth in this section are found to conflict with those prescribed by the Attorney General, the latter shall govern upon motion of any party other than the Commission or Department.]

Proposed Amended EQC Procedure Rules	Attorney General's Model Rules as Amended	Notes
Temporary Rules 340-11-052 The Commission may adopt temporary rules and file the same, along with supportive findings, pursuant to ORS 183.335(5) and 183.355(2) **and the Attorney General's Model Rule OAR 137-01-080**.	**Temporary Rulemaking** 137-01-080 (1) If no notice has been provided before adoption of a temporary rule, the agency shall give notice of its temporary rulemaking to persons, entities, and media specified under ORS 183.335(1) by mailing or personally delivering to each of them a copy of the rule or rules as adopted and a copy of the statements required under ORS 183.335(5). If a temporary rule or rules are over ten pages in length, the agency may provide a summary and state how and where a copy of the rule or rules may be obtained. Failure to give this notice shall not affect the validity of any rule. (2) A temporary rule is effective for less than 180 calendar days if a shorter period is specified in the rule, or for 180 calendar days if the rule does not specify a shorter period. (ORS 183.335; 183.355)	

Proposed Amended EQC Procedure Rules	Attorney General's Model Rules as Amended	Notes
Periodic Rule Review 340-11-053 Periodic review of agency rules shall be accomplished once every 3 years in accordance with ORS 183.545 and the Attorney General's Model Rule OAR 137-01-085.	**Periodic Rule Review** 137-01-085 (1) Pursuant to ORS 183.545, the agency shall review and analyze all of its rules at least once every three years, including rules reviewed during prior reviews and rules adopted after the last review. (2) As part of the review, the agency shall invite public comment upon the rules pursuant to ORS 183.335(1). (3) The notice shall identify the rules under review by rule or division number and subject matter. It shall state that the agency invites written comments concerning the continued need for the rule; the complexity of the rule; the extent to which the rule duplicates, overlaps, or conflicts with other state rule, federal regulations, and local government regulations; the degree to which technology, economic conditions, or other factors have changed in the subject area affected by the rule; the rule's potential for enhancement of job-producing enterprises; and the legal basis for the rule. (4) The notice shall state the date by which written comments must be received by the agency and the address to which the comments should be sent. (5) If the agency provides a public hearing to receive oral comments on the rules, the notice shall include the time and place of the hearing. (ORS 183.545)	

Proposed Amended EQC Procedure Rules	Attorney General's Model Rules as Amended	Notes
Declaratory Rulings: Institution of Proceedings, Consideration of Petition and Disposition of Petition 340-11-061 The declaratory ruling process shall be governed by the Attorney General's Uniform Rules of Procedure, OAR 137-02-010 through 137-02-060. As used in those rules, the terms "agency", "governing body", and "decision maker" generally should be interpreted to mean "Commission". The term "agency" may also be interpreted to be the "Department" where context requires. ~~[340-11-062~~ ~~(1) Pursuant to the provisions of ORS 183.410 and the rules prescribed thereunder by the Attorney General; and upon the petition of any person, the Commission may, in its discretion, issue a declaratory ruling with respect to the applicability to any person, property, or state of facts or any rule or statute enforceable by the Department or Commission:~~ ~~(2) The petition to institute proceedings for a declaratory ruling shall contain:~~ ~~(a) A detailed statement of the facts upon which petitioner requests the Commission to issue its declaratory ruling;~~ ~~(b) The rule or statute for which petitioner seeks declaratory ruling;~~ ~~(c) Sufficient facts to show how petitioner will be affected by the requested declaratory ruling;~~ ~~(d) All propositions of law or contentions to be asserted by the petitioner;~~ ~~(e) The question presented for decision by the Commission:~~ ~~(f) The specific relief requested;~~ ~~(g) The name and address of petitioner and of any other person known by the petitioner to have special interest in the requested declaratory ruling.]~~	**Declaratory Rulings -- Contents of Petition** 137-02-010 The petition to institute proceedings for declaratory ruling shall contain: (1) The rule or statute that may apply to the person, property, or state of facts; (2) A detailed statement of the relevant facts; including sufficient facts to show petitioner's interest; (3) All propositions of law or contentions asserted by petitioner; (4) The questions presented; (5) The specific relief requested; and (6) The name and address of petitioner and any other persons known by petitioner to be interested in the requested declaratory ruling. (ORS 183.410)	The Attorney General's rules on this topic (OAR 137-02-010 through 02-060) are "uniform" rules which apply to all agencies. These rules cannot be modified by individual agency action.

Proposed Amended EQC Procedure Rules	Attorney General's Model Rules as Amended	Notes

[(3) The petition shall be typewritten or printed and in the form provided in Appendix 1 to this rule 340-11-062. The Commission may require amendments to petitions under this rule but shall not refuse any reasonably understandable petition for lack of form.]

[(4) The petition shall be deemed filed when received by the Department.]

[(5) The Department shall, within thirty (30) days after the petition is filed, notify the petitioner of the Commission's decision not to issue a ruling or the Department shall, within the same thirty days, serve all specially interested persons in the petition by mail:]

[(a) A copy of the petition together with a copy of the Commission's rules of practice; and]

[(b) A notice of the hearing at which the petition will be considered. This notice shall have the contents set forth in section (6) of this rule.]

[(6) The notice of hearing at which time the petition will be considered shall set forth:]

[(a) A copy of the petition requesting the declaratory ruling;]

[(b) The time and place of hearing;]

[(c) A statement that the Commission will conduct the hearing or a designation of the Presiding Officer who will preside at and conduct the hearing.]

Filing and Service of Petition

137-02-020

(1) The petition shall be deemed filed when received by the agency.

(2) Within 60 days after the petition is filed, the agency shall notify the petitioner whether it will issue a ruling. If the agency decides to issue a ruling, it shall serve all persons named in the petition by mailing:

(a) A copy of the petition together with a copy of the agency's rules of practice; and

(b) Notice of any proceeding at which the petition will be considered. (See 137-02-030 for contents of notice.)

(3) Notwithstanding subsection (2), the agency may decide at any time that it will not issue a declaratory ruling in any specific instance.

(ORS 183.410)

Contents of Notice of Hearing

137-02-030

The notice of proceeding for a declaratory ruling shall set forth:

(1) A copy of the petition requesting the declaratory ruling;

(2) The time and place of the proceeding; and

(3) The designation of the presiding officer.

(ORS 183.410)

Proposed Amended EQC Procedure Rules	Attorney General's Model Rules as Amended	Notes
~~[(7) The hearing shall be conducted by and shall be under the control of the Presiding Officer. The Presiding Officer may be the Chairman of the Commission, any Commissioner, the Director, or any other person designated by the Commission or its Chairman:~~	**Conduct of Hearing, Briefs, and Oral Argument** 137-02-040 (1) The proceeding shall be conducted by and shall be under the control of the presiding officer. The presiding officer may be the chief administrative officer of the agency, a member of its governing body or any other person designated by the agency.	
~~(8) At the hearing, petitioner and any other party shall have the right to present oral argument. The Presiding Officer may impose reasonable time limits on the time allowed for oral argument. Petitioner and other parties may file with the agency briefs in support of their respective positions. The Presiding Officer shall fix the time and order of filing briefs.]~~	(2) At the proceeding, petitioner and any other interested person shall have the right to present oral argument. The presiding officer may impose reasonable time limits on the time allowed for oral argument. Petitioner, agency staff, and interested persons may file briefs in support of their respective positions. The presiding officer shall fix the time and order of filing briefs. (ORS 183.410)	
~~[(9) In those instances where the hearing was conducted before someone other than the Commission, the Presiding Officer shall prepare an opinion in form and in content as set forth in section (11) of this rule.]~~	**Presiding Officer's Opinion** 137-02-050 Except when the presiding officer is the decision maker, the presiding officer shall prepare an opinion in accordance with 137-02-060 for consideration by the decision maker. (ORS 183.410)	

Proposed Amended EQC Procedure Rules	Attorney General's Model Rules as Amended	Notes
[(10) The Commission is not bound by the opinion of the Presiding Officer. (11) The Commission shall issue its declaratory ruling within sixty (60) days of the close of the hearing; or, where briefs are permitted to be filed subsequent to the hearing, within sixty (60) days of the time permitted for the filing of briefs. The ruling shall be in the form of a written opinion and shall set forth: (a) The facts being alleged by petitioner; (b) The statute or rule being applied to those facts; (c) The Commission's conclusions as to the applicability of the statute or rule to those facts; (d) The Commission's conclusion as to the legal effect or result of applying the statute or rule to those facts; (e) The reasons relied upon by the agency to support its conclusions.] [(12) A declaratory ruling issued in accordance with this section is binding between the Commission, the Department, and the petitioner on the state of facts alleged, or found to exist, unless set aside by a court. (13) Where procedures set forth in this section are found to conflict with those prescribed by the Attorney General, the latter shall govern upon motion by any party other than the Commission or Department.]	**Decision of Agency; Time, Form, and Service** 137-02-060 (1) The agency shall issue its declaratory ruling within 60 days of the close of the proceeding or within 60 days of the time permitted for the filing of briefs, whichever is later. (2) The ruling shall be in writing and shall include: (a) The facts upon which the ruling is based; (b) The statute or rule in issue; (c) The agency's conclusion as to the applicability of the statute or rule to those facts; (d) The agency's conclusion as to the legal effect or result of applying the statute or rule to those facts; and (e) The reasons relied upon by the agency to support its conclusion. (ORS 183.410)	

Proposed Amended EQC Procedure Rules	Attorney General's Model Rules as Amended	Notes
CONTESTED CASES	**CONTESTED CASES**	
Service of Written Notice	**Contested Case Notice**	
340-11-097	137-03-001	
(1) Whenever a statute or rule requires that the Commission or Department serve a written notice or final order upon a party other than for purposes of ORS 183.335 or for the purposes of notice to members of the public in general, the notice or final order shall be personally delivered or sent by registered or certified mail.	(1) In addition to the requirements of ORS 183.415(2), a contested case notice may include a statement that the record of the proceeding to date, including information in the agency file or files on the subject of the contested case, automatically become part of the contested case record upon default for the purpose of proving a prima facie case.	
(2) The Commission or Department perfects service of a written notice when the notice is posted, addressed to, or personally delivered to:	(2) Except as otherwise required by law, the contested case notice shall include a statement that if a request for hearing is not received by the agency within 21 days of the date of mailing or other service of the notice, the person shall waive the right to a hearing under ORS chapter 183, except as provided in OAR 137-03-075(6) and (7).	
(a) The party; or	(ORS 183.415; 183.450)	
(b) Any person designated by law as competent to receive service of a summons or notice for the party; or		
(c) Following appearance of Counsel for the party, the party's counsel.		
(3) A party holding a license or permit issued by the Department or Commission or an applicant therefore, shall be conclusively presumed able to be served at the address given in his application, as it may be amended from time to time, until the expiration date of the license or permit.		
(4) Service of written notice may be proven by a certificate executed by the person effecting service.		
(5) In all cases not specifically covered by this section, a rule, or a statute, a writing to a person if mailed to said person at his last known address, is rebuttably presumed to have reached said person in a timely fashion, notwithstanding lack of certified or registered mailing.		

Proposed Amended EQC Procedure Rules	Attorney General's Model Rules as Amended	Notes

Contested Case Proceedings Generally

340-11-098

Except as specifically provided in OAR 340-11-132, contested cases shall be governed by the Attorney General's Model Rules of Procedure, OAR 137-03-001 through 137-03-093. In general, a contested case proceeding is initiated when a decision of the Director or Department is appealed to the Commission. Therefore, as used in the Model Rules, the terms "agency", "governing body", and "decision maker" generally should be interpreted to mean "Commission". The term "agency" may also be interpreted to be Department where context requires.

~~Written Notice of Opportunity for a Hearing~~

~~340-11-100~~

~~(1) Except as otherwise provided in ORS 183.430 and ORS 670.285, before the Commission or Department shall by order suspend, revoke, refuse to renew, or refuse to issue a license, or enter a final order in any other contested case as defined in ORS Chapter 183, it shall afford the licensee, the license applicant or other party to the contested case an opportunity for hearing after reasonable written notice:~~

~~(2) Written notice of opportunity for a hearing, in addition to the requirements of ORS 183.415(2), may include:~~

~~(a) A statement that an answer will or will not be required if the party requests a hearing, and, if so, the consequence of failure to answer. A statement of the consequence of failure to answer may be satisfied by serving a copy of rule 340-11-107 upon the party;~~

~~(b) A statement that the party may elect to be represented by legal counsel;~~

~~(c) A statement of the party or parties who, in the contention of the Department or Commission, would have the burden of coming forward with evidence and the burden of proof in the event of a hearing.~~

Rights of Parties in Contested Cases

137-03-002

(1) In addition to the information required to be given under ORS 183.413(2) and ORS 183.415(7), before commencement of a contested case hearing, the agency shall inform a party, if the party is an agency, corporation, or an unincorporated association, that such party must be represented by an attorney licensed in Oregon, unless statutes applicable to the contested case proceeding specifically provide otherwise.

(2) Except as otherwise required by ORS 183.415(7), the information referred to in 137-03-002(1) may be given in writing or orally before the commencement of the hearing.

(3) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default. Informal settlement may be made in license revocation proceedings by written agreement of the parties and the agency consenting to a suspension, fine, or other form of intermediate sanction.

(4) Unless precluded by law, informal disposition includes, upon agreement between the agency and the parties, but is not limited to, a modified contested case proceeding, nonrecord abbreviated hearing, nonbinding arbitration, and mediation, but does not include binding arbitration.

(ORS 183.413, 183.415)

Request by Person to Participate as Party or Limited Party

137-03-005

(1) When an agency gives notice that it intends to hold a contested case hearing, persons who have an interest in the outcome of the agency's proceeding or who represent a public interest in such result [~~shall upon~~] may request [~~be given the opportunity~~] to participate as parties or limited parties.

(2) A person requesting to participate as a party or a limited party shall file a petition, with sufficient copies for service on all parties, with the agency at least [~~14 business~~] 21 days before the date set for hearing. Petitions untimely filed shall not be considered unless the agency determines that good cause has been shown for failure to file timely.

(3) The petition shall include the following:

(a) Names and addresses of the petitioner and of any organization which the petitioner represents.

(b) Name and address of the petitioner's attorney, if any.

(c) A statement of whether the request is for participation as a party or a limited party, and, if as a limited party, the precise area or areas in which participation is sought.

(d) If the petitioner seeks to protect a personal interest in the outcome of the agency's proceeding, a detailed statement of the petitioner's interest, economic or otherwise, and how such interest may be affected by the results of the proceeding.

(e) If the petitioner seeks to represent a public interest in the results of the proceeding, a detailed statement of such public interest, the manner in which such public interest will be affected by the results of the proceeding, and the petitioner's qualifications to represent such public interest.

(f) A statement of the reasons why existing parties to the proceeding cannot adequately represent the interests identified in 137-03-005(3)(d) or (e).

(4) The agency shall serve a copy of the petition on each party personally or by mail. Each party shall have seven ~~[business]~~ days from the date of personal service or agency mailing to file a response to the petition.

(5) If the agency determines that good cause has been shown for failure to file a timely petition, the agency at its discretion may:

(a) Shorten the time within which answers to the petition shall be filed, or

(b) Postpone the hearing until disposition is made of the petition.

(6) If a person is granted participation as a party or a limited party, the agency may postpone or continue the hearing to a later date when it appears that commencing or continuing the hearing would jeopardize or unduly burden one or more of the parties in the case.

(7) In ruling on petitions to participate as a party or a limited party, the agency shall consider:

(a) Whether the petitioner has demonstrated a personal or public interest that could reasonably be affected by the outcome of the proceeding.

(b) Whether any such affected interest is within the scope of the agency's jurisdiction **and within the scope of the notice of contested case hearing**.

(c) ~~[The qualifications the petitioner represents in cases in which a public interest is alleged.]~~ **When a public interest is alleged, the qualifications of the petitioner to represent that interest.**

(d) The extent to which the petitioner's ~~[alleged]~~ interest will be represented by existing parties.

(8) A petition to participate as a party may be treated as a petition to participate as a limited party.

(9) The agency has discretion to grant petitions for persons to participate as a party or a limited party. The agency shall specify areas of participation and procedural limitations as it deems appropriate.

(10) An agency ruling on a petition to participate as a party or as a limited party shall be by written order and served promptly on the petitioner and all parties. **If the petition is allowed,** ~~If~~ the agency shall also serve petitioner with the notice of rights required by ORS 183.413(2).

(ORS 183.310; 183.415)

Request by Agency to Participate as a Party or an Interested Agency

137-03-007

(1) When an agency gives notice that it intends to hold a contested case hearing, it may name any other agency that has an interest in the outcome of that proceeding as a party or as an interested agency, either on its own initiative or upon request by that other agency.

(2) An agency named as a party or as an interested agency has the same procedural rights and shall be given the same notices, including notice of rights, as any party in the proceeding.

(3) An agency may not be named as a party under this rule without written authorization of the Attorney General.

(ORS 180.060; 183.310; 183.413)

Proposed Amended EQC Procedure Rules	Attorney General's Model Rules as Amended	Notes

Non-Attorney Representation

340-11-102

Pursuant to the provisions of Section 3 of Chapter 833, Oregon Laws 1987, and the Attorney General's Model Rule OAR 137-03-008, a person may be represented by an attorney or by an authorized representative in a contested case proceeding before the Commission or Department.

Answer Required: Consequences of Failure to Answer

340-11-107

(1) Unless waived in the notice of opportunity for a hearing, and except as otherwise provided by statute or rule, a party who has been served written notice of opportunity for a hearing shall have twenty **one (21)** [~~(20)~~] days from the date of mailing or personal delivery of the notice in which to file with the Director a written answer and application for hearing.

(2) In the answer, the party shall admit or deny all factual matters and shall affirmatively allege any and all affirmative claims or defenses the party may have and the reasoning in support thereof. Except for good cause shown:

(a) Factual matters not controverted shall be presumed admitted;

(b) Failure to raise a claim or defense shall be presumed to be waiver of such claim or defense;

(c) New matters alleged in the answer shall be presumed to be denied unless admitted in subsequent pleading or stipulation by the Department or Commission; and

(d) **Subject to ORS 183.415(10),** [~~E~~]evidence shall not be taken on any issue not raised in the notice and the answer **unless such issue is specifically raised by a subsequent petitioner for party status and is determined to be within the scope of the proceeding by the presiding officer**.

(3) In the absence of a timely answer, the Director on behalf of the Commission or Department may issue a default order and judgment, based upon a prima facie case made on the record, for the relief sought in the notice.

Persons Represented by Authorized Representative in Statutorily Designated Agencies

137-03-008

(1) For purposes of this rule, the following words and phrases have the following meaning:

(a) "Agency" means: State Landscape Contractors Board; Department of Energy and the Energy Facility Siting Council; Environmental Quality Commission and the Department of Environmental Quality; Insurance Division of the Department of Insurance and Finance for proceedings in which an insured appears pursuant to ORS 737.505; Fire Marshall Division of the Executive Department; Division of State Lands for proceedings regarding the issuance or denial of fill or removal permits under ORS 641.605 to 541.685; Public Utility Commission; Water Resources Commission and the Water Resources Department.

(b) "Authorized representative" means a member of a partnership, an authorized officer or regular employee of a corporation, association or organized group, or an authorized officer of employee of a governmental authority other than a state agency.

(c) "Legal argument" includes arguments on:

(A) The jurisdiction of the agency to hear the contested case.

(B) The constitutionality of a statute or rule or the application of a constitutional requirement of an agency.

(C) The application of court precedent to the facts of the particular contested case proceeding.

(d) "Legal argument" does not include presentation of evidence, examination and cross-examination of witnesses or presentation of factual arguments or arguments on:

(A) The application of facts to the statutes or rules directly applicable to the issues in the contested case.

(B) Comparison of prior actions of the agency in handling similar situations.

(C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case.

(D) The admissibility of evidence or the correctness of procedures being followed.

(2) A party or limited party participating in a contested case hearing before an agency listed in subsection (1)(a) of this rule may be represented by an authorized representative as provided in this rule if the agency has by rule specified that authorized representatives may appear in the type of contested case hearing involved.

(3) On or before the first appearance by an authorized representative as defined in subsection (1)(b) of this rule, an authorized representative must provide the presiding officer with a letter authorizing the named representative to appear on behalf of a party or limited party.

(4) The presiding officer may limit an authorized representative's presentation of evidence, examination and cross examination of witnesses, or presentation of factual arguments to insure the orderly and timely development of the hearing record, and shall not allow an authorized representative to present legal argument as defined in subsection (1)(c) of this rule.

(5) When an authorized representative is representing a party or a limited party in a hearing, the presiding officer shall advise such representative of the manner in which objections may be made and matters preserved for appeal. Such advice is of a procedural nature and does not change the applicable law on waiver or the duty to make timely objection. Where such objections may involve legal argument as defined in this rule, the presiding officer shall provide reasonable opportunity for the authorized representative to consult legal counsel and permit such legal counsel to file written legal argument with a reasonable time after conclusion of the hearing.

Immediate Suspension or Refusal to Renew a License, Notice of Opportunity for Hearing, Service

137-03-010

(1) If the agency finds there is a serious danger to the public health or safety, it may immediately suspend or it may refuse to renew a license. For purposes of this rule, such a decision is referred to as an emergency suspension order. An emergency suspension order is a written order which is not a final order under ORS chapter 183. An emergency suspension order is not an order in a contested case and may be issued without notice or an opportunity for a hearing as required for contested cases under ORS chapter 183.

(2) (a) Except where the danger to the public health or safety is so imminent that the opportunity for the licensee to object under subsection (3) of this rule is not practicable as determined by the agency, the agency shall provide the licensee with notice and opportunity to object prior to issuing the emergency suspension order. For purposes of this rule, this notice is referred to as a presuspension notice.

(b) The presuspension notice shall:

(A) Specify the acts of the licensee and the evidence available to the agency which would be grounds for revocation, suspension or refusal to renew the license under the agency's usual procedures.

(B) Specify the reasons why the acts of the licensee seriously endanger the public's health or safety.

(C) Identify a person in the agency authorized to issue the emergency suspension order or to make recommendations regarding the issuance of the emergency suspension order.

(c) The agency may provide the presuspension notice to the licensee in writing, orally by telephone, or in person, or by any other means available to the agency.

(d) Where the presuspension notice is given orally, the agency subsequently shall provide the licensee with a written copy of the notice.

(3) Following the presuspension notice, the agency shall provide the licensee an immediate opportunity to object to the agency's specifications provided in the presuspension notice before a person authorized to issue the emergency suspension order or to make recommendations regarding the issuance of the emergency suspension order.

[(2) The agency shall give notice to the party upon immediate suspension or refusal to renew a license. The notice shall be served personally or by registered or certified mail and shall include:]

(4) (a) When the agency issues the emergency suspension order, the agency shall serve the order on the licensee either personally or by registered or certified mail.

(b) The order shall include the following statements:

[(a)] (A) [The statements] Those required under ORS 183.415(2) and (3).

(B) That the licensee has the right to demand a hearing to be held as soon as practicable to contest the emergency suspension order.

(C) That if the demand is not received by the agency within 90 days of the date of the notice of the emergency suspension order the licensee shall have waived its right to a hearing under ORS chapter 183.

(D) The effective date of the emergency suspension order.

(E) The specifications noted in subsection (2)(b) of this rule.

(F) That with the agreement of the licensee and the agency the hearing opportunity on the emergency suspension order may be combined with any other agency proceeding affecting the license. The procedures for a combined proceeding shall be those applicable to the other proceeding affecting the license.

[(b) The effective date of the suspension or refusal to renew the license.]

~~(c) A statement that any demand for a hearing must be received within 90 days of date of notice or the hearing is waived.~~

~~(d) A statement giving reasonable grounds and supporting the finding that a serious danger to the public health and safety would exist without the immediate suspension or refusal to renew the license.~~

(5) (a) If timely requested by the licensee pursuant to subsection (4)(b) of this rule, the agency shall hold a hearing on the emergency suspension order as soon as practicable.

(b) At the hearing, the agency shall consider the facts and circumstances including, but not limited to:

(A) Whether at the time of issuance of the order there was probable cause to believe from the evidence available to the agency that there were grounds for revocation, suspension or refusal to renew the license under the agency's usual procedures.

(B) Whether the acts or omissions of the licensee pose a serious danger to the public's health or safety.

(C) Whether circumstances at the time of the hearing justify confirmation, alteration or revocation of the order.

(D) Whether the agency followed the appropriate procedures in issuing the emergency suspension order.

(ORS 183.430)

Subpoenas ~~[and Depositions]~~

340-11-116 Subpoenas

(1) Upon a showing of good cause and general relevance any party to a contested case shall be issued subpoenas to compel the attendance of witnesses and the production of books, records and documents.

(2) Subpoenas may be issued by:

(a) A hearing officer; or

(b) A member of the Commission; or

(c) An attorney of record of the party requesting the subpoena.

(3) Each subpoena authorized by this section shall be served personally upon the witness by the party or any person over 18 years of age.

(4) Witnesses who are subpoenaed, other than parties or officers or employees of the Department or Commission, shall receive the same fees and mileage as in civil actions in the circuit court.

(5) The party requesting the subpoena shall be responsible for serving the subpoena and tendering the fees and mileage to the witness.

(6) A person present in a hearing room before a hearing officer during the conduct of a contested case hearing may be required, by order of the hearing officer, to testify in the same manner as if he were in attendance before the hearing officer upon a subpoena.

(7) Upon a showing of good cause a hearing officer or the Chairman of the Commission may modify or withdraw a subpoena.

(8) Nothing in this section shall preclude informal arrangements for the production of witnesses or documents, or both.

Proposed Amended EQC Procedure Rules	Attorney General's Model Rules as Amended	Notes

[Conduct of Hearing

340-11-128

(1) (a) Contested case hearings before the Commission shall be held under the control of the chairman as Presiding Officer, or any Commission member, or other person designated by the Commission or Director to be Presiding Officer.

(b) Contested case hearings before the Department shall be held under the control of the Director as Presiding Officer or other person designated by the Director to be Presiding Officer.

(2) The Presiding Officer may schedule and hear any preliminary matter, including a pre-hearing conference, and shall schedule the hearing on the merits. Reasonable written notice of the date, time, and place of such hearings and conferences shall be given to all parties.

Except for good cause shown, failure of any party to appear at a duly scheduled pre-hearing conference or the hearing on the merits shall be presumed to be a waiver of right to proceed any further, and, where applicable:

(a) A withdrawal of the answer;

(b) An admission of all the facts alleged in the notice of opportunity for a hearing; and

(c) A consent to the entry of a default order and judgment for the relief sought in the notice of opportunity for a hearing.

(3) At the discretion of the Presiding Officer, the hearing shall be conducted in the following manner:

(a) Statement and evidence of the party with the burden of coming forward with evidence in support of his proposed action;

(b) Statement and evidence of defending party in support of his alleged position;

(c) Rebuttal evidence, if any;

(d) Surrebuttal evidence, if any.]

Conducting Contested Case Hearings

137-03-040

(1) The contested case hearing shall be conducted by and under the control of the presiding officer. The presiding officer may be the chief administrative officer of the agency, a member of its governing body, or any other person designated by the agency.

(2) If the presiding officer or any decision maker has a potential conflict of interest as defined in ORS 244.020(4), that officer shall comply with the requirement of ORS chapter 244 (e.g., ORS 244.120 and 244.130).

(3) The hearing shall be conducted, subject to the discretion of the presiding officer, so as to include the following:

(a) The statement and evidence of the proponent in support of its action.

(b) The statement and evidence of opponents, interested agencies, and other parties; except that limited parties may address only subjects within the area to which they have been limited.

(c) Any rebuttal evidence.

(d) Any closing arguments.

Proposed Amended EQC Procedure Rules	Attorney General's Model Rules as Amended	Notes
~~[(4) Except for good cause shown, evidence shall not be taken on any issue not raised in the notice and the answer.~~	(4) Presiding officers or decision makers, interested agencies, and parties shall have the right to question witnesses. However, limited parties may question only those witnesses whose testimony may relate to the area or areas of participation granted by the agency.	
~~(5) All testimony shall be taken upon oath or affirmation of the witness from whom received. The officer presiding at the hearing shall administer oaths of affirmations to witnesses.~~	(5) The hearing may be continued with recesses as determined by the presiding officer.	
~~(6) The following persons shall have the right to question, examine, or cross-examine any witness:~~	(6) The presiding officer may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious, or immaterial matter.	
~~(a) The Presiding Officer;~~		
~~(b) Where the hearing is conducted before the full Commission, any member of the Commission;~~		
~~(c) Counsel for the Commission or the Department;~~		
~~(d) Where the Commission or the Department is not represented by counsel, a person designated by the Commission or the Director;~~		
~~(e) Any party to the contested case or such party's counsel:~~		
~~(7) The hearing may be continued with recesses as determined by the Presiding Officer.~~	(7) Exhibits shall be marked and maintained by the agency as part of the record of the proceedings.	
~~(8) The Presiding Officer may set reasonable time limits for oral presentation and shall exclude or limit cumulative, repetitious, or immaterial matter.~~	(8) If the presiding officer or any decision maker receives any written or oral ex parte communication on a fact in issue during the contested case proceeding;, that person shall notify all parties and otherwise comply with the requirements of 137-03-055.	
~~(9) The Presiding Officer shall, where appropriate and practicable, receive all physical and documentary evidence presented by parties and witnesses. Exhibits shall be marked, and the markings shall identify the person offering the exhibits. The exhibits shall be preserved by the Department as part of the record of the proceeding. Copies of all documents offered in evidence shall be provided to all other parties, if not previously supplied.~~	(ORS 183.415)	
~~(10) A verbatim oral, written, or mechanical record shall be made of all motions, evidentiary objections, rulings, and testimony.~~		
~~(11) Upon request of the Presiding Officer or upon a party's own motion, a party may submit a pre-hearing brief, or a post-hearing brief, or both.]~~		

Proposed Amended EQC Procedure Rules	Attorney General's Model Rules as Amended	Notes
~~[The Record~~ ~~340-11-121 The Presiding Officer shall certify such part of the record as defined by ORS 183.415(7) as may be necessary for review of final orders and proposed final orders. The Commission or Director may review tape recordings of proceedings in lieu of a prepared transcript.]~~	**Evidentiary Rules** 137-03-050 (1) Evidence of a type commonly relied upon by reasonably prudent persons in **the** conduct of their serious affairs shall be admissible. (2) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. (3) All offered evidence, not objected to, will be received by the presiding officer subject to the officer's power to exclude irrelevant, immaterial, or unduly repetitious matter. (4) Evidence objected to may be received by the presiding officer. Rulings on its admissibility or exclusion, if not made at the hearing, shall be made on the record at or before the time a final order is issued. (5) Any time ten days or more before a hearing, the agency, an interested agency, and any party may serve upon every party, interested agency, and the agency a copy of any affidavit, certificate, or other document proposed to be introduced in evidence. Unless cross-examination is requested of the affiant, certificate preparer, or other document preparer or custodian, within five days prior to hearing, the affidavit, certificate, or other document may be offered subject to the same standards and received with the same effect as oral testimony. (6) If cross-examination is requested of the affiant, certificate preparer, or other document preparer or custodian as provided in 137-03-050(5), and the requestor is informed within five days prior to the hearing that the requested witness will not appear for cross-examination, the affidavit, certificate, or other document may be received in evidence, if the agency or presiding officer determines that the party requesting cross-examination would not be unduly prejudiced or injured by lack of cross-examination. (ORS 183.450)	
~~[Evidentiary Rules~~ ~~340-11-125~~ ~~(1) In applying the standard of admissibility of evidence set forth in ORS 183.450, the Presiding Officer may refuse to admit hearsay evidence inadmissible in the courts of this state where he is satisfied that the declarant is reasonably available to testify and the declarant's reported statement is significant, but would not commonly be found reliable because of its lack of corroboration in the record or its lack of clarity and completeness.~~ ~~(2) All offered evidence, not objected to, will be received by the Presiding Officer subject to his power to exclude or limit cumulative, repetitious, irrelevant, or immaterial matter.~~ ~~(3) Evidence objected to may be received by the Presiding Officer with rulings on its admissibility or exclusion to be made at the time a final order is issued.]~~		

Ex Parte Communications

137-03-055

(1) An ex parte communication is an oral or written communication to an agency decision maker or the presiding officer not made in the presence of all parties to the hearing, concerning a fact in issue in the proceeding, ~~[and includes communication of any new facts from staff]~~ **but does not include communication from agency staff or counsel about facts in the record**.

(2) If an agency decision maker or presiding officer receives an ex parte communication during the pendency of the proceeding, the officer shall:

(a) Give all parties notice of the substance of the communication, if oral, or a copy of the communication, if written; and

(b) Provide any party who did not present the ex parte communication an opportunity to rebut the substance of the ex parte communication at the hearing, at a separate hearing for the limited purpose of receiving evidence relating to the ex parte communication, or in writing.

(3) The agency's record of a contested case proceeding shall include:

(a) The ex parte communication, if in writing;

(b) A statement of the substance of the ex parte communication, if oral;

(c) The agency or presiding officer's notice to the parties of the ex parte communication; and

(d) Rebuttal evidence.

(ORS 183.415(8); 183.462)

Proposed Orders in Contested Cases, Filing of Exceptions, Argument, and Adoption of Order

137-03-060

(1) If a majority of the officials who are to render the final order in a contested case have neither attended the hearing nor reviewed and considered the record, and the order is adverse to a party, a proposed order including findings of fact and conclusion of law shall be served upon the parties.

(2) When the agency serves a proposed order on the parties, the agency shall at the same time or at a later date notify the parties:

(a) When written exception must be filed to be considered by the agency; and

(b) When and in what form argument may be made to the officials who will render the final order.

(3) The agency decision maker, after receiving exceptions and argument, may adopt the proposed order or prepare a new order.

(ORS 183.460)

~~[Appeal of Hearing Officer's Final Order]~~
Alternative Procedure for Entry of a Final Order in Contested Cases Resulting from Appeal of Civil Penalty Assessments

340-11-132

In accordance with the procedures and limitations which follow, the Commission's designated Hearing Officer is authorized to enter a final order in contested cases resulting from imposition of civil penalty assessments:

(1) Hearing Officer's Final Order: In a contested case if a majority of the members of the Commission have not heard the case or considered the record, the Hearing Officer shall prepare a written Hearing Officer's Final Order including findings of fact and conclusions of law. The original of the Hearing Officer's Final Order shall be filed with the Commission and copies shall be served upon the parties in accordance with rule 340-11-097 (regarding service of written notice).

(2) Commencement of Appeal to the Commission:

(a) The Hearing Officer's Final Order shall be the final order of the Commission unless within 30 days from the date of mailing, or if not mailed then from the date of personal service, any of the parties**, ~~[or]~~** a member of the Commission**, or the Department** files with the Commission and serves upon each party **and the Department** a Notice of Appeal. A proof of service thereof shall also be filed, but failure to file a proof of service shall not be a ground for dismissal of the Notice of Appeal.

(b) The timely filing and service of a Notice of Appeal is a jurisdictional requirement for the commencement of an appeal to the Commission and cannot be waived; a Notice of Appeal which is filed or served date shall not be considered and shall not affect the validity of the Hearing Officer's Final Order which shall remain in full force and effect.

(c) The timely filing and service of a sufficient Notice of Appeal to the Commission shall automatically stay the effect of the Hearing Officer's Final Order.

(3) Contents of Notice of Appeal. A Notice of Appeal shall be in writing and need only state the party's or a Commissioner's intent that the Commission review the Hearing Officer's Final Order.

(4) Procedures on Appeal:

(a) Appellant's Exceptions and Brief -- Within 30 days from the date of service or filing of his Notice of Appeal, whichever is later, the Appellant shall file with the Commission and serve upon each other party written exceptions, brief and proof of service. Such exceptions shall specify those findings and conclusions objected to and reasoning, and shall include proposed alternative findings of fact, conclusions of law, and order with specific references to those portions to the record upon which the party relies. Matters not raised before the Hearing Officer shall not be considered except when necessary to prevent manifest injustice. In any case where opposing parties timely serve and file Notices of Appeal, the first to file shall be considered to be the appellant and the opposing party the cross appellant.

(b) Appellee's Brief -- Each party so served with exceptions and brief shall then have 30 days from the date of service or filing, whichever is later, in which to file with the Commission and serve upon each other party an answering brief and proof of service.

(c) Reply Brief -- Except as provided in subsection (d) of this section, each party served with an answering brief shall have 20 days from the date of service or filing, whichever is later, in which to file with the Commission and serve upon each other party a reply brief and proof of service.

(d) Cross Appeals -- Should any party entitled to file an answering brief so elect, he may also cross appeal to the Commission the Hearing Officer's Final Order by filing with the Commission and serving upon each other party in addition to an answering brief a Notice of Cross Appeal, exceptions (described in subsection (a) of this section), a brief on cross appeal and proof of service, all within the same time allowed for an answering brief. The appellant-cross appellee shall then have 30 days in which to serve and file his reply brief, cross answering brief and proof of service. There shall be no cross reply brief without leave of the Chairman or the Hearing Officer.

(e) Briefing on Commission Invoked Review -- Where one or more members of the Commission commence an appeal to the Commission pursuant to subsection (2)(a) of this rule, and where no party to the case has timely served and filed a Notice of Appeal, the Chairman shall promptly notify the parties of the issue that the Commission desires the parties to brief and the schedule for filing and serving briefs. The parties shall limit their briefs to those issues. Where one or more members of the Commission have commenced an appeal to the Commission and a party has also timely commenced such a proceeding, briefing shall follow the schedule set forth in subsections (a), (b), (c), (d), and (f) of this section.

(f) Extensions -- The Chairman or a Hearing Officer, upon request, may extend any of the time limits contained in this section. Each extension shall be made in writing and be served upon each party. Any request for an extension may be granted or denied in whole or in part.

(g) Failure to Prosecute -- The Commission may dismiss any appeal or cross appeal if the appellant or cross appellant fails to timely file and serve any exceptions or brief required by these rules.

(h) Oral Argument -- Following the expiration of the time allowed the parties to present exceptions and briefs, the Chairman may at his discretion schedule the appeal for oral argument before the Commission.

(i) Scope of Review -- In an appeal to the Commission of a Hearing Officer's Final Order, the Commission may, substitute its judgment for that of the Hearing Officer in making any particular finding of fact, conclusion of law, or order. As to any finding of fact made by the Hearing Officer the Commission may make an identical finding without any further consideration of the record.

(j) Additional Evidence -- In an appeal to the Commission of a Hearing Officer's Final Order the Commission may take additional evidence. Requests to present additional evidence shall be submitted by motion and shall be supported by a statement specifying the reason for the failure to present it at the hearing before the Hearing Officer. If the Commission grants the motion, or so decides of its own motion, it may hear the additional evidence itself or remand to a Hearing Officer upon such conditions as it deems just.

(5) In exercising the authority to enter a final order pursuant to this rule, the Hearing Officer:

(a) Shall not reduce the amount of civil penalty imposed by the Director unless:

(A) The department fails to establish some or any of the factors considered by the Director in setting the civil penalty amount; or

(B) The respondent introduces new information at the hearing regarding mitigating and aggravating circumstances not initially considered by the Director. Under no circumstances shall the Hearing Officer reduce or mitigate a civil penalty based on new information submitted at the hearing below the minimum established in the schedule of civil penalties contained in Commission rules.

(b) May elect to prepare proposed findings of fact and a proposed order and refer the matter to the Commission for entry of a final order pursuant to the general procedure for contested cases prescribed under OAR 340-11-098.

[Presiding Officer's Proposed Order in Hearing Before the Department

340-11-134

(1) In a contested case before the Department, the Director shall exercise powers and have duties in every respect identical to those of the Commission in contested cases before the Commission:

(2) Notwithstanding section (1) of this rule, the Commission may, as to any contested case over which it has final administrative jurisdiction, upon motion of its Chairman or a majority of its members, remove to the Commission any contested case before the Department at any time during the proceedings in a manner consistent with ORS Chapter 183.]

Proposed Amended EQC Procedure Rules	Attorney General's Model Rules as Amended	Notes
[Final Orders in Contested Cases Notification	**Final Orders**	
340-11-135	137-03-070	
(1) Final orders in contested cases shall be in writing or stated in the record, and may be accompanied by an opinion.	**(1)** Final orders on contested cases shall be in writing and shall include the following:	
(2) Final orders shall include the following:		
(a) Rulings on admissibility of offered evidence if not already in the record;	[(1)] **(a)** Rulings on admissibility of offered evidence when the rulings are not set forth in the record.	
(b) Findings of fact, including those matters which are agreed as fact, a concise statement of the underlying facts supporting the findings as to each contested issue of fact and each ultimate fact, required to support the Commission's or the Department's order;	[(2)] **(b)** Findings of fact -- those matters that are either agreed as fact or that, when disputed, are determined by the fact finder on substantial evidence to be facts over contentions to the contrary. A finding must be made on each fact necessary to reach the conclusions of law on which the order is based.	
(c) Conclusions of law;	[(3)] **(c)** Conclusion(s) of law -- applications of the controlling law to the facts found and the legal results arising therefrom.	
(d) The Commission's or the Department's Order.	[(4)] **(d)** Order -- the action taken by the agency as a result of the facts found and the legal conclusions arising therefrom.	
(3) The Department shall serve a copy of the final order upon every party or, if applicable, his attorney of record.]	[(5)] **(e)** A citation of the statutes under which the order may be appealed.	
	(2) The date of service of the order to the parties shall be specified in writing and be part of or be attached to the order on file with the agency.	
	(ORS 183.470)	

Default Orders

137-03-075

(1) When the agency has given a party an opportunity to request a hearing and the party fails to make a request within a specified time, or when the agency has set a specified time and place for a hearing and the party fails to appear at the specified time and place, the agency may enter a final order by default.

(2) The agency may issue an order of default only after making a prima facie case on the record. The record may be made at an agency meeting, at a scheduled hearing on the matter, or, if the notice of intended action states that the order will be issued or become effective upon the failure of the party to timely request a hearing, when the order is issued.

(3) If the notice of intended action contains an order that is to become effective unless the party requests a hearing, the record shall be complete at the time of the notice of intended action.

(4) The record may consist of oral (transcribed, recorded, or reported) or written evidence or a combination of oral and written evidence. When the record is made at the time the notice or order is issued, the agency file may be designated as the record. In all cases, the record must contain substantial evidence to support the findings of fact.

(5) When the agency has set a specified time and place for a hearing in a matter in which only one party is before the agency and that party subsequently notifies the agency that the party will not appear at such specified time and place, the agency may enter a default order, cancel the hearing, and follow the procedure described in 137-03-075(2) and (4).

(6) When a party requests a hearing after the time specified by the agency, but before the agency has entered a default order, the agency may grant the request or make further inquiry as to the existence of the reasons specified in 137-03-075(7)(a) for the request being tardy. If further inquiry is made, the agency may require an affidavit to be filed with the agency. The agency shall enter an order granting or denying the request as described in 137-03-075(7)(e).

(7) (a) When a party requests a hearing after entry of a default order, the party may request to be relieved from the default order only on grounds of mistake, inadvertence, surprise, or excusable neglect.

(b) The request shall be filed with the agency, and a copy delivered or mailed to all persons and agencies required by statute, rule, or order to receive notice of the proceeding, within a reasonable time. If the request is received more than 75 days after delivery or mailing of a copy of the order of default to the party or the party's attorney, it shall be presumed that such a request is not timely. This presumption may be rebutted by evidence showing that the request is reasonably timely.

(c) The request shall state why the party should be relieved from the default order.

(d) The agency may make further inquiry, including holding a hearing, as it deems appropriate.

(e) If the request is allowed by the agency, it shall enter an order granting the request and schedule a hearing in due course. If the request is denied, the agency shall enter an order setting forth its reasons for such denial.

(8) The agency shall notify a defaulting party of the entry of a default order by delivering or mailing a copy of the order as required by ORS 183.330(2).

(ORS 183.415; 183.470)

Reconsideration and Rehearing

137-03-080

(1) A party may file a petition for reconsideration or rehearing of a final order with the agency within 60 days after the order is served. A copy of the petition shall also be delivered or mailed to all parties any other persons and agencies required by statute, rule, or order to receive notice of the proceeding.

(2) The petition shall set forth the specific grounds for reconsideration or rehearing. The petition may be supported by written argument.

(3) A rehearing may be limited by the agency to specific matters.

(4) The petition may include a request for stay of a final order if the petition complies with the requirements of 137-03-090(2)(f) through (i).

(5) The agency may consider a petition for reconsideration or rehearing as a request for either or both. The petition may be granted or denied by summary order and, if no action is taken, shall be deemed denied as provided in ORS 183.482.

(6) Any member of an agency's governing body may move for reconsideration or rehearing of an agency final order within 60 days after the order is served. Reconsideration or rehearing shall be granted if approved by the governing body. The procedural effect of granting reconsideration or rehearing on an agency's own motion shall be identical to the effect of granting a party's petition for reconsideration or rehearing.

(7) Reconsideration or rehearing shall not be granted after the filing of a petition for judicial review, except in the manner provided by ORS 183.482(6).

(8) A final order remains in effect during reconsideration or rehearing until changed.

(9) At the conclusion of a reconsideration or rehearing, an agency must enter a new order, which may be an order affirming the existing order.

(ORS 183.482)

Request for Stay

137-03-090

(1) Any person entitled to judicial review of an agency order who files a petition for judicial review may request the agency to stay the enforcement of the agency order that is the subject of judicial review.

(2) The stay request shall contain:

(a) The name of the person filing the request, identifying that person as a petitioner and the agency as the respondent;

(b) The full title of the agency decision as it appears on the order and the date of the agency decision;

(c) A summary of the agency decision; and

(d) The name, address, and telephone number of each of the following:

(A) The petitioner;

(B) All other parties to the agency proceeding. When the party was represented by an attorney in the proceeding, then the name, address, and telephone number of the attorney shall be provided and the address and telephone number of the party may be omitted.

(e) A statement advising all persons whose names, addresses and telephone numbers are required to appear in the stay request as provided in 137-03-090(2)(d), that they may participate in the stay proceeding before the agency if they file a response in accordance with 137-03-091 within ten days from delivery or mailing of the stay request to the agency.

(f) A statement of facts and reasons sufficient to show that the stay request should be granted because:

(A) The petitioner will suffer irreparable injury if the order is not stayed;

(B) There is a colorable claim of error in the order; and

(C) Granting the stay will not result in substantial public harm.

(g) A statement identifying any person, including the public, who may suffer injury if the stay is granted. If the purposes of the stay can be achieved with limitations or conditions that minimize or eliminate possible injury to other persons, petitioner shall propose such limitations or conditions. If the possibility of injury to other persons cannot be eliminated or minimized by appropriate limitation or conditions, petitioner shall propose an amount of bond or other undertaking to be imposed on the petitioner should the stay be granted, explaining why that amount is reasonable in light of the identified potential injuries.

(h) A description of additional procedures, if any, the petitioner believes should be followed by the agency in determining the appropriateness of the stay request.

(i) An appendix of affidavits containing all evidence (other than evidence contained in the record of the contested case out of which the stay request arose) upon which the petitioner relies in support of the statements required under 137-03-090(2)(f) and (g). The record of the contested case out of which the stay request arose is a part of the record of the stay proceeding.

(3) The request must be delivered or mailed to the agency and on the same date a copy delivered or mailed to all parties identified in the request as required by 137-03-090(2)(d).

(ORS 183.482)

Request for Stay -- Motion to Intervene

137-03-091

(1) Any party identified under 137-03-090(2)(d) desiring to participate as a party in the stay proceeding may file a response to the request for stay.

(2) The response shall contain:

(a) The full title of the agency decision as it appears on the order;

(b) The name, address, and telephone number of the person filing the response, except that if the person is represented by an attorney, then the name, address, and telephone number of the attorney shall be included and the person's address and telephone number may be deleted;

(c) A statement accepting or denying each of the statements of facts and reasons provided pursuant to 137-03-090(2)(f) in the petitioner's stay request;

(d) A statement accepting, rejecting, or proposing alternatives to the petitioner's statement on the bond or undertaking amount or other reasonable conditions that should be imposed on petitioner should the stay request be granted.

(3) The response may contain affidavits containing additional evidence upon which the party relies in support of the statement required under 137-03-091(2)(c) and (d).

(4) The response must be delivered or mailed to the agency and to all parties identified in the stay request within ten (10) days of the date of delivery or mailing to the agency of the stay request.

(ORS 183.482)

Request for Stay -- Agency Determination

137-03-092

(1) The agency may allow the petitioner to amend or supplement the stay request to comply with 137-03-090(2)(a)-(e) or (3). All amendments and supplements shall be delivered or mailed as provided in 137-03-090(3), and the deadlines for response and agency action shall be computed from the date of delivery or mailing to the agency.

(2) After the deadline for filing of responses, the agency shall:

(a) Decide upon the basis of the material before it; or

(b) Conduct such further proceedings as it deems desirable; or

(c) Allow the petitioner within a time certain to submit responsive legal arguments and affidavits to rebut any response. Petitioner may not bring in new direct evidence through such affidavits. The agency may rely on evidence in such affidavits only if it rebuts intervenor evidence.

(3) The agency's order shall:

(a) Grant the stay request upon findings of irreparable injury to the petitioner ~~[or]~~ and a colorable claim of error in the agency order and may impose reasonable conditions, including but not limited to a bond or other undertaking and that the petitioner file all documents necessary to bring the matter to issue before the Court of Appeals within a specified reasonable period of time; or

(b) Deny the stay request upon a finding that the petitioner failed to show irreparable injury or a colorable claim of error in the agency order; or

(c) Deny the stay request upon a finding that a specified substantial public harm would result from granting the stay, notwithstanding the petitioner's showing of irreparable injury and a colorable claim of error in the agency order.

(4) Nothing in 137-03-055 or in 137-03-090 to 137-03-092 prevents an agency from receiving evidence from agency staff concerning the stay request. Such evidence shall be presented by affidavit within the time limits imposed by 137-03-091(3). If there are further proceedings pursuant to 137-03-092(2), the agency staff may present additional evidence in the same manner that parties are permitted to present additional evidence.

Request for Stay -- Time Frames

137-03-093

(1) Unless otherwise agreed to by the agency, petitioner, and respondents, the agency shall commence any proceeding instituted pursuant to 137-03-092(2) within 20 days after receiving the stay request.

(2) Unless otherwise agreed to by the agency, petitioner, and respondents, the agency shall grant or deny the stay request within 30 days after receiving it.

(ORS 183.482)

Proposed Amended EQC Procedure Rules	Attorney General's Model Rules as Amended	Notes
Power of the Director 340-11-136 (1) Except as provided by rule 340-12-075, the Director, on behalf of the Commission, may execute any written order which has been consented to in writing by the parties adversely affected thereby. (2) The Director, on behalf of the Commission, may prepare and execute written orders implementing any action taken by the Commission on any matter. (3) The Director, on behalf of the Commission, may prepare and execute orders upon default where: (a) The adversely affected parties have been properly notified of the time and manner in which to request a hearing and have failed to file a proper, timely request for a hearing; or (b) Having requested a hearing, the adversely affected party has failed to appear at the hearing or at any duly scheduled prehearing conference. (4) Default orders based upon failure to appear shall issue only upon the making of a prima facie case on the record.	**Miscellaneous Rules -- Unacceptable Conduct** 137-04-010 A presiding officer may expel a person from an agency proceeding if that person engages in conduct that disrupts the proceeding.	

Miscellaneous Provisions

~~[340-11-140~~

~~OAR Chapter 340, rules 340-11-010 to 340-11-140, as amended and adopted June 25, 1976, shall take effect upon prompt filing with the Secretary of State. They shall govern all further administrative proceedings then pending before the Commission or Department except to the extent that, in the opinion of the Presiding Officer, their application in a particular action would not be feasible or would work an injustice, in which event, the procedure in former rules designated by the Presiding Officer shall apply.]~~

Procedures for Conduct of Contested Case on Order of Environmental Quality Commission Selecting a Land Fill Disposal Site Under Authority of 1985 Oregon Laws, Chapter 679.

340-11-141 Rules/Applicability.

(a) The Environmental Quality Commission hereby adopts the Attorney General's Model Rules numbered OAR 137-03-001 through 137-03-093 and OAR 137-04-010 (Model Rules) for application to any contested case conducted by or for the Commission on its order selecting a landfill disposal site pursuant to 1985 Oregon Laws, Chapter 679.

(b) The Model Rules shall only apply to the contested case (or cases) described in subsection 340-11-141(a). The Commission's rules for conduct of contested cases, OAR 340-11-097 through 340-11-140, shall continue to apply in all other cases. These rules shall become effective upon filing of the adopted rule with the Secretary of State.

Procedures for Conduct of Contested Case on Denial Pursuant to OAR 340-48-035 of 401 Certification of the Proposed Salt Caves Hydroelectric Project.

340-11-142 Rules/Applicability.

(1) The Environmental Quality Commission hereby adopts the Attorney General's Model Rules numbered OAR 137-03-001 through 137-03-093 and OAR 137-04-010 (Model Rules) for application to any contested case conducted by or for the Commission on denial pursuant to OAR 340-48-035 of 401 certification of the proposed Salt Caves Hydroelectric Project.

(2) The Model Rules shall only apply to the contested case (or cases) described in subsection 340-11-142(1). The Commission's rules for conduct of contested cases, OAR 340-11-097 through 340-11-140, shall continue to apply in all other cases. These rules shall become effective upon filing of the adopted rule with the Secretary of State.

Attachment 2
Agenda Items K, L, M

MEMORANDUM

To: Environmental Quality Commission

From: Hearings Officers

Subject: Hearing Report for PM_{10} Rule Change Hearings Held March 2, 3, 7, 9, and 10, 1988

Summary of Procedure

As announced in the public notice, public hearings were convened as follows: Wednesday March 2 in the 2nd Floor Conference Room, Portland Building, 1120 S.W. 5th, Portland; Thursday March 3 at the same location; Monday March 7, in the Jackson County Courthouse Auditorium, 10 S. Oakdale, Medford; Wednesday March 9 in Conference Room A, Juvenile Justice Center, 1128 N.W. Harriman, Bend; and Thursday March 10 in the Court Annex Conference Room, 1100 L Avenue, La Grande. The purpose of the hearings was to receive testimony on proposed PM_{10} amendments to Ambient Air Standards, Air Pollution Emergency Rules, revisions to the New Source Review Rules, and Prevention of Significant Deterioration Rules and proposed committments for PM_{10} Group II Areas, as revisions to the State Implementation Plan. Sarah Armitage conducted the Portland hearings, Merlyn Hough conducted the Medford hearing, and Spencer Erickson conducted the hearings in Bend and La Grande.

Oral and written testimony was offered by Henry Rust of Timber Products Co., Andre' Pinnette of Bend, Sue Joerger of SOTIA, and John Simpson of Bend.

Oral testimony was offered by Larry Cribbs of La Grande, John Charles of the Oregon Environmental Council, Norm Cimon of La Grande, Jim Brown of La Grande, John J. Harmon of Medford, Elzy Kees of Medford, Art Balbini of Bend, Don Sands of La Grande, Glenn Reed of Bend, William Martin of Bend, Donna Berry of La Grande, Marge Woodford of La Grande, Marie Lester of La Grande, and Grant Darrow of the Oregon Chimney Sweeps Association.

Written testimony was submitted by D'Arcy P. Bannister of the U.S. Department of the Interior, Llewellen Matthews of the Northwest Pulp and Paper Association, Thomas C. Donaca of Associated Oregon Industries, David S.Kircher of the U.S. EPA, Carol Pedersen Moorehead of the American Lung Association, Saltmen & Stevens, P.C. for the Cogeneration Interest Group, L.R. Starr of Summerville, and Max Robertson of Bend.

Summary of Testimony

For ease of reference, testimony taken at the March, 1988 PM_{10} hearings is broken int four categories: standards and monitoring,

general policy issues, field and slash burning, and residential woodheat.

STANDARDS AND MONITORING

Henry Rust
Director, Environmental Affairs
Timber Products Co.
Springfield, OR 97477-0055

Mr. Rust submitted written comments in a letter dated March 3, 1988, and oral comments at the March 7 Public Hearing in Medford. In both sets of comments, Mr. Rust remarked that proposed Oregon PM_{10} regulations unnecessarily retain the TSP standard, which in his view, would require duplicate testing of some point sources.

D'Arcy P. Bannister
Supervisor, Mineral Issues Involvement Section
Branch of Engineering and Economic Analysis
U.S. Department of the Interior
East 360 3rd Avenue
Spokane, Washington 99202

Mr. Bannister submitted written comments in a letter dated February 8, 1988. The Mineral Issues Involvement Section of the Department of the Interior commented on the proposed amendment of the Ambient Air Quality Standards (OAR 340-31-005 through 040). They want to know the present emission levels from industrial plants and mining-related operations, and how the new air quality standards will affect the minerals industry. They also question whether it is economically feasible for mining sources of particulates to apply the best available control technology for PM_{10}. Sources of fine particulates from mining range from open-pit blasting to emissions from processing plants.

Llewellen Matthews
Executive Director, Northwest Pulp and Paper Association (NWPPA)
1300 114th Avenue S.E., Suite 110
Bellevue, WA 98004

The NWPPA submitted written comments in a letter dated March 18, 1988. Their comments were lengthy and are included in this memorandum as attachment 1. In general, NWPPA expresses concern that DEQ will unnecessarily be designating Group I PM_{10} areas as in nonattainment, inconsistent with EPA requirements and without sufficient supporting data. DEQ could be abusing its administrative discretion if it designates Group I areas as in nonattainment, based on inadequate data and inadequately explained or undisclosed assumptions.

In NWPPA's view, the unnecessary designation of Group I areas as in nonatttainment could increase Oregon's exposure to EPA's nonattainment area sanctions. If Group I areas were not designated as in nonattainment, then, in NWPPA's view, there would be less likelihood of application of certain EPA sanctions.

The NWPPA also commented that the full federal Clean Air Act review requirements that would be required for Group I areas designated as in nonattainment would industrial growth and modernization. Compliance with lowest achievable emission rate (LAER) is discouraging to new sources and modernization. NWPPA stated that it would be difficult for an applicant to show that the SIP is being carried out for the nonattainment area because DEQ itself may face difficulties in regulating woodstoves, which are the major contributors to Group I PM_{10} problems.

Premature designation of Group I areas as in nonattainment could raise the question, when three years of successful attainment have been demonstrated, of what date to use in calculating three years of valid data needed in order to de-designate the area.

The NWPPA is also concerned that proposed DEQ regulations do not include any of the EPA's three phase-in exemption periods for preconstruction monitoring required in support of new source review in PSD areas. Even though DEQ knows of no proposed NSR sources currently doing pre-construction monitoring for particulate matter, there could be project applicants who could qualify for one or two of the exemptions proposed by EPA.

The DEQ takes too lenient an approach to regulation of woodstoves, the major sources of PM_{10}, while it maintains requirements for point sources that are more stringent than federal standards.

Finally, the NWPPA stated that there exist economic impacts of the proposed PM_{10} regulations that were not included in DEQ's statements of fiscal and economic impact. In addition to certain additional costs to the DEQ, the rules will increase pre-construction monitoring costs for NSR applicants, increase permit application costs to applicants going through full nonattainment review procedures, and increase costs for point source curtailment.

Thomas C. Donaca
General Counsel
Associated Oregon Industries
1149 Court Street, N.E.
Salem, Oregon 97309-0519

Mr. Donaca submitted written comments in a letter dated March 21, 1988. He stated that Associated Oregon Industries (AOI) reviewed the comments of NWPPA, and agrees with them. AOI concurs that

data does not at this time require designation of Group I areas as in legal nonattainment. Local governments should be made aware that designation of Group I areas as in nonattainment may accelerate potential for EPA sanctions. Local governments should also be made aware of difficulties involved with being de-designated, especially if a proposed SIP does acheive attainment within the EPA time frame. DEQ should take as much time as federal law and rules allow to develop and implement an overall program to achieve attainment, in view of the complexity of the PM_{10} issue, the cost to DEQ and the cost to the regulated community. Forcing the industrial community to assume LAER or BACT in the area where industry is already the most stringently regulated will not be cost effective and will not solve overall PM_{10} problems.

David S.Kircher
Chief, Air Programs Development Section
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue
Seattle, Washington 98101

On behalf of EPA's Region 10 PM_{10} Task Force, Mr. Kircher submitted comments by letter dated March 16, 1988. EPA's comment were lengthy and will be summarized in this report and also included as attachment 2.

EPA submitted the following comments:

A "dimensionless system" of measurement, as referenced in the public notice, does not apply to measurement of particulate matter.

DEQ failed to include a necessary definition of PM_{10} in the documents submitted for comment.

DEQ must add a definition of "emission standard or limitation" to its rules, as agreed in the October 23, 1987 letter from Fred Hansen to Robie Russel on Stack Heights and Dispersion Techniques.

EPA objected to the definition of "ambient air" as being that which is "normally used for respiration by plants or animals". EPA's objection could be cured by removal of the word "normally", which they view as creating too restrictive a definition.

EPA objected to the definition of an "ambient air monitoring site" as one that had been "established by the Department", and to the statement that "such sites are intended to represent a relatively broad area".

"Equivalent method" as defined in 340-31-005(5) must clearly state that EPA in 40 CFR 50 defines which methods are approved for NAAQS compliance.

EPA objected to the wording of the ambient air quality rules in OAR 340-31-015, 020, 025, 030, 040, and 055 that restrict application of these standards to measurements taken at ambient air monitoring sites. Standards should apply to all locations in ambient air, regardless of where monitors are located.

Area specific contingency plans should be revised to include by whom and how contingency plans will be implemented.

It is not correct to say, under the PSD/NSR program, that no offset is required for PM_{10}. PM_{10} offsets must be obtained if emissions from a new major source or major modification to an existing source will cause or contribute to a violation of an ambient standard.

Because an exemption for sources not significantly impacting designated nonattainment areas exempts certain major stationary sources less then 250 ton per year from the attainment area NSR requirements, the DEQ NSR PM_{10} rule does not apply to all 100 ton per year sources. This must be revised to comply with 40 CFR 51.165(b) which requires the major source permit program to apply to any major new stationary source or major modification locating in areas not violating NAAQS.

In its committal SIP for Group II areas, DEQ should identify the appropriate EPA regional office who will be notified when an exceedance of the PM_{10} NAAQS is observed.

The terms "attainment" and "nonattainment" used in reference to Group II areas should appear in quotations because PM_{10} areas are not being officially designated as such.

The report on the final status evaluation of each of the Group II areas along with the inventory of actual and allowable emissions for these areas must be submitted to EPA no later than August 30, 1990, not September 1, 1990.

Andre' Pinette
61210 Parrell Road
Bend, Oregon 97702

Mr. Pinnette submitted both oral and written comments at the March 9 hearing in Bend. He stated that he was disappointed that not more Bend residents attended the March 9 hearing. Mr. Pinnette is concerned that monitoring and interpretation of air quality data in Bend be done equitably. He wants more information on the role of inversions on high pollution days and the naturally occuring background level of PM_{10} particles. In addition, Mr. Pinette is concerned about the impact of woodstove regulation on low income persons, and wants a balance in the quality of life in Oregon. Woodstoves should not be abolished.

Larry Cribbs
P.O. Box 2873
La Grande, Oregon 97850

Mr. Cribbs presented oral comments at the March 10, public hearing in La Grande. He stated that the DEQ needs to make a better effort to inform the public in Eastern Oregon. DEQ should leave copies of rule packages at public libraries, and generally make information more accessible. Mr. Cribbs is concerned that there is only one monitoring station in La Grande. There may be a need for more than one monitor. It is important to know the background level of particulates from natural sources, such as forest fires, in order to be able to determine which sources of particulates can be controlled. Mr. Cribbs believes that monitoring around the perimeter of the La Grande area could provide information on particulates transported into the area. Federal agencies should be made to comply with state's smoke management plan.

John Charles
Oregon Environmental Council
2637 S.W. Water Street
Portland, Oregon 97201

Mr. Charles presented oral comments at the March 2 meeting in Portland. He stated that a PM_{10} standard shorter than 24 hours is needed because problems are related to peaks from primary sources. Averaging readings over a 24 hour period makes PM_{10} problems appear to be less than they are. The state should go beyond the EPA's 24 hour approach and use an 8 to 4 hour standard to address the peak problem. Mr. Charles objected to the standards proposed for use in classifying Group I and Group II areas. Group I areas should be those with a 60% or greater chance of violating PM_{10} standards, instead of a 95% or greater chance. DEQ should establish stricter criteria than the EPA on designation of Group I areas. Additional monitoring will cause Group II areas to be redesignated as Group I areas, and this will involve SIP revisions, delays, and later dates for compliance.

GENERAL POLICY ISSUES

Sue Joerger
Executive Vice President
Southern Oregon Timber Industries Association (SOTIA)
2680 N. Pacific Hwy.
Medford, OR 97501

Ms. Joerger offered both oral and written comments at the March 7 Public Hearing in Medford. SOTIA had no comments on the new standards and proposed changes. It approved of the manner in which DEQ incorporated new EPA standards into Oregon

administrative rules. Ms. Joerger's remarks were an effort to put Group I area control strategies in context of issues facing southern Oregon timber industry. If implemented, new Forest Plans would reduce timber supplies by 36% in the Rogue and 10% in the Siskiyou National Forest. If there is a timber shortage and regional competition for raw materials, the cost of lumber will increase. In this situation, Jackson and Josephine County timber industry may have difficulty competing in the marketplace. Prices of softwood are set nationally, therefore Jackson and Josephine County industries are unable to remain competitive by passing along increased costs. Timber supplies may be further reduced by the plan to make the Siskiyou National Forest a National Park.

Since the late 1970s, Jackson County industry has reduced its emissions by 69%, and today, only 13% of worst day and 21% of the annual average day problem is attributable to industry. Ms. Joerger stated that the real problem is caused by smoke from wood stoves which contributes 65% of worst day problem and 41% of the annual average problem. If DEQ were to close down the forest products industry, a PM_{10} problem would still exist in the AQMA. The PM_{10} problem cannot be solved by regulation of industry alone.

SOTIA opposes DEQ's proposed rules which would not treat all Group I areas the same. Their competitors outside of a Group I area have an advantage, and their competitors in other Group I areas could also have an advantage if Group I rules are not uniform.

If timber supplies decrease and the DEQ passes its proposed rules for PM_{10} for the Medford-White City Group I area, manufacturers in Jackson and Josephine Counties will be unable to compete effectively in national markets. Many companies may not be able to afford the capital outlays necessary to comply with new PM_{10} rules.

Carol Pedersen Moorehead
Regional Director
American Lung Association-Central and Eastern Regions
25 N.W. Minnesota St.
Bend, OR 97701

Ms. Pedersen-Moorehead submitted written comments in a letter dated March 11, 1988. Ms. Pedersen Moorehead commends the DEQ for introducing new PM_{10} standards. It is essential that we are aware of and monitor closely those pollutants known or suspected to cause damage to human health. She encourages DEQ to perform intensive air quality monitoring for more than one year in affected areas because of variations in conditions. When possible, monitoring should continue year-round to assure clean air.

Saltman & Stevens, P.C.,
1515 S.W. Fifth, Suite 555
Portland, OR 97201

Representing: Cogeneration Interest Group, including Snow Mountain Pine, Kinzua Corporation, Blue Mt. Forest Products, Prairie Wood Products, Catalyst Hudson, Douglas County, D.R. Johnson Lumber Co., Biomass I and Catalyst Energy Development Corporation

On behalf of the Cogeneration Interest Group, the law firm of Saltman & Stevens submitted written comments in a letter dated March 18, 1988. The Cogeneration Interest Group stated that current new and relatively unproven technologies, including high pressure bag houses and electrostatic precipitators are not cost effective for reducing PM_{10}. In the Group's view, implementation of the proposed PM_{10} rules would result in higher electric power rates and cause fuel switching to natural gas, greater reliance on hydroelectric potential as well as increased use of wood stoves by residential customers. Increased use of residential wood heat would increase PM_{10} problems. The Cogeneration Interest Group is interested in having an opportunity to discuss PM_{10} regulation issues in greater detail.

Norm Cimon
1208 1st Street
La Grande, Oregon

Mr. Cimon presented oral comments at the March 10 meeting in La Grande. He stated that DEQ should inform the public earlier about public hearings. Mr. Cimon questions replacement of the TSP standard, but will accept this if the new PM_{10} standard effectively regulates the same pollutants. He is concerned with volitalization of chemicals sprayed on burned fields. Sprayed and burned wheat fields could produce dangerous bi-products. Mr. Cimon favors the use of tunable lasar devices for pollution control. Woodstove smoke problems should be separated from agricultural burning problems. Self monitoring will work for the majority of agricultural burners, but there will always be a minority which fails to comply. Mr. Cimon supports block grants to assist in the switch over to alternate sources of heat. Area physicians should be surveyed to obtain an idea of particulate related health problems.

Jim Brown
P.O. Box 300
La Grande, Oregon

Mr. Brown presented oral comments at the March 10 meeting in La Grande. He commented on his lack of notice regarding the La Grande PM_{10} meeting. Up until this point, DEQ has had very little community involvement in the Grande Ronde Valley. There is a need

for a comprehensive smoke management plan in Eastern Oregon. Mr. Brown supports implementation of a "Clean Air Electric Rate" during periods of atmospheric inversion. In addition, a community based conservation program is important so people will use less fuel, pollute less. It is possible to super-insulate close to 100% of homes. There is not enough local political leadership on pollution problems. Funds may be available from the DEQ or EPA. DEQ has asked the area to come up with a pollution management program, but few people realize this because of lack of involvement by the DEQ.

John J. Harmon
Chair, Air Quality Commission
Medford Chamber of Commerce
P.O. Box 1511
Medford, Oregon 97501

Mr. Harmon presented oral comments at the March 7 meeting in Medford. He supports DEQ's adoption of the federal PM_{10} standards, and asks DEQ to act as an advocate for enforcement of the rules. PM_{10} rules should not be more restrictive in Medford than in other areas. For fairness of administration, there should be no unique rules for the Medford AQMA. Mr. Harmon expressed the wish to participate in the full control strategy that will be developed for the Medford AQMA.

Elzy Kees, Jr.
2617 Howard Avenue
Medford, Oregon

Mr. Kees presented oral comments art the March 7 meeting in Medford. He questions the need for the PM_{10} regulations. He would like to see information from the Surgeon General or other studies proving that particulates cause illness. Have there been any deaths due to woodsmoke,and has anyone been hospitalized because of it ? Disease can be caused by well insulated homes, especially those using air conditioners. Mr. Kees believes that more people are affected by pollen than by woodsmoke. The Rogue Valley has already cleaned-up its air without government intervention. Mr. Kees believes that particulates could be carried into the area from outside sources. The jet stream could be carrying particulates from Japan.

FIELD AND SLASH BURNING ISSUES

L.R. Starr
Rt. 1, Box 102, Slack Lane
Summerville, OR 97876

Mr. Starr submitted written comments in a letter dated March 16, 1988. Mr. Starr is a farmer who described the difference between burning acreage of wheat stubble and working wheat stubble back into the ground. When wheat stubble is not burned, two additional operations are necessary: using a beater and discing. Wheat fields that were burned are more productive and lose less money due to disease.

There are great difficulties in rotating wheat with seed grass when either crop is incorporated instead of burned. For farmers rotating wheat and seed grass, it is not cost effective to incorporate wheat straw. Cutting cost and receiving return on investments in agriculture is the difference between forclosure and a paying operation.

Art Balbini
7101 S.W. McVey
Bend, Oregon

Mr. Balbini presented oral comments at the March 9 meeting in Bend. He lives 15 miles north of town up on a hill, and can see Mt. Bachelor during the winter. However, in the summer during burning periods, he cannot see the mountain. Mr. Balbini feels that before DEQ looks at regulating wood stoves, it should consider smoke that is blowing into the Bend area. Farmers in Madras burn and Bend sometimes receives the smoke because it blows in the wrong direction.

Don Sands
Manager, Valley Chemical
Member, La Grande Chamber of Commerce, La Grande & Union County Natural Resources Task Force
1002 3rd Street
La Grande, Oregon

Mr. Sands presented oral comments at the March 10 meeting in La Grande. He objects to having had little notice of the PM_{10} public hearing in La Grande. Smoke should be kept in perspective. It is essential to burn fields and slash. Agriculture and timber are the two main supporting resources of the Grand Ronde Valley. Self monitoring must work without government intervention, although occasionally mistakes are made. Uncontrolled wildfires burning in the wilderness areas during summer 1987 filled the valley with smoke, and farmers took the blame. Mr. Sands is concerned that

the bureaucratic process could lead to excessive regulation, and costly, complicated laws.

RESIDENTIAL WOOD HEAT

Glenn Reed
Mayor, City of Bend

Mayor Reed presented oral comments at the March 9 public hearing in Bend. He remarked that the city council is aware of the increased smoke problem. Mayor Reed is not in favor of mandatory curtailment, but thinks that voluntary curtailment could work. Wood is a secondary source of heat for many Bend residents. Residents of the West side have a more severe smoke problem than elsewhere, especially those suffering from respiratory disorders.

John Simpson
1449 N.W. Saginaw
Bend, Oregon 97701

Mr. Simpson presented both oral and written comments at the March 9 meeting in Bend. His written comments were presented in a letter dated March 8, 1988. After an absence of eleven years, Mr. Simpson returned to live in Bend and was shocked at the deterioration of air quality due to woodstoves. Bend is a community where people enjoy clean air and clear skies. Bend is also a tourism-oriented economy, whose resources require extraordinary care. Mr. Simpson burns wood for heat, and has learned to minimize visible emissions. Greater numbers of wood burners burn incorrectly, contributing to much of Bend's problem. Mr. Simpson supports DEQ's efforts to regulate burning.

Twenty four hour averaging of pollution conditions is not appropriate to gauge air quality. Periods of poor air quality occur when both children and adults are likely to be outdoors.

DEQ is urged not to use Klamath Falls as a standard to measure "bad" air.

Max Robertson
1427 N.W. Quincy
Bend, Oregon 97701

Mr. Robertson submitted written comments at the Bend Meeting in a memorandum dated March 9, 1988. He remarked that the woodsmoke problem is a concern to Oregon cities with the increased emphasis on the economics of energy and heating. More use of wood for heat has compounded Bend air quality problems, and caused a situation

of real concern. Mr. Robertson strongly encourages the DEQ to set standards and to strengthen emissions controls on woodstoves.

William T. Martin
2326 N.E. Ravenwood
Bend, Oregon 97701

Mr. Martin presented oral comments at the March 9 meeting in Bend. He stated that he lives downwind of woodstoves and a mill. He supports PM_{10} standards because he believes that the smoke problem is becoming worse. He can no longer exercise outdoors in the winter. Smoke has been proven to diminish childrens' aerobic capacity. Poor air quality is of great concern to Bend's resident athletes, of which there are many. Mr. Martin would like to see a workable partnership between citizens and industry. He does not understand why DEQ proposes a 24 hour PM_{10} standard, and thinks that looking at 3 or 6 hours in the evening when ventilation is poor would make more sense. DEQ should spend more money on informing people about the environmental and health hazards of wood smoke.

Donna Berry
1205 4th Street
La Grande, Oregon

Ms. Berry presented oral comments at the March 10 public hearing in La Grande. She read the Omni report and is concerned about health effects of aldehydes in smoke. Aldehydes are known lung irritants and will aggravate emphysema and asthma.

Marge Woodford
1202 Penn
La Grande, Oregon

Ms. Woodford presented oral comments at the March 10 meeting in La Grande. She commented that public education is important because many stoves now are operated by people who do not know how to burn wood correctly. Smoke from outdoors come back inside of peoples' houses and is worse for health than cigarette smoke. Residents of smokey areas may lose sight of the problem because they can become accustomed to a smokey environment. Especially respiratory patients can become prisoners in their own homes on smokey days. Ms. Woodford favors voluntary curtailment during inversion days in the winter.

Commissioner Marie C. Lester
La Grande, Oregon

Commissioner Lester submitted oral comments at the March 10 meeting in La Grande. She commented that she was not given adequate notice to prepare for the hearing. The Health Department has studied the PM_{10} particulate problem in La Grande. The wind usually clears out inversions. It is important to consider field burning and wood smoke issues separately. Commissioner Lester is concerned about the economic issues centered around wood heating.

Grant Darrow
Vice President
Oregon Chimney Sweeps Association

Mr. Darrow presented oral comments at the March 10 meeting in La Grande. He offered the following remarks: Eighty percent of the local population heats with wood, and the economic role of woodstoves in the community is great. Stoves can be burned cleanly. Banning of woodstoves is wrong. Mr. Darrow supports the monitoring of PM_{10}, but thinks there should also be a chemical analysis of what is collected. "Fingerprinting" will reveal main sources of particulates, and allow the community to address the problems. DEQ has not done enough public education. Too many people wrongly believe that DEQ has issued a "silent catalytic mandate". People should understand that catalytic stoves are not required. Mr. Darrow is concerned that catalysts are neither operated nor working properly.

ATTACHMENT 1

NORTHWEST PULP&PAPER

March 18, 1988

Spencer Erickson
Department of Environmental Quality
811 SW Sixth Avenue
Portland, OR 97204

SUBJECT: NWPPA COMMENTS ON DEQ PROPOSALS TO IMPLEMENT EPA'S NEW PM-10 STANDARD

Dear Mr. Erickson:

Thank you for the information that the deadline for comments has been extended to March 21, 1988. The proposed rule changes entail some complex issues and the additional time is appreciated. NWPPA's comments pertain to four issues:

- the proposal to exceed the federal concept for Group I areas by prematurely treating them as legal nonattainment areas for PM-10 (thereby triggering LAER and offset requirements for new major sources instead of BACT);
- not including a phase-in period for preconstruction monitoring for PM-10 where current data is not available;
- general approach to woodstoves; during air pollution episodes; and
- adequacy of fiscal and economic impact analysis.

These issues pose two overall concerns.

First, it appears that the package of proposals to implement the PM-10 standard is based on an approach which is more stringent toward stationary sources to compensate for a perceived lack of authority to adequately address woodstoves.

Such an approach is ill-advised because it could inadvertently cause greater emissions of PM-10. It is well recognized in the various Oregon emission inventories that woodstoves are the single largest contributors of PM-10 and together with soil and road dust account for approximately two-thirds of the total; whereas major point sources account for approximately one-fifth. Given these levels of contribution, it is unlikely that increasingly stringent measures aimed at point sources will achieve enough incremental gain to compensate for woodstoves. More importantly, more stringent requirements for point sources could worsen air quality problems under two scenarios. One is that many sources would attempt to keep obsolete equipment longer rather than to

modernize and apply LAER. The other is that those with power boilers needing modernization might go to cogeneration to offset some of the increased costs. Utilities would be required to purchase the power and if residents perceived this as increasing their electricity rates might increase reliance on woodstoves. It must be remembered that woodstove users sometimes react to subjective views of utilities and costs rather than rational views of air quality.

Secondly, the fiscal and economic impact analysis does not address many of the known impacts that exceeding federal requirements will have on either the regulated community or the DEQ. For the regulated community there are the increased costs of additional pre-construction monitoring, additional permit application costs with LAER review, and additional construction costs. For the agency there are additional costs in staff resources in reviewing all of the above, as well as costs of additional document preparation and sorting out unnecessary legal complications. There may be a cost difference in preparing a SIP for nonattainment areas versus a control strategy document to bring Group I areas into compliance in three years. EPA estimates that it requires up to four years work and $250,000 to develop a SIP for each nonattainment area. Then, there would be the cost and time involved in de-designating the nonattainment areas if the control strategies are successful. The legal confusion and cost may outlast the actual nonattainment problems.

Designating an area as legal nonattainment is a momentous decision and one which should not be made lightly. According to DEQ statements in EQC Agenda Item D, control strategies for Group I areas will be the subject of a separate rulemaking following the adoption of this package. Consequently, it appears that the DEQ could delay its decision regarding legally designating Group I areas as nonattainment until the subsequent strategies are determined.

At a minimum, NWPPA requests delay in the decision to designate Group I areas as nonattainment until a complete package of control strategies can be developed or until actual data warrants this legal classification.

These problems are explained in the detailed comments which are attached.

Thank you for your consideration.

Sincerely,

Llewellyn Matthews

Llewellyn Matthews
Executive Director

LM:sd

Attachment: Specific Comments

ATTACHMENT

SPECIFIC COMMENTS

ISSUE I: Designating Group I areas as legal nonattainment areas for PM-10

In promulgating a new PM-10 standard for particulate, EPA devoted a great deal of consideration (and much of the July 1, 1987 preamble) to the subject of the legal pathway for implementation. Out of the lengthy and somewhat tortuous prose of the preamble, EPA offered two concepts which bear on this issue.

First, EPA determined that the applicable procedures for new PM-10 nonattainment areas should be derived from Section 110 of the Federal Clean Air Act and not Part D which governs areas which were in nonattainment in 1977 and failed to meet the compliance deadlines. Part D sanctions are not of immediate concern unless the new area fails to come into compliance within the applicable time frame.

Secondly, EPA offered the following concept for designating nonattainment areas. If there is sufficient PM-10 data to define an area as nonattainment in accordance with Appendix K of 40 CFR Part 50 (three years of valid data) then the need for SIP revision can be determined relatively easily. For areas where there is insufficient data, a three-step process is to be used to classify areas preliminarily as Group I, II or III. Group I areas have a high probability of exceeding the PM-10 standard but are not legal nonattainment areas until further determinations are made. This second approach is based on probabilities where there is limited or uncertain data when the uncertainties are resolved with actual data, then a different legal procedure and schedule applies. Thus, there are two different designation schemes with distinct legal consequences.

The Oregon DEQ has correctly used the preliminary classification system but then mixes up the two available legal procedures by further classifying Group I areas as nonattainment, reasoning this is immediately necessary "to avoid federal sanctions."

As mentioned above, EPA interprets Part D sanctions as not immediately applicable. This is explained further below. Also, the DEQ, in EQC Agenda Item D, states that control strategies for Group I areas must be coordinated with local governments and cannot be completed until May 1, 1988. Thus, there is no real need to classify Group I areas as nonattainment at this time.

Some of the problems of prematurely designating Group I areas as nonattainment include:

1. Inconsistency with EPA's legal definition of nonattainment may be "arbitrary and capricious"

Section 171(2) of the federal Clean Air Act defines a "nonattainment area" as:

> "for any air pollutant an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the Administrator to be reliable) to exceed any NAAQs for such pollutant." (emphasis added)

Historically (prior to the current efforts to develop a PM-10 standard and determine PM-10 nonattainment areas), nonattainment designations were among the most

thoroughly litigated administrative choices under the Clean Air Act. With respect to designations based on modeling versus monitoring, the cases have upheld agency discretion but have made it clear that modeling exercises will be reversed if assumptions are undisclosed or inadequately explained. See Columbus and Southern Ohio Electric Company v. Costle, 638 F. 2d 910, 912 (6th Cir. 1980) and Cincinnati Gas and Electric Company v. Costle, 632 F. 2d 14, 19 (6th Cir. 1980).

In the present instance, EPA notes there is reason to doubt PM-10 monitoring data that is available for designation purposes and it is partly for this reason that it devised the preliminary classification system. Specifically, at page 24680, footnote 7, of the July 1988 Federal Register, the preamble states that EPA has found some uncertainty exists in the PM-10 measurements collected prior to 1987 with the PM-10 instruments available at that time; depending on the instrument, there is a zone of uncertainty of +/- 20 percent around the standard for the purpose of calculating the probability of attainment.

Oregon's baseline PM-10 data is from the 1984-1986 period and design values for proposed Group I areas are considered approximate.

Given the probability guidelines developed by EPA for preliminarily classifying Group I areas, and the time frame of the Oregon baseline data, it is probably correct to classify certain areas as Group I; however it is probably arbitrary and capricious to go further at this time and classify Group I areas as legal nonattainment.

2. Designating Group I areas as legal nonattainment areas may increase, instead of decrease, the probability of federal sanctions

The EQC Agenda Item F at page 3 states: "Failure to have an adequate strategy to achieve compliance in Group I areas could lead to federal funding and construction sanctions." A similar statement is made in EQC Agenda Item D. The rationale for designating Group I areas as nonattainment is that this is necessary as part of having an adequate strategy to avoid federal sanctions. Ironically, as a legal matter, this proposal accomplishes the opposite and increases the probability of federal sanctions sooner.

EPA explained in the July 1, 1988 Federal Register preamble pages 24677-82, that Section 110 SIP requirements apply to newly designated PM-10 nonattainment areas and to a certain extent areas preliminarily classified as Group I. Part D sanctions (for nonattainment that failed attainment deadlines in first round SIPs) do not apply. EPA (page 24682) is clear that federal intervention is provided for under Section 110(c)(1) if a state fails to submit a plan at all or the plan submitted is inadequate for attainment compliance with PM-10.

EPA does not suggest Section 110 sanctions would be considered for areas preliminarily categorized as Group I, but does raise the question (suggesting the possibility) as to whether the sanctions apply to actual PM-10 nonattainment areas. EPA states its intention to explore the legal issues, appropriateness and authority for imposing construction bans and funding sanctions under Section 110 to actual PM-10 nonattainment areas.

Assuming EPA resolves these questions in the affirmative, the DEQ proposal to designate Group I areas as nonattainment actually increases the exposure to federal sanctions. Also, although EPA clearly did not intend such a result, it appears the DEQ's proposed designation of Group I areas as nonattainment areas means DEQ intends Part D review

procedures to apply. This raises another legal uncertainty in whether DEQ is also unnecessarily increasing Oregon's exposure to Part D sanctions.

3. Prematurely designating Group I areas as nonattainment will discourage future growth/modernization

If the DEQ defers designating Group I areas as nonattainment, it could proceed to develop control strategies pursuant to EPA requirements and decide as part of the pending process on a case-by-case basis, whether more stringent new source reviews (LAER or other) are necessary. Thus, the DEQ would have flexibility based on actual needs that emerge as part of developing the control strategies.

If the DEQ designates Group I areas as nonattainment, then presumably full federal Clean Air Act review requirements under Part D, Section 173 would be required, including:

- offsets or "further reasonable progress" demonstration for the region;
- compliance with lowest achievable emission rate (LAER);
- all major sources owned by the applicant are in compliance or on a schedule for compliance; and
- the applicable implementation plan is being carried out for the nonattainment area.

The problems for stationary sources seeking to expand or modernize center primarily around the second and fourth requirements.

LAER means the most stringent level of control for the particular source category unless the applicant shows it is not achievable. The problems with LAER have to do with the practicality of identifying some uncertain technology that exceeds NSPS. The agency and applicant are cast in an adversarial position of arguing whether some extreme control technology required in another situation is or is not too radical. In the final analysis, the single most discouraging type of review for a new source and modernization is LAER.

Also, the applicant would be required to show the SIP is being carried out for the nonattainment area. Since the major category of PM-10 emissions in Oregon's Group I areas is woodstoves and because the DEQ doubts its legal authority with respect to woodstoves, it is unlikely that a private applicant will be able to satisfy this requirement if DEQ itself is uncertain.

4. Prematurely designating Group I areas as nonattainment will create legal problems with respect to the demonstration needed to de-designate the area

EPA requires states with Group I areas to submit complete SIPs within nine months of promulgation of the PM-10 standard that will demonstrate attainment as expeditiously as possible but not later than three years from SIP approval.

Assuming the control strategies proposed for Group I areas are successful and attainment is demonstrated at the end of the specified three years, the legal consequences of nonattainment status need not be triggered. If Group I areas are classified as nonattainment now (in advance of three years valid data) questions are created as to what

is the applicable date from which three good years of valid data must be shown in order to de-designate the areas.

ISSUE II: No phase-in exemption periods for pre-construction monitoring where current PM-10 data is not available is inconsistent with federal rules and may adversely affect new proposals

The proposed DEQ regulations do not include a phase-in exemption periods for pre-construction monitoring required in support of a new source review (NSR) in PSD areas. Normally under PSD rules, one year of monitoring is required but sources may rely on other applicable monitoring in the proximity. EPA, in promulgating the PM-10 standards, recognized problems to applicants with plans underway and provided three phase-in exemption period depending on when the PSD application is complete.

The DEQ rationalizes disallowing the three phase-in exemption period for monitoring in EQC Agenda Item F by stating, "No proposed NSR sources are currently known by the Department to be doing pre-construction monitoring in Oregon for particulate matter, so no current programs are known to be affected."

This reasoning appears to be an error in interpreting how EPA visualized the phase-in exemption periods for monitoring to be applied. First, EPA's proposal specifies that a NSR applicant is eligible for the phase-in monitoring depending on when a complete PSD application is submitted (page 24686). Eligibility does not have to do with commencing pre-construction monitoring by June 1988 as suggested by the DEQ.

Specifically, EPA established the following phase-in periods:

- Complete PSD applications submitted within 10 months after the new PM-10 standard have no new monitoring requirements;
- complete PSD applications submitted within 10-16 months may use existing PM-10 or PM-15 representative data or collect data which can come from non-reference methods and will involve at least 4 months of data;
- complete PSD applications submitted within 16-24 months must use reference methods and have at least 4 months of data.

Although DEQ may be correct that there appear to be no project proponents who will have pre-construction monitoring in place by June 1988, this is not the criteria for eligibility for one of the phase-in exemptions. It is entirely likely that there are project applicants who could qualify for the second or third of EPA's three exemptions. For example, any modernization replacement at a pulp mill. As another example, there appears to be progress in the proposal for a groundwood mill in Southern Oregon. In the latter case, requiring a full year of reference method PM-10 monitoring could cause the project proponents to consider locating in Northern California instead.

ISSUE III: General approach to woodstove curtailments during air pollution episodes

The EQC Agenda Item E document states that clarification is needed that wood and coal space heating shall be curtailed when future legal authority exists to do so. Meanwhile the proposal amendments to the Air Pollution Episode requirements appear to be very

minimal with respect to woodstoves compared to point sources. For Warning and Emergency Levels, woodstoves and fireplace use is prohibited if legal authority exists whereas point sources are required to shutdown and to "assume economic hardships."

Again, this illustrates relative leniency toward woodstoves, the major sources of PM-10 while elsewhere requirements for point sources are more stringent than federal requirements.

ISSUE IV: Adequacy of fiscal/economic impact analysis

In the foregoing comments, a number of economic impacts were identified which were not mentioned in the DEQ statements. These are summarized together as follows:

- Increased costs to DEQ for SIP preparation and resolving legal ambiguities for Group I areas which are prematurely designated legal nonattainment;
- increased costs to DEQ for data demonstrating that a legal nonattainment area may be de-designated;
- increased pre-construction monitoring costs for NSR applicants under DEQ's proposal as opposed to EPA's phase-in exemptions (several applicants will experience cost differences due to 12 months as opposed to 4 months of monitoring);
- increased permit application costs to the agency and applicant in going through full nonattainment review procedures as opposed to Group I area control strategies envisioned by EPA;
- increased costs for point source curtailment as opposed to woodstoves.

ATTACHMENT 2

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 SIXTH AVENUE
SEATTLE, WASHINGTON 98101

MAR 16 1989

REPLY TO ATTN OF AT-092

John Kowalczyk, Manager
Planning & Development, Air Quality Division
Oregon Department of Environmental Quality
811 Southwest Sixth Avenue
Portland, Oregon 97204-1334

Dear Mr. Kowalczyk:

Members of EPA Region 10's PM_{10} Task Force have reviewed DEQ's draft rules submittal which included the PM_{10} Ambient Standard and Emergency Action Manual modifications, New Source Review (NSR) and Prevention of Significant Deterioration (PSD) rule revisions, and Group II committal SIP. We appreciate this opportunity to comment on your proposed rule revisions while they are still in draft.

It is our intent in reviewing and commenting on state rule revisions that changes conform with federal requirements, i.e. that these revisions are no less stringent than required by the federal Clean Air Act (CAA). Therefore, in our comments, we have tried to distinguish between those changes which must be made to your proposed rules in order to satisfy CAA and regulatory requirements and changes which are our recommendations.

Our comments appear in the enclosure and are organized by agenda item. If you have any questions regarding our comments, please feel free to contact me at (206) 442-4198 or Ann Williamson at (206) 442-8633.

Sincerely,

David S. Kircher, Chief
Air Programs Development Section

Enclosures 1 and 2

cc: Jim Herlihy, OOO
Ron Householder, DEQ

Enclosure 1

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

We have no comments on this agenda item.

Agenda Item E: Request for Authorization to Conduct a Public Hearing to Amend Ambient Air Standards (OAR-340-31-005 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-

Attachment 1- We have no comments on this portion of Agenda Item E.

Attachment 2- On the second page of the attachment under Items 2. and 5., it is incorrect to include particulate in a "dimensionless system". By definition and due to particulate matter's capacity to exist in two distinct phases (solid/liquid-gas), it must be expressed in terms of mass per unit standard volume (ug/m^3).

Attachment 3 (Definitions (340-31-005))- Our comments on Attachment 3 are divided into three sections: general definition requirements for ambien standards, general definition requirements for SIP revisions and specific comments on DEQ's proposed rule revisions. The ambient standards and general SIP revision comments are based on a comparison of the guidance EPA provided each of the state and local agencies in a letter dated February 4, 1988, and the proposed revisions as they appear in this draft submittal.

For Ambient Standards:

Although PM_{10} has been added to the section on ambient air quality standards (340-31-015), there appears to be no definition of PM_{10} including reference methods under 40 CFR Part 50, Appendix J or an equivalent method designated in accordance with 40 CFR Part 53 (40 CFR 50.6 (c)). A definition of PM_{10} is required.

For General SIP Revisions:

It is unclear from DEQ's submittal whether "particulate matter" or "particulate matter emissions" are defined anywhere in the Oregon rules. If they are not, then definitions for "particulate matter" (40 CFR 51.100 (oo)) and "particulate matter emissions" (40 CFR 51.100 (pp)) must be added to this rule revision. Neither "PM_{10}", including reference methods under 40 CFR Part 50, Appendix J or equivalent method designated in accordance with 40 CFR Part 53 (40 CFR 51.100 (qq)) nor "PM_{10} emissions" (40 CFR 51.100 (rr)) are currently defined in the rule. These definitions must be included. Further, revisions to requirements for sources to report PM_{10} emissions instead of (or in addition to, optional) particulate matter emissions, effective January 1, 1988 (40 CFR 51.322(a)(1) and (b)(1)), and revisions to the procedures for reporting PM_{10} emissions to EPA (40 CFR 51.323(a)(3)) do not appear to be included in the rule revisions. Unless these definitions are included elsewhere in the Oregon rules, they must be added.

A definition of "emission standard or limitation" was to have been provided as part of the PM_{10} rule changes as agreed to in a letter from Fred Hansen to Robie Russell dated October 23, 1987, for Oregon rules for Stack Heights and Dispersion Techniques. This definition must be added to your rules.

The following are specific comments on the proposed rule revisions as submitted in Attachment 3:

(1). The definition of ambient air as proposed in (1) is unacceptable as written. The current 40 CFR Part 50.1 definition states that "ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access. We could approve a definition of ambient air based on the 40 CFR Part 50 wording or the proposed DEQ definition modified by deleting the term "normally". It is unclear in the present context what "normally" means.

(2). A definition of "ambient air monitoring site" would only be acceptable to EPA if it indicates that a site must comply with applicable instrument and siting requirements (e.g. 40 CFR Parts 50, 53 and 58). Provisions which restrict who can establish a site, the purpose of the site, the area of representation and who needs to approve the site, are not acceptable.

The proposed definition of "ambient air monitoring site" does not account for sites established for PSD purposes or special purpose monitoring (SPM).

By stating in the proposed definition that "sites are intended to represent a relatively broad area" suggests that PM_{10} microscale or neighborhood scale siting is inappropriate.

Appendix E of 40 CFR Part 58 is sufficiently clear and specific in establishing "standard siting criteria". Any additional siting criteria approved by DEQ is unnecessary and could serve to misconstrue the Agency's intent in 40 CFR Part 58.

(3). Item (5) defining "equivalent method" must clearly state that EPA in 40 CFR Part 50 defines which methods are approved for NAAQS compliance purposes.

(4). The proposed change to each of the ambient standards (OAR 340-31-015, -020, -025, -030, -040, and -055) which would make them applicable only at an "ambient air monitoring site" is unacceptable. The ambient standards must apply at all locations in ambient air, regardless of whether or not a monitor is located on that specific piece of ground. This change would further preclude the use of dispersion modeling to estimate ambient concentrations at locations without monitoring sites, seriously undermining the SIP and new source review processes.

Attachment 4- While revisions to the emergency episode plan and area-specific contingency plan regulation changes were included in this submittal (OAR 340-27-010, 340-27-015 and 340-27-025), the implementation of the contingency plan was not. The rule should be revised to include by whom and how the contingency plans will be implemented (40 CFR Part 51, Appendix L Section 1.1). Please note that levels of significant harm for various pollutants are no longer listed in 40 CFR Part 51.16 as indicated in your rule revision on page 1 of Attachment 4, but rather appear in 40 CFR Part 51.151.

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)-

On page 5 of the Background and Problem Statement to the EQC, the statement is made that "no offset is required for PM_{10}" under the PM_{10} PSD/NSR program. This is untrue. As stated in 40 CFR 51.165(b) which describes the new PM_{10} NSR program, PM_{10} offsets must be obtained if emissions from a new major source or major modification to an existing source will cause or contribute to a violation of an ambient standard. PM_{10} emission offsets, either from the source itself or from other sources, must be obtained to reduce the impact of the new or modified source to less than the defined significance levels. This should be clarified.

Attachments 1 and 2-

Revision 6 on page 5 of Attachment 2 should cite Supplement A as well as "Guidelines on Air Quality Models (Revised)" as references for air quality modeling procedures (see Enclosure 2).

For PM_{10} NSR Revisions and PM_{10} PSD Revisions:

As noted in our review of earlier sections of DEQ's proposed rule revisions, it is unclear whether definitions exist for "particulate matter", "particulate matter emissions" anywhere in the Oregon rules. A definition of "PM_{10}" including reference methods under 40 CFR Part 50, Appendix J, or equivalent method designated in accordance with 40 CFR Part 53 (40 CFR 51.100 (qq)) and a definition of "PM_{10} emissions" (40 CFR 51.100 (rr)) must be added to the rules as well as definitions for "particulate matter" and "particulate matter emissions".

For PM_{10} NSR Revisions:

The major source permit program as described in 40 CFR Part 51.165(b) and the procedures for approving attainment area offsets as described in 40 CFR 51.165(b)(3) must apply to any new major stationary source (100 tons per year cutoff) and major modification locating in areas not violating NAAQS. The DEQ rule as currently written does not apply to all 100 ton per year sources since the exemption for sources not significantly impacting designated nonattainment areas (OAR 340-20-245(3)) exempts certain major stationary sources less than 250 tons per year from the attainment area NSR requirements. This must be revised to comply with 40 CFR 51.165(b).

For PM_{10} PSD Revisions:

If DEQ has defined "total suspended particulate" in their existing rules, this definition should either be revised or retained per the requirements identified in 40 CFR Part 51.100(ss)), or if a definition does not exist, one should be added per the referenced CFR cite above.

Attachment 3- Oregon State Implementation Plan Commitments for PM_{10} Group II Areas (Bend, La Grande and Portland)

EPA is requiring that all Group II committal SIPs be submitted for formal approval. Therefore, state and local agencies are required to submit committal SIPs containing a signed agreement to perform specific monitoring and reporting tasks per EPA guidelines. It is unclear from the committal SIP format we are reviewing whether the SIP will be submitted in a formal fashion.

Under Section 5.4.3 Reporting Exceedances To EPA, DEQ should identify the appropriate EPA regional office divisions (i.e. Air and Toxics Division and Environmental Services Division) who will be notified when an exceedance of the PM_{10} NAAQS is observed.

The use of the terms attainment and nonattainment when referring to the status of PM_{10} areas should appear in quotes since PM_{10} areas are not officially being designated as such (Sections 5.4.4 and 5.4.5).

Under Section 5.4.4 Notification Of Violations To EPA, the third sentence in the second paragraph is incomplete. We would recommend the sentence be revised as follows: "At sites where less than daily samples are being collected, if an exceedance is observed, an adjustment to account for missing samples will be made for all other days not sampled between the exceedance day and the next sample day."

The report on the final status evaluation of each of the Group II areas along with the inventory of actual and allowable emissions for these areas must be submitted to EPA by no later than August 30, 1990 not September 1, 1990. Corrections to Sections 5.4.6 Evaluation Of Area Status And Reporting To EPA and 5.4.7 Emission Inventory should be made to reflect this requirement.

ENCLOSURE 2

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 SIXTH AVENUE
SEATTLE, WASHINGTON 98101

March 15, 1988

REPLY TO ATTN OF: AT-092

MEMORANDUM

SUBJECT: Revision of PSD Programs to Incorporate Revised Modeling Guidelines

FROM: David C. Bray, Technical Advisor
Air Programs Development Section

TO: State Air Coordinators

On January 6, 1988 (53 FR 392), EPA revised the requirements for prevention of significant deterioration (PSD) programs concerning modeling procedures. It is now necessary for all state and local agencies with EPA-approved or delegated PSD programs to incorporate Supplement A of the Modeling Guidelines, as well as the 1986 version of the Guideline on Air Quality Modeling.

Each of the Region 10 state and local agencies which implement the PSD program have previously indicated that they will be incorporating the 1986 Modeling Guidelines into their programs at the same time as they adopt the new PM_{10} permitting provisions. It appears that it would be an easy matter to include Supplement A in these revisions as well as the 1986 Guidelines.

Please provide a copy of the attached Federal Register notice to each of your state and local agencies which implements the PSD program and discuss with them the need for including Supplement A in their forthcoming PSD rule revisions. We will also mention the need to incorporate this Supplement when we comment on proposed PM_{10} rule revisions.

If you have any questions on the changes needed in the state or local rules, please give me a call at FTS 399-4253. If you have any questions on the Modeling Guidelines themselves, contact Rob Wilson at FTS 399-1531.

Attachment

cc: G. Abel
D. Kircher
A. Williamson
R. Wilson

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

dc

MEMORANDUM

To: Environmental Quality Commission

From: Fred Hansen for Lydia Taylor

Subject: Written Comments Received on the PM_{10} Rules Changes
Agenda Items K, L and M
April 29, 1988, EQC Meeting

Due to the volume of written materials received concerning the PM_{10} rules changes, the Department is submitting them separately attached to this memorandum. The Northwest Pulp and Paper Association and EPA's written comments are attached to the hearings report since they are not as easily summarized as the rest of the written comments.

Sarah Armitage:kp
Attachment: Written Public Testimony
229-5581

John Simpson
1449 NW Saginaw
Bend, Oregon 97701

March 8, 1988

D.E.Q.
Air Quality Standards Hearing
Bend, Oregon

In 1972 and '73 I lived in Bend. I moved from here in '73 and returned in 1984. When I returned, I was shocked by the deteriorated air quality due to wood stoves. It was the greatest change to have occured to Bend during my absence.

It is encouraging that the D.E.Q. is beginning to resolve the wood smoke problem here. This is a community where people enjoy clear skies. Bend is also a visitor oriented economy, whose resource requires extroardinary care.

I burn wood for heat and have learned that at least visible emissions from our stove can be minimized through careful burning techniques. I believe that the greater number of wood burners start and maintain their fires improperly, leading to much of Bend's problem. I support the D.E.Q.'s efforts to regulate burning.

I also feel that D.E.Q. averaging of air quality is not appropriate to gauge air quality. Periods of low quality occur when both children and adults are likely to be outside recreating. They need good air, not averaged air.

In addition, I urge you not to use Klamath Falls as a standard to measure what "bad" air is. Compared to 1973, I feel we have bad air.

Sincerely,

John Simpson

Comments of Andre' Pinnette

#1 Is an occasional inversion layer your entire justification for your presence in Bend?

#2 Isn't the testing location a rather myopic representation of our air quality? Kenwood Elementary, where it's noted to be a pocket for smoke and the Greenwood/97 intersection where the traffic lights are suspiciously holding back traffic for God knows what. (Sequencial traffic control is apparrently used in big cities only).

#3 Yesterday, our air quality did not score an excellent rating, presumably because you don't have one. Your scale starts at good and ends with HAZARDOUS, but it didn't even rate a "good" score. Today with the wind blowing it just barely made a good score with 45. Obviously, your machine does not appreciate clean Central Oregon air as much as we do. Or is you machine broken?

#4 Do other types of combustion create PM10, Like oil, pine needles, leaves, and garbage?

#5 Does volcanic ash measure as small as PM10?

#6 Is the natural environment hazardous to our health?

#7 Do you think industry will attempt to exempt itself from restrictions and see the community cut down on wood stove use?

#8 How do you expect restricted wood stove use to affect the poor, low and fixed income households economically?

#9 Aren't your standards, more the power industries standards? The only times large concerns care about the environment or our health is when there's money to be made.

#10 Did you not just recently change your standards to find even smaller particles, that can only be measured by your machine? That on even on a pristine day it will find something wrong?

#11 Do you intend to strong arm our county and city commisioners to comply in passing ordinances by way of threat or enticement?

#12 Would it be reasonable to put the issue of accepting the EPA's presence, authority, and recommendations to the vote of the people who are going to be affected by it?

#13 Would it be reasonable to expect the city and county commissioners to represent the will of the majority in their community above voting their conscience? Let's see.

TO: Department of Environmental Quality
FROM: Max Robertson, 1427 N.W. Quincy, Bend, OR. 97701
SUBJECT: Air Quality Standards
DATE: 3/9/88

To Whom it may Concern,

I have lived in the Central Oregon area since having moved here from Portland in 1971. The area has undergone many changes since establishment of my residence here. The woodsmoke problem is obviously a concern to several Oregon cities with the increased emphasis placed on the economics of energy and heating. Bend is not an exception to this problem. Over the years it has gone from being fashionable then practical to use firewood as a secondary and primary source of heating.

This increased emphasis on firewood as an energy source has compounded the air quality problems experienced in the Bend area. The situation has gone from no problem to a sometimes annoyance to a real concern.

I strongly encourage the Department of Environmental Quality to Air Quality standards and improve/strengthen emissions on woodstoves.

Thank you for your time,

Max Robertson

Max Robertson

LAW OFFICES OF
Saltman & Stevens, P.C.
1515 S.W. FIFTH AVENUE
SUITE 555
PORTLAND, OR 97201

(503) 227-0000
TELECOPIER (503) 227-3304

WASHINGTON, D.C. OFFICE:
1612 K STREET, N.W.
WASHINGTON, D.C. 20006
(202) 887-6760
TELECOPIER (202) 296-7088

March 18, 1988

Spencer Erickson
Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, OR 97204

Re: DEQ Proposals to Implement EPAs New PM-10 Standard

Dear Mr. Erickson:

Last August a number of small power producers who held PURPA contracts formed an informal working group. This group called the Cogeneration Interest Group hired the services of our firm, Saltman & Stevens, to monitor activities effecting their contracts and to participate in state issues concerning cogeneration and small power production. Participating members include Snow Mountain Pine, Kinzua Corporation, Blue Mt. Forest Products, Prairie Wood Products, Catalyst Hudson, Douglas County, D.R. Johnson Lumber Co., Biomass I and Catalyst Energy Development Corp. The majority of our efforts have focused on the Public Utility Commission's review of cogeneration under the auspices of SJR 27.

Your proposed rules to implement EPAs new PM-10 standards recently came to our attention. I understand that the deadline for comment has been moved to March 21. While I am not in a position to comment on the specific details of your proposal, I would like to give your our general views.

Current technologies including high pressure bag houses and electrostatic precipitators are not cost effective for reducing PM-10. These technologies are relatively new and the results unproven. Implemention of the proposed rules in our view would result in higher electric power rates and cause fuel switching to natural gas, greater reliance on hydro electric potential as well as increased use of wood stoves by residential customers. We believe the proposed rule changes would increase rather than diminish the problem that the proposed rules attempt to mitigate due to this increased reliance on residential wood stove use.

Although the proposed rule comment period expires March 21, the cogeneration interests would be pleased to discuss these issues in greater detail and the potential ramifications associated with them. Thank you for your consideration.

Sincerely,

Patricia M. Amedeo
Director of Government Relations

cc: Cogeneration Interest Group Members

PMA:dc

Rt. 1, Box 102, Black Lane
Summerville, OR 97876
March 16, 1988

D.E.Q. Air Quality Division
811 S.W. 6th Ave.
Portland, OR 97204

Attn.: Mr. Spencer Erickson

Dear Mr. Erickson:

I was unable to attend the Air Quality meeting in La Grande. I would like to explain a couple of things that should be considered in the burning of wheat stubble.

I had 40 acres of wheat stubble of which I burned 30 acres and left ten for working the stubble into the ground, incorporating the stubble. We used a beater then disced it, which were two additional operations that were not necessary where the stubble was burned. After these two operations we handled all of the field the same way. At harvest time we cut these two pieces separately. The piece with the stubble burned made 96½ bushels. The piece with the stubble incorporated made 71 bushels.

This disease suppression by burning certainly enters into the financial situation as we lost money where the stubble was incorporated.

We plant grass in a rotation. There is no way that we have seen or heard of that you can incorporate wheat straw and then seed grass. When we plow out grass sod, the sod takes four or five years to completely decompose. It is almost impossible to incorporate heavy wheat straw in the grass sod. With 80 bushel wheat or more, the amount of residue is so heavy that it decreases the yield on the following crop and costs additional money to incorporate. With a rotation of grass and wheat the cost of incorporating the wheat straw far exceeds any benefit. Cutting cost and return on investment in agriculture is the difference tetween foreclosure and a paying operation.

Please consider the above when some of the management regulations are instigated.

Yours very truly,

L. R. Starr

LRS:es

TIMBER PRODUCTS CO.
Executive Office

POST OFFICE BOX 269
SPRINGFIELD, OREGON 97477-0055
PHONE 503/747-3321

March 3, 1988

Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, OR 97204

Gentlemen:

The proposed changes in the air quality rules for the State of Oregon are required because of the implementation of new standards (PM10) by the U.S. Environmental Protection Agency.

The proposed rules seem in general to be a duplication of the EPA regulations with one exception. Oregon will retain a TSP standard which was deleted in the Federal rule. It is my view that retention of this rule is unnecessary, requiring duplicate testing of some point sources.

Very truly yours,

Henry E. Rust
Director, Environmental Affairs

HR/DN

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 SIXTH AVENUE
SEATTLE, WASHINGTON 98101

MAR 16 1989

REPLY TO ATTN OF: AT-092

John Kowalczyk, Manager
Planning & Development, Air Quality Division
Oregon Department of Environmental Quality
811 Southwest Sixth Avenue
Portland, Oregon 97204-1334

Dear Mr. Kowalczyk:

Members of EPA Region 10's PM_{10} Task Force have reviewed DEQ's draft rules submittal which included the PM_{10} Ambient Standard and Emergency Action Manual modifications, New Source Review (NSR) and Prevention of Significant Deterioration (PSD) rule revisions, and Group II committal SIP. We appreciate this opportunity to comment on your proposed rule revisions while they are still in draft.

It is our intent in reviewing and commenting on state rule revisions that changes conform with federal requirements, i.e. that these revisions are no less stringent than required by the federal Clean Air Act (CAA). Therefore, in our comments, we have tried to distinguish between those changes which must be made to your proposed rules in order to satisfy CAA and regulatory requirements and changes which are our recommendations.

Our comments appear in the enclosure and are organized by agenda item. If you have any questions regarding our comments, please feel free to contact me at (206) 442-4198 or Ann Williamson at (206) 442-8633.

Sincerely,

David S. Kircher, Chief
Air Programs Development Section

Enclosures 1 and 2

cc: Jim Herlihy, OOO
Ron Householder, DEQ

Enclosure 1

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

We have no comments on this agenda item.

Agenda Item E: Request for Authorization to Conduct a Public Hearing to Amend Ambient Air Standards (OAR-340-31-005 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-

Attachment 1- We have no comments on this portion of Agenda Item E.

Attachment 2- On the second page of the attachment under Items 2. and 5., it is incorrect to include particulate in a "dimensionless system". By definition and due to particulate matter's capacity to exist in two distinct phases (solid/liquid-gas), it must be expressed in terms of mass per unit standard volume (ug/m^3).

Attachment 3 (Definitions (340-31-005))- Our comments on Attachment 3 are divided into three sections: general definition requirements for ambient standards, general definition requirements for SIP revisions and specific comments on DEQ's proposed rule revisions. The ambient standards and general SIP revision comments are based on a comparison of the guidance EPA provided each of the state and local agencies in a letter dated February 4, 1988, and the proposed revisions as they appear in this draft submittal.

For Ambient Standards:

Although PM_{10} has been added to the section on ambient air quality standards (340-31-015), there appears to be no definition of PM_{10} including reference methods under 40 CFR Part 50, Appendix J or an equivalent method designated in accordance with 40 CFR Part 53 (40 CFR 50.6 (c)). A definition of PM_{10} is required.

For General SIP Revisions:

It is unclear from DEQ's submittal whether "particulate matter" or "particulate matter emissions" are defined anywhere in the Oregon rules. If they are not, then definitions for "particulate matter" (40 CFR 51.100 (oo)) and "particulate matter emissions" (40 CFR 51.100 (pp)) must be added to this rule revision. Neither "PM_{10}", including reference methods under 40 CFR Part 50, Appendix J or equivalent method designated in accordance with 40 CFR Part 53 (40 CFR 51.100 (qq)) nor "PM_{10} emissions" (40 CFR 51.100 (rr)) are currently defined in the rule. These definitions must be included. Further, revisions to requirements for sources to report PM_{10} emissions instead of (or in addition to, optional) particulate matter emissions, effective January 1, 1988 (40 CFR 51.322(a)(1) and (b)(1)), and revisions to the procedures for reporting PM_{10} emissions to EPA (40 CFR 51.323(a)(3)) do not appear to be included in the rule revisions. Unless these definitions are included elsewhere in the Oregon rules, they must be added.

A definition of "emission standard or limitation" was to have been provided as part of the PM_{10} rule changes as agreed to in a letter from Fred Hansen to Robie Russell dated October 23, 1987, for Oregon rules for Stack Heights and Dispersion Techniques. This definition must be added to your rules.

The following are specific comments on the proposed rule revisions as submitted in Attachment 3:

(1). The definition of ambient air as proposed in (1) is unacceptable as written. The current 40 CFR Part 50.1 definition states that "ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access. We could approve a definition of ambient air based on the 40 CFR Part 50 wording or the proposed DEQ definition modified by deleting the term "normally". It is unclear in the present context what "normally" means.

(2). A definition of "ambient air monitoring site" would only be acceptable to EPA if it indicates that a site must comply with applicable instrument and siting requirements (e.g. 40 CFR Parts 50, 53 and 58). Provisions which restrict who can establish a site, the purpose of the site, the area of representation and who needs to approve the site, are not acceptable.

The proposed definition of "ambient air monitoring site" does not account for sites established for PSD purposes or special purpose monitoring (SPM).

By stating in the proposed definition that "sites are intended to represent a relatively broad area" suggests that PM_{10} microscale or neighborhood scale siting is inappropriate.

Appendix E of 40 CFR Part 58 is sufficiently clear and specific in establishing "standard siting criteria". Any additional siting criteria approved by DEQ is unnecessary and could serve to misconstrue the Agency's intent in 40 CFR Part 58.

(3). Item (5) defining "equivalent method" must clearly state that EPA in 40 CFR Part 50 defines which methods are approved for NAAQS compliance purposes.

(4). The proposed change to each of the ambient standards (OAR 340-31-015, -020, -025, -030, -040, and -055) which would make them applicable only at an "ambient air monitoring site" is unacceptable. The ambient standards must apply at all locations in ambient air, regardless of whether or not a monitor is located on that specific piece of ground. This change would further preclude the use of dispersion modeling to estimate ambient concentrations at locations without monitoring sites, seriously undermining the SIP and new source review processes.

Attachment 4- While revisions to the emergency episode plan and area-specific contingency plan regulation changes were included in this submittal (OAR 340-27-010, 340-27-015 and 340-27-025), the implementation of the contingency plan was not. The rule should be revised to include by whom and how the contingency plans will be implemented (40 CFR Part 51, Appendix L Section 1.1). Please note that levels of significant harm for various pollutants are no longer listed in 40 CFR Part 51.16 as indicated in your rule revision on page 1 of Attachment 4, but rather appear in 40 CFR Part 51.151.

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)-

On page 5 of the Background and Problem Statement to the EQC, the statement is made that "no offset is required for PM_{10}" under the PM_{10} PSD/NSR program. This is untrue. As stated in 40 CFR 51.165(b) which describes the new PM_{10} NSR program, PM_{10} offsets must be obtained if emissions from a new major source or major modification to an existing source will cause or contribute to a violation of an ambient standard. PM_{10} emission offsets, either from the source itself or from other sources, must be obtained to reduce the impact of the new or modified source to less than the defined significance levels. This should be clarified.

Attachments 1 and 2-

Revision 6 on page 5 of Attachment 2 should cite Supplement A as well as "Guidelines on Air Quality Models (Revised)" as references for air quality modeling procedures (see Enclosure 2).

For PM_{10} NSR Revisions and PM_{10} PSD Revisions:

As noted in our review of earlier sections of DEQ's proposed rule revisions, it is unclear whether definitions exist for "particulate matter", "particulate matter emissions" anywhere in the Oregon rules. A definition of "PM_{10}" including reference methods under 40 CFR Part 50, Appendix J, or equivalent method designated in accordance with 40 CFR Part 53 (40 CFR 51.100 (qq)) and a definition of "PM_{10} emissions" (40 CFR 51.100 (rr)) must be added to the rules as well as definitions for "particulate matter" and "particulate matter emissions".

For PM_{10} NSR Revisions:

The major source permit program as described in 40 CFR Part 51.165(b) and the procedures for approving attainment area offsets as described in 40 CFR 51.165(b)(3) must apply to any new major stationary source (100 tons per year cutoff) and major modification locating in areas not violating NAAQS. The DEQ rule as currently written does not apply to all 100 ton per year sources since the exemption for sources not significantly impacting designated nonattainment areas (OAR 340-20-245(3)) exempts certain major stationary sources less than 250 tons per year from the attainment area NSR requirements. This must be revised to comply with 40 CFR 51.165(b).

For PM_{10} PSD Revisions:

If DEQ has defined "total suspended particulate" in their existing rules, this definition should either be revised or retained per the requirements identified in 40 CFR Part 51.100(ss)), or if a definition does not exist, one should be added per the referenced CFR cite above.

Attachment 3- Oregon State Implementation Plan Commitments for PM_{10} Group II Areas (Bend, La Grande and Portland)

EPA is requiring that all Group II committal SIPs be submitted for formal approval. Therefore, state and local agencies are required to submit committal SIPs containing a signed agreement to perform specific monitoring and reporting tasks per EPA guidelines. It is unclear from the committal SIP format we are reviewing whether the SIP will be submitted in a formal fashion.

Under Section 5.4.3 Reporting Exceedances To EPA, DEQ should identify the appropriate EPA regional office divisions (i.e. Air and Toxics Division and Environmental Services Division) who will be notified when an exceedance of the PM_{10} NAAQS is observed.

The use of the terms attainment and nonattainment when referring to th status of PM_{10} areas should appear in quotes since PM_{10} areas are not officially being designated as such (Sections 5.4.4 and 5.4.5).

Under Section 5.4.4 Notification Of Violations To EPA, the third sentence in the second paragraph is incomplete. We would recommend the sentence be revised as follows: "At sites where less than daily samples are being collected, if an exceedance is observed, an adjustment to account for missing samples will be made for all other days not sampled between the exceedance day and the next sample day."

The report on the final status evaluation of each of the Group II areas along with the inventory of actual and allowable emissions for these areas must be submitted to EPA by no later than August 30, 1990 not September 1, 1990. Corrections to Sections 5.4.6 Evaluation Of Area Status And Reporting To EPA and 5.4.7 Emission Inventory should be made to reflect this requirement.

ENCLOSURE 2

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 SIXTH AVENUE
SEATTLE, WASHINGTON 98101

March 15, 1988

REPLY TO ATTN OF AT-092

MEMORANDUM

SUBJECT: Revision of PSD Programs to Incorporate Revised Modeling Guidelines

FROM: David C. Bray, Technical Advisor
Air Programs Development Section

TO: State Air Coordinators

On January 6, 1988 (53 FR 392), EPA revised the requirements for prevention of significant deterioration (PSD) programs concerning modeling procedures. It is now necessary for all state and local agencies with EPA-approved or delegated PSD programs to incorporate Supplement A of the Modeling Guidelines, as well as the 1986 version of the Guideline on Air Quality Modeling.

Each of the Region 10 state and local agencies which implement the PSD program have previously indicated that they will be incorporating the 1986 Modeling Guidelines into their programs at the same time as they adopt the new PM_{10} permitting provisions. It appears that it would be an easy matter to include Supplement A in these revisions as well as the 1986 Guidelines.

Please provide a copy of the attached Federal Register notice to each of your state and local agencies which implements the PSD program and discuss with them the need for including Supplement A in their forthcoming PSD rule revisions. We will also mention the need to incorporate this Supplement when we comment on proposed PM_{10} rule revisions.

If you have any questions on the changes needed in the state or local rules, please give me a call at FTS 399-4253. If you have any questions on the Modeling Guidelines themselves, contact Rob Wilson at FTS 399-1531.

Attachment

cc: G. Abel
D. Kircher
A. Williamson
R. Wilson

AMERICAN
LUNG
ASSOCIATION
of Oregon

Central and Eastern Regions
25 N.W. Minnesota St.
Bend, Oregon 97701
(503) 382-LUNG (5864)

March 11, 1988

Spencer Erickson
DEQ Air Quality Division
811 SW 6th Ave.
Portland, OR. 97204

Dear Mr. Erickson:

I am writing because I was unable to be at the hearing in Bend regarding the new PM10 standards for air pollution.

I want to commend the Department of Environmental Quality for introducing these new standards. As our environment is introduced to more and more pollutants, it is essential that we pay close attention and monitor accordingly those pollutants which are known or even suspected of causing damage to human life.

I would encourage the DEQ to perform intensive air quality monitoring for more than one year. As has happened in Bend this year, we can have an exceptionally non-polluted year or an exceptionally polluted one. Wherever possible this monitoring should be on going year-round to assure clean air for all populated area.

Sincerely,

Carol Pedersen Moorehead
Regional Director

CC: John Hector

United States Department of the Interior

BUREAU OF MINES

WESTERN FIELD OPERATIONS CENTER
EAST 360 3RD AVENUE
SPOKANE, WASHINGTON 99202

February 8, 1988

Mr. Spencer Erickson
Oregon Department of Environmental Quality
Air Quality Division
811 SW Sixth Avenue
Portland, Oregon 97204

Dear Mr. Erickson:

RE: PROPOSED AMENDMENT OF OAR 340-31-005 THROUGH 340-31-040, AMBIENT AIR QUALITY STANDARDS

Our concerns relate to mineral issues. What are the present emission levels from industrial plants and mining related operations? How will these new air quality standards affect the minerals industry? Is it economically feasible for the sources of particulate in the mining industry to apply the best available control technology for PM_{10}? Sources of fine particulate in mining range from open-pit blasting, which causes ambient dust particles, to emissions from processing plants. The impacts to these and other mineral issues must be considered prior to the approval of different air quality standards.

Thank you for the opportunity to review and comment on these amendments.

Sincerely,

D'Arcy B. Banister

D'Arcy B. Banister, Supervisor
Mineral Issues Involvement Section
Branch of Engineering and Economic Analysis

NORTHWEST
PULP&PAPER

March 18, 1988

Spencer Erickson
Department of Environmental Quality
811 SW Sixth Avenue
Portland, OR 97204

SUBJECT: NWPPA COMMENTS ON DEQ PROPOSALS TO IMPLEMENT EPA'S NEW PM-10 STANDARD

Dear Mr. Erickson:

Thank you for the information that the deadline for comments has been extended to March 21, 1988. The proposed rule changes entail some complex issues and the additional time is appreciated. NWPPA's comments pertain to four issues:

- the proposal to exceed the federal concept for Group I areas by prematurely treating them as legal nonattainment areas for PM-10 (thereby triggering LAER and offset requirements for new major sources instead of BACT);
- not including a phase-in period for preconstruction monitoring for PM-10 where current data is not available;
- general approach to woodstoves; during air pollution episodes; and
- adequacy of fiscal and economic impact analysis.

These issues pose two overall concerns.

First, it appears that the package of proposals to implement the PM-10 standard is based on an approach which is more stringent toward stationary sources to compensate for a perceived lack of authority to adequately address woodstoves.

Such an approach is ill-advised because it could inadvertently cause greater emissions of PM-10. It is well recognized in the various Oregon emission inventories that woodstoves are the single largest contributors of PM-10 and together with soil and road dust account for approximately two-thirds of the total; whereas major point sources account for approximately one-fifth. Given these levels of contribution, it is unlikely that increasingly stringent measures aimed at point sources will achieve enough incremental gain to compensate for woodstoves. More importantly, more stringent requirements for point sources could worsen air quality problems under two scenarios. One is that many sources would attempt to keep obsolete equipment longer rather than to

modernize and apply LAER. The other is that those with power boilers needing modernization might go to cogeneration to offset some of the increased costs. Utilities would be required to purchase the power and if residents perceived this as increasing their electricity rates might increase reliance on woodstoves. It must be remembered that woodstove users sometimes react to subjective views of utilities and costs rather than rational views of air quality.

Secondly, the fiscal and economic impact analysis does not address many of the known impacts that exceeding federal requirements will have on either the regulated community or the DEQ. For the regulated community there are the increased costs of additional pre-construction monitoring, additional permit application costs with LAER review, and additional construction costs. For the agency there are additional costs in staff resources in reviewing all of the above, as well as costs of additional document preparation and sorting out unnecessary legal complications. There may be a cost difference in preparing a SIP for nonattainment areas versus a control strategy document to bring Group I areas into compliance in three years. EPA estimates that it requires up to four years work and $250,000 to develop a SIP for each nonattainment area. Then, there would be the cost and time involved in de-designating the nonattainment areas if the control strategies are successful. The legal confusion and cost may outlast the actual nonattainment problems.

Designating an area as legal nonattainment is a momentous decision and one which should not be made lightly. According to DEQ statements in EQC Agenda Item D, control strategies for Group I areas will be the subject of a separate rulemaking following the adoption of this package. Consequently, it appears that the DEQ could delay its decision regarding legally designating Group I areas as nonattainment until the subsequent strategies are determined.

At a minimum, NWPPA requests delay in the decision to designate Group I areas as nonattainment until a complete package of control strategies can be developed or until actual data warrants this legal classification.

These problems are explained in the detailed comments which are attached.

Thank you for your consideration.

Sincerely,

Llewellyn Matthews

Llewellyn Matthews
Executive Director

LM:sd

Attachment: Specific Comments

ATTACHMENT

SPECIFIC COMMENTS

ISSUE I: Designating Group I areas as legal nonattainment areas for PM-10

In promulgating a new PM-10 standard for particulate, EPA devoted a great deal of consideration (and much of the July 1, 1987 preamble) to the subject of the legal pathway for implementation. Out of the lengthy and somewhat tortuous prose of the preamble, EPA offered two concepts which bear on this issue.

First, EPA determined that the applicable procedures for new PM-10 nonattainment areas should be derived from Section 110 of the Federal Clean Air Act and not Part D which governs areas which were in nonattainment in 1977 and failed to meet the compliance deadlines. Part D sanctions are not of immediate concern unless the new area fails to come into compliance within the applicable time frame.

Secondly, EPA offered the following concept for designating nonattainment areas. If there is sufficient PM-10 data to define an area as nonattainment in accordance with Appendix K of 40 CFR Part 50 (three years of valid data) then the need for SIP revision can be determined relatively easily. For areas where there is insufficient data, a three-step process is to be used to classify areas preliminarily as Group I, II or III. Group I areas have a high probability of exceeding the PM-10 standard but are not legal nonattainment areas until further determinations are made. This second approach is based on probabilities where there is limited or uncertain data when the uncertainties are resolved with actual data, then a different legal procedure and schedule applies. Thus, there are two different designation schemes with distinct legal consequences.

The Oregon DEQ has correctly used the preliminary classification system but then mixes up the two available legal procedures by further classifying Group I areas as nonattainment, reasoning this is immediately necessary "to avoid federal sanctions."

As mentioned above, EPA interprets Part D sanctions as not immediately applicable. This is explained further below. Also, the DEQ, in EQC Agenda Item D, states that control strategies for Group I areas must be coordinated with local governments and cannot be completed until May 1, 1988. Thus, there is no real need to classify Group I areas as nonattainment at this time.

Some of the problems of prematurely designating Group I areas as nonattainment include:

1. Inconsistency with EPA's legal definition of nonattainment may be "arbitrary and capricious"

Section 171(2) of the federal Clean Air Act defines a "nonattainment area" as:

> "for any air pollutant an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the Administrator to be reliable) to exceed any NAAQs for such pollutant." (emphasis added)

Historically (prior to the current efforts to develop a PM-10 standard and determine PM-10 nonattainment areas), nonattainment designations were among the most

thoroughly litigated administrative choices under the Clean Air Act. With respect to designations based on modeling versus monitoring, the cases have upheld agency discretion but have made it clear that modeling exercises will be reversed if assumptions are undisclosed or inadequately explained. See Columbus and Southern Ohio Electric Company v. Costle, 638 F. 2d 910, 912 (6th Cir. 1980) and Cincinnati Gas and Electric Company v. Costle, 632 F. 2d 14, 19 (6th Cir. 1980).

In the present instance, EPA notes there is reason to doubt PM-10 monitoring data that is available for designation purposes and it is partly for this reason that it devised the preliminary classification system. Specifically, at page 24680, footnote 7, of the July 1988 Federal Register, the preamble states that EPA has found some uncertainty exists in the PM-10 measurements collected prior to 1987 with the PM-10 instruments available at that time; depending on the instrument, there is a zone of uncertainty of +/- 20 percent around the standard for the purpose of calculating the probability of attainment.

Oregon's baseline PM-10 data is from the 1984-1986 period and design values for proposed Group I areas are considered approximate.

Given the probability guidelines developed by EPA for preliminarily classifying Group I areas, and the time frame of the Oregon baseline data, it is probably correct to classify certain areas as Group I; however it is probably arbitrary and capricious to go further at this time and classify Group I areas as legal nonattainment.

2. Designating Group I areas as legal nonattainment areas may increase, instead of decrease, the probability of federal sanctions

The EQC Agenda Item F at page 3 states: "Failure to have an adequate strategy to achieve compliance in Group I areas could lead to federal funding and construction sanctions." A similar statement is made in EQC Agenda Item D. The rationale for designating Group I areas as nonattainment is that this is necessary as part of having an adequate strategy to avoid federal sanctions. Ironically, as a legal matter, this proposal accomplishes the opposite and increases the probability of federal sanctions sooner.

EPA explained in the July 1, 1988 Federal Register preamble pages 24677-82, that Section 110 SIP requirements apply to newly designated PM-10 nonattainment areas and to a certain extent areas preliminarily classified as Group I. Part D sanctions (for nonattainment that failed attainment deadlines in first round SIPs) do not apply. EPA (page 24682) is clear that federal intervention is provided for under Section 110(c)(1) if a state fails to submit a plan at all or the plan submitted is inadequate for attainment compliance with PM-10.

EPA does not suggest Section 110 sanctions would be considered for areas preliminarily categorized as Group I, but does raise the question (suggesting the possibility) as to whether the sanctions apply to actual PM-10 nonattainment areas. EPA states its intention to explore the legal issues, appropriateness and authority for imposing construction bans and funding sanctions under Section 110 to actual PM-10 nonattainment areas.

Assuming EPA resolves these questions in the affirmative, the DEQ proposal to designate Group I areas as nonattainment actually increases the exposure to federal sanctions. Also, although EPA clearly did not intend such a result, it appears the DEQ's proposed designation of Group I areas as nonattainment areas means DEQ intends Part D review

procedures to apply. This raises another legal uncertainty in whether DEQ is also unnecessarily increasing Oregon's exposure to Part D sanctions.

3. Prematurely designating Group I areas as nonattainment will discourage future growth/modernization

If the DEQ defers designating Group I areas as nonattainment, it could proceed to develop control strategies pursuant to EPA requirements and decide as part of the pending process on a case-by-case basis, whether more stringent new source reviews (LAER or other) are necessary. Thus, the DEQ would have flexibility based on actual needs that emerge as part of developing the control strategies.

If the DEQ designates Group I areas as nonattainment, then presumably full federal Clean Air Act review requirements under Part D, Section 173 would be required, including:

- offsets or "further reasonable progress" demonstration for the region;
- compliance with lowest achievable emission rate (LAER);
- all major sources owned by the applicant are in compliance or on a schedule for compliance; and
- the applicable implementation plan is being carried out for the nonattainment area.

The problems for stationary sources seeking to expand or modernize center primarily around the second and fourth requirements.

LAER means the most stringent level of control for the particular source category unless the applicant shows it is not achievable. The problems with LAER have to do with the practicality of identifying some uncertain technology that exceeds NSPS. The agency and applicant are cast in an adversarial position of arguing whether some extreme control technology required in another situation is or is not too radical. In the final analysis, the single most discouraging type of review for a new source and modernization is LAER.

Also, the applicant would be required to show the SIP is being carried out for the nonattainment area. Since the major category of PM-10 emissions in Oregon's Group I areas is woodstoves and because the DEQ doubts its legal authority with respect to woodstoves, it is unlikely that a private applicant will be able to satisfy this requirement if DEQ itself is uncertain.

4. Prematurely designating Group I areas as nonattainment will create legal problems with respect to the demonstration needed to de-designate the area

EPA requires states with Group I areas to submit complete SIPs within nine months of promulgation of the PM-10 standard that will demonstrate attainment as expeditiously as possible but not later than three years from SIP approval.

Assuming the control strategies proposed for Group I areas are successful and attainment is demonstrated at the end of the specified three years, the legal consequences of nonattainment status need not be triggered. If Group I areas are classified as nonattainment now (in advance of three years valid data) questions are created as to what

is the applicable date from which three good years of valid data must be shown in order to de-designate the areas.

ISSUE II: No phase-in exemption periods for pre-construction monitoring where current PM-10 data is not available is inconsistent with federal rules and may adversely affect new proposals

The proposed DEQ regulations do not include a phase-in exemption periods for pre-construction monitoring required in support of a new source review (NSR) in PSD areas. Normally under PSD rules, one year of monitoring is required but sources may rely on other applicable monitoring in the proximity. EPA, in promulgating the PM-10 standards, recognized problems to applicants with plans underway and provided three phase-in exemption period depending on when the PSD application is complete.

The DEQ rationalizes disallowing the three phase-in exemption period for monitoring in EQC Agenda Item F by stating, "No proposed NSR sources are currently known by the Department to be doing pre-construction monitoring in Oregon for particulate matter, so no current programs are known to be affected."

This reasoning appears to be an error in interpreting how EPA visualized the phase-in exemption periods for monitoring to be applied. First, EPA's proposal specifies that a NSR applicant is eligible for the phase-in monitoring depending on when a complete PSD application is submitted (page 24686). Eligibility does not have to do with commencing pre-construction monitoring by June 1988 as suggested by the DEQ.

Specifically, EPA established the following phase-in periods:

- Complete PSD applications submitted within 10 months after the new PM-10 standard have no new monitoring requirements;
- complete PSD applications submitted within 10-16 months may use existing PM-10 or PM-15 representative data or collect data which can come from non-reference methods and will involve at least 4 months of data;
- complete PSD applications submitted within 16-24 months must use reference methods and have at least 4 months of data.

Although DEQ may be correct that there appear to be no project proponents who will have pre-construction monitoring in place by June 1988, this is not the criteria for eligibility for one of the phase-in exemptions. It is entirely likely that there are project applicants who could qualify for the second or third of EPA's three exemptions. For example, any modernization replacement at a pulp mill. As another example, there appears to be progress in the proposal for a groundwood mill in Southern Oregon. In the latter case, requiring a full year of reference method PM-10 monitoring could cause the project proponents to consider locating in Northern California instead.

ISSUE III: General approach to woodstove curtailments during air pollution episodes

The EQC Agenda Item E document states that clarification is needed that wood and coal space heating shall be curtailed when future legal authority exists to do so. Meanwhile the proposal amendments to the Air Pollution Episode requirements appear to be very

minimal with respect to woodstoves compared to point sources. For Warning and Emergency Levels, woodstoves and fireplace use is prohibited if legal authority exists whereas point sources are required to shutdown and to "assume economic hardships."

Again, this illustrates relative leniency toward woodstoves, the major sources of PM-10 while elsewhere requirements for point sources are more stringent than federal requirements.

ISSUE IV: Adequacy of fiscal/economic impact analysis

In the foregoing comments, a number of economic impacts were identified which were not mentioned in the DEQ statements. These are summarized together as follows:

- Increased costs to DEQ for SIP preparation and resolving legal ambiguities for Group I areas which are prematurely designated legal nonattainment;
- increased costs to DEQ for data demonstrating that a legal nonattainment area may be de-designated;
- increased pre-construction monitoring costs for NSR applicants under DEQ's proposal as opposed to EPA's phase-in exemptions (several applicants will experience cost differences due to 12 months as opposed to 4 months of monitoring);
- increased permit application costs to the agency and applicant in going through full nonattainment review procedures as opposed to Group I area control strategies envisioned by EPA;
- increased costs for point source curtailment as opposed to woodstoves.

TESTIMONY OF SUE JOERGER,
EXECUTIVE VICE PRESIDENT,
SOUTHERN OREGON TIMBER INDUSTRIES ASSOCIATION,
BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY,
MARCH 7, 1988

Thank-you for this opportunity to offer comments on the proposed changes to Oregon's air pollution control program. It is our understanding that the proposed rule changes are being made in response to the Environmental Protection Agency's newly adopted revisions to national ambient air quality standards for particulate matter.

SOTIA is a trade association in Jackson, Josephine and South Douglas counties, of mill operators, contract loggers, log truckers and road builders and associates who provide goods and services to the industry. SOTIA currently has 130 members.

The SOTIA Environmental Affairs Committee has reviewed the proposed Oregon PM10 ambient air quality standards, amendments to the emergency action plan, amendments to the new source review rules, and amendments to the prevention of significant deterioration rules.

I am happy to report that the Committee's review concluded that the staff of the Department of Environmental Quality has one an excellent job of incorporating the new EPA standards into the Oregon administrative rules. Therefore, SOTIA has no comments on these new standards and proposed changes.

It is our understanding that a public hearing on the proposed control strategies for Group I areas will be held in April. SOTIA will present its detailed comments on the strategies at the appropriate time, however, I would like to put these control strategies in context of the other issues that are facing the industry in Southern Oregon.

In 1986, according to the Western Wood Products Association, Jackson, and Josephine Counties produced 15% of the softwood lumber consumed by the nation. Since the price of softwood lumber is set in national markets, manufacturers in Southern Oregon are unable to pass increased costs of doing business on to consumers and expect to remain competitive.

The forest products industry in Southern Oregon is not only important to the nation, it is important to the economies of Jackson and Josephine County. Almost 50% of the employment in these two counties is either directly or indirectly attributable to our industry. In addition, the receipts from the harvest of timber on O & C lands and national forests is the source of almost 50% of these counties total revenues.

There are three major issues on facing the forest products in-

dustry here in Southern Oregon which will not only have a major impact on its competitiveness in nationwide markets, but will effect the survival of the industry as it is today.

First, the Forest Service has submitted for public review, the draft forest plans for the Rogue River and Siskiyou National Forests. The cumulative reduction in timber supply from these forests is 94 million board feet or 26%: a 36% reduction in the annual timber sale program from the Rogue and a 10% reduction on the Siskiyou. Regional competition for less timber, from Roseburg to Yreka, and Klamath Falls to Brookings, will significantly increase raw material costs and the price of lumber and plywood.

Second, a proposal to convert the Siskiyou National Forest to a national park is another very serious and major threat. If this happens, coupled with a reduction on the Rogue, we are talking about a 71% decrease in timber supply. If this happens, not only will raw material and lumber and plywood prices increase, I believe there won't be much left of the forest products industry.

The third issue is PM10. As you are well aware, the industry in Jackson County has reduced its emissions by 69% since the late 1970's. Today only 13% of the worst day and 21% of the average annual day problem is attributable to the industry. The real problem is with smoke from wood stoves which provide 65% of the worst day problem and 41% of the annual average problem. If the DEQ closed the forest products industry down, the PM10 problem would still exist in the AQMA.

Yet, in spite of the fact that further regulating the industry will not solve the PM10 problem, the DEQ is proposing rules for Medford-White City which will cause increased capital expenditures, at a time when the industry's existence is seriously threatened by a timber supply shortage.

Furthermore, these rules will not treat all Group I areas the same. The Medford-White City rules include a change in the offset ratio to 1.3 to 1. Not only are our competitors better off being located outside of a Group I area, they are also better off and more competitive if they are in any Group I area except Medford-White City. We do not support these inequities.

If timber supply decreases as proposed and the DEQ passes its proposed rules for PM10 for the Medford-White City Group I area, manufacturers in Jackson and Josephine Counties will be unable to compete effectively in national markets. In fact, many companies may not be able to afford the capital outlays needed to comply with the new PM10 rules.

The real issue is smoke from wood stoves. We urge the DEQ to deal with the real problem.

March 21, 1988

ASSOCIATED OREGON INDUSTRIES

Mr. Spencer Erickson
Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, Oregon 97204

Subject: Comments on DEQ proposed rules to implement the new PM-10 Standards

Dear Mr. Erickson:

We have reviewed the submittal of Northwest Pulp and Paper, and we find ourselves in agreement with the concerns that have been raised above the rules as proposed.

We are particularly interested in the concern raised about designating an area as legal nonattainment. We agree there is enough basic data to classify those areas as Group I that have been classified, but we concur that that data does not, at this time, require a designation of such areas as legal nonattainment.

The further concern that the designation as legal nonattainment may speed up the potential for EPA sanctions should be studied carefully. Those sanctions will be imposed on the local government, not on DEQ, and the local governments should be fully appraised of the potential. It is doubtful that local governments are aware of the pitfalls for them in the proposed rules. They should also be aware of the difficulties in being de-designated, particularly if the proposed SIP does achieve attainment within the EPA time frame.

The documentation of the contribution of woodstoves of PM-10 by the DEQ is overwhelming. However, DEQ has no direct control over woodstove operation and must, lacking legislative authorization, depend on the voluntary cooperation of local governments to achieve attainment. Under the circumstances, it appears to us that in view of the complexity of the issue, the cost to the agency and the regulated community, that DEQ should take as much time as federal law and rules allow to develop and implement an overall program to achieve attainment. Forcing the industrial-commercial community to assume LAER or BACT in the area of the State that already has imposed on it the most stringent air quality rules is not called for. This will not be cost effective and will not solve the overall PM-10 issues.

We urge you to re-examine the issues raised by Northwest Pulp and Paper and to reform the proposed rules as they propose.

Sincerely,

Thomas C. Donaca
General Counsel

TCD:ab

TIMBER PRODUCTS CO.
Executive Office

POST OFFICE BOX 269
SPRINGFIELD, OREGON 97477-0055
PHONE 503-747-3321

March 3, 1988

Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, OR 97204

Gentlemen:

The proposed changes in the air quality rules for the State of Oregon are required because of the implementation of new standards (PM10) by the U.S. Environmental Protection Agency.

The proposed rules seem in general to be a duplication of the EPA regulations with one exception. Oregon will retain a TSP standard which was deleted in the Federal rule. It is my view that retention of this rule is unnecessary, requiring duplicate testing of some point sources.

Very truly yours,

Henry E. Rust
Director, Environmental Affairs

HR/DN

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, April 29, 1988 EQC Meeting

Proposed Adoption of Rules 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

A request for authorization to conduct a public hearing on revisions to the new source review (NSR) rules and prevention of significant deterioration (PSD) rules was made as agenda item F of the January 22, 1988, Environmental Quality Commissions (EQC) meeting. As a result, public hearings were held on March 2-3 in Portland, March 7 in Medford, March 9 in Bend and on March 10 in La Grande. Following revisions made in response to public testimony, the Department is now proposing adoption of those rules.

The New Source Review (NSR) regulations contain requirements for major new or modified air contaminant sources. Although the Department typically reviews approximately ten new major sources or major modifications of sources per year, effective regulation of these sources is important because of the relatively large amount of emissions from 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} (particulate matter less than 10 micrometers in diameter) for which new standards are proposed for adoption (see Agenda Item L).

Revisions in the NSR rules 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. Control strategies to deal with existing sources in each area that is exceeding PM_{10} standards will be proposed for future adoption by the EQC. At the same time, the boundaries of the PM_{10} nonattainment areas will be proposed for designation.

Federal PM_{10} regulations were promulgated in 1987 to take into account the health impacts of fine particulate. 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 PM_{10} NSR regulations by May 1, 1988.

Legal Authority

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

Proposed Rule Changes

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	
(8)	Addition of the definition of Emission Limit and Emission Standard
Old (8)-(15) New (9)-(16)	Revises numbering of definitions to keep alphabetical system after new definitions are added.
Old (16) New (17)	Revises the definition of "Nonattainment Area" to allow independent designation by the Environmental Quality Commission.
Old (17) New (18)	Revises numbering of definitions to keep alphabetical system after new definitions are added.
(19)	Addition of the definition of Particulate Matter Emissions.
(20)	Addition of the definition of PM_{10} Emissions.
Old (18)-(21) New (21)-(24)	Revises numbering of definitions to keep alphabetical system after new definitions are added.
Old (22)(c) New (25)(c)	Addition of PM_{10} Significant Emission Rate (SER). Inclusion of PM_{10} in SER for Medford AQMA.
Old (23) New (26)	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.
Old (24)-(26) New (27)-(29)	Revises numbering to keep alphabetical system after new definitions are added.
340-20-245 Requirements for Sources in Attainment or Unclassified Areas (Prevention of Significant Deterioration)	
(3)(a)	Restricts exemptions from New Source Review rules to sources that do not cause or contribute to standard or PSD increment exceedances as well as those that do not affect **designated** nonattainment areas.

(3)(c) Exemptions to PM_{10} requirements added for sources which received permits 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}.

(5)(a)(C) Exemption level for preconstruction ambient monitoring of PM_{10} added to particulate subsection.

(5)(a)(D) Allows transition period for phasing in preconstruction PM_{10} monitoring.

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 micrometers) offsets be obtained from a source of particulate in the same size range revised to respirable particulate (less than 10 micrometers).

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).

Overview

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 New Source Review (NSR) sources to evaluate emissions of both PM_{10} and TSP. However, the NSR federal regulations for PM_{10} are less stringent than the previous NSR federal regulations for TSP.

The Environmental Protection Agency (EPA) had two alternatives for implementing the new PM_{10} standard. They could have regulated under "Part D" or "Section 110" of the 1977 Clean Air Act Amendments. "Part D" of the Act would have required designation of PM_{10} nonattainment areas and PM_{10} would have been treated the same as other criteria pollutants. This would have included Lowest Achievable Emission Rate (LAER) control technology and stringent offset requirements for new sources locating in areas exceeding PM_{10} standards and also would have included automatic federal sanctions (e.g., construction bans and withdrawal of federal environmental funding).

"Section 110" of the Act requires the development of Implementation Plans to meet standards after the promulgation of a new standard. This section does not require designation of official nonattainment areas, does not have Lowest Achievable Emission Rate (LAER) control technology requirements, and also does not have automatic federal sanctions if plans are inadequate or not followed. "Section 110" does require that plans be adequate to achieve and maintain standards. Federal sanctions could still be imposed for failure to submit or implement an adequate plan. However, such sanctions would be at the discretion of EPA and would not be automatic.

In the July 1, 1987 Federal Register, EPA concluded that the best legal interpretation is that "Part D" applies only to those criteria pollutants that existed when the Clean Air Act Amendments were adopted in 1977. Further they concluded "Section 110" applies to new standards and to revised standards that impose significant new planning burdens on the states. Instead of referring to areas that exceed the PM_{10} standard as nonattainment areas, these were defined as "Group I" areas. These Group I areas were listed in the August 7, 1987 Federal Register. At that time Medford and White City; Grants Pass; Eugene and Springfield; and Klamath Falls were listed as Group I areas.

Since the federal PM_{10} regulations do not require designation of areas exceeding the ambient PM_{10} standards as nonattainment areas, the normal requirements for applying Lowest Achievable Emission Rate (LAER) control technology and more stringent offsets would not be applicable. Major new PM_{10} sources could locate in areas which exceed the health-based PM_{10} ambient standards and cause ambient PM_{10} levels to increase an incremental amount. The magnitude and duration of adverse health impacts could increase. Compliance with the ambient air quality standards could be delayed and capacity for growth in the area would be further hampered.

To meet the requirements of "Section 110," the Department proposes that PM_{10} be regulated just as the criteria pollutants, including TSP, are currently regulated. That is that PM_{10} Group I areas be treated as nonattainment areas and that major sources of PM_{10} be subject to Lowest Achievable Emission Rate (LAER) control technology and offsets.

The Department's proposed control strategy would require the designation of Group I areas as state nonattainment areas. As the federal rules prevent EPA from also making this designation, only state rules would place additional requirements on new sources. Automatic federal sanctions would not apply.

The proposed regulations would require that major new PM_{10} sources in nonattainment areas employ Lowest Achievable Emission Rate (LAER) control technology and obtain offsets for PM_{10}. This requirement is particularly important for achieving attainment in those areas which were in attainment for TSP[1] and are Group I areas (exceeding standards) for PM_{10} (Grants Pass

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[1]If TSP were measured at the current PM_{10} monitoring sites, these locations most likely would have not been in attainment with the State 24 hour TSP standard.

and Klamath Falls). It is also important 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 Department or EPA control requirements for other pollutants.

Overall, the proposed strategies should also minimize future 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.

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. If required, monitoring data for a minimum period of four months must be submitted as part of a complete application. This is now equivalent to the federal PM_{10} regulations. However, we clarify that this period must cover the season(s) of expected elevated PM_{10} levels for that area.

Increments for Prevention of Significant Deterioration (PSD) for PM_{10} have not been established by EPA. PSD increments ensure that areas with clean air retain that quality. Ambient pollutant concentrations, are permitted to degrade only by the amount of an applicable PSD increment, rather than to the Ambient Air Quality Standard. EPA 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 adoption of the federal revisions and the continuation of the TSP increments in attainment areas. The proposed rule change clarifies that the increments for particulate matter apply to TSP.

Public Comments Received

Comments on this Agenda item were received from the U.S. Environmental Protection Agency (EPA), the Northwest Pulp and Paper Association, Associated Oregon Industries, the Southern Oregon Timber Products Association (SOTIA), the Timber Products Company and the U.S. Bureau of Mines. (See attachment 5).

EPA offered several comments on the acceptability of the proposed revisions:

Comment

EPA commented that an error had been made with respect to a reference to EPA's rules regarding offsets. On page 5 of the January 22, 1988 EQC Agenda item F report, statements were made that "LAER (Lowest Achievable Emission Rate control technology) and offsets for PM_{10} are not part of the federal program" and that "no offset is required for PM_{10}."

Department Response
The Department agrees with EPA that this misrepresents EPA's program regarding offsets. PM_{10} offsets are required in the federal program for sources that may exceed an incremental contribution to standard violations or PSD increment exceedances. This is however less stringent than federal offset requirement for other criteria pollutants which require full offsets irregardless of incremental impacts on ambient air.

Comment
EPA further commented that the State rules as currently written do not require offsets for all 100 ton per year sources because of an exemption for certain sources not significantly impacting designated nonattainment areas (OAR 340-20-245(3)).

Department Response
A revision to section OAR 340-20-245 (3(A)) is proposed which modifies this exemption in line with EPA policy. Sources in attainment areas that impact designated nonattainment areas or which would cause or contribute to an exceedance of a standard or increment would be subject to review. This would also require the source to acquire emission offsets.

Comment
EPA commented that it was unclear whether definitions exist for "particulate matter emissions," "PM_{10} Emissions," or "Emission Standard or Limitation" anywhere in Oregon rules.

Department Response
As a result, these definitions have been added to OAR 340-20-225. Definitions of PM_{10} and particulate ambient levels are being proposed in OAR 340-31 (See Agenda Item L).

Comment
Finally EPA commented that the new reference to the "Guidelines on Air Quality Models (Revised)" did not also reference its Supplement A which was noticed in the Federal Register on January 6, 1988.

Department Response
This is now included in the reference.

Comment
The Northwest Pulp & Paper Association made extensive comments concerning designating PM_{10} Group I areas (areas with measured standard violations) as nonattainment areas. Their concerns were:

1. Inconsistency with EPA's legal definition of nonattainment may be "arbitrary and capricious."
2. Designating Group I areas as legal nonattainment areas may increase, instead of decrease the probability of federal sanctions.
3. Prematurely designating Group I areas as nonattainment will discourage future growth/modernization.

4. Prematurely designating Group I areas as nonattainment will create legal problems with respect to the demonstration needed to de-designate the area.

These concerns were also supported by the Associated Oregon Industries.

Department Response

As stated in the Background and Problem Statement, the proposed rules will not cause Group I areas to be designated as nonattainment areas by EPA. They will only require the same Lowest Achievable Emission Rate (LAER) control technology and offset requirements which are now applied to other criteria pollutant sources. These requirements would be applied to PM_{10} sources in Group I areas when the EQC adopts complete strategies for PM_{10} Group I areas and designates the boundaries of nonattainment.

Mr. David Bray of EPA Region 10 was contacted on April 11, 1988 regarding the possibility of EPA sanctions if the State were to designate Group I areas as nonattainment areas. His response was that EPA would also have to declare these areas as nonattainment areas under Section 107 of the Clean Air Act Amendments before automatic sanctions could apply. This is something that they cannot do. Secondly, the new EPA PM_{10} regulations state that EPA can only use Section 110 of the Clean Air Act (which covers implementation plans and discretionary sanctions), not Part D (automatic sanctions), for nonattainment problems arising from the new PM_{10} standards. Further, EPA is even unable to enforce construction bans for existing TSP nonattainment areas because they now do not have a TSP standard.

The current TSP nonattainment areas are Portland, Eugene, and Medford. The Group I areas are Eugene, Grants Pass, Medford, and Klamath Falls. As Eugene and Medford are already designated nonattainment for TSP, no increased burden would exist for new sources and major modifications in these areas over existing rules. The main areas that would be affected would be Klamath Falls where the highest PM_{10} concentrations in Oregon have been measured and Grants Pass. This is reflected in Attachment 1 (Statement of Need for Rulemaking, Land Use, and Fiscal and Economic Impacts). These latter two areas would only be affected when the EQC adopts the control strategies for these areas which will include nonattainment area boundary designation.

In summary, PM_{10} nonattainment areas are not being prematurely designated by the EQC. EPA has already classified these areas as Group I, thereby triggering State Implementation Plan control strategy requirements. The EQC will consider formal adoption of Oregon PM_{10} nonattainment areas when control strategy SIPs are adopted by the EQC. EPA Lowest Achievable Emission Rate (LAER) control technology, more stringent offsets and automatic sanctions will not be triggered by state designation of nonattainment areas. However State PM_{10} LAER control technology and offset requirements are proposed to take effect in areas where the EQC ultimately will adopt control strategies to avoid aggravating problems and making it even more difficult to accommodate growth.

Comment
The Northwest Pulp & Paper association commented that the proposed pre-construction monitoring requirements are inconsistent with federal rules and may adversely affect new proposals where current PM_{10} data is not available.

Department Response
This revision is now proposed to be consistent with EPA rules. This allows a phase-in schedule for preconstruction monitoring requirements and allows a minimum sampling duration of four months of data instead of a full year. At the same time, a clarification is made that this four month period must include the season(s) of expected elevated PM_{10} levels. For example, areas strongly affected by space heating emissions would be required to include winter sampling. Areas strongly affected by soil dust may be required to include summer sampling. The Department would provide guidance to the source on the exact sample scheduling requirements.

Comment
The Southern Oregon Timber Industries Association (SOTIA) commented that the Department had done an excellent job of incorporating the Rules and that SOTIA had no comments on these new standards and proposed changes. However, SOTIA also stated that they do have comments on the proposed strategies that the Department will adopt for cleaning up Oregon's Group I areas (areas exceeding EPA's PM_{10} standard).

SOTIA stated that the industry in Jackson County has reduced its emissions by 69% since the late 1970's and that the real problem is with smoke from wood stoves. They do not think that new industrial controls are advisable when industry now represents a small amount of the problem. They are particularly concerned about the strategy for Medford-White City which would require that new sources obtain more emissions offsets (a ratio of 1.3 to 1) than would be emitted from the new source itself. Further, their competitors in other areas would not be subject to these measures.

Department Response
These concerns will be addressed when the Group I State Implementation Plan strategies are brought before the EQC.

Comment
The Timber Products Company in Springfield, Oregon commented that the proposed rules would have an unnecessary retention of a TSP standard that was deleted in the Federal rule and would require duplicate testing of some point sources. This is referring to the possibility that some sources may have to source test for both TSP and PM_{10}.

Department Response
The Department currently has authority under OAR 340-20-010 and -046 to require sources to report the "amount, nature and duration of air contaminant emissions" without specific regard to any ambient air quality standards. Therefore retention of the TSP standard has no specific effect on the source reporting requirements.

In order to minimize this problem, the Department intends to use the current particulate sampling methodology and emission standards until a PM_{10} source test method is approved. At the time that a new method is adopted for PM_{10}, the Department would then consider replacing the current methodology with it rather than requiring two different methodologies. At the same time, emission standards would then also be based on PM_{10}.

Comment
Finally, the US Bureau of Mines expressed concerns as to how the new rules would affect the mining industries.

Department Response
These concerns are being referred to staff for their evaluation. In general, it is not expected that the new rules will affect the mining industry because mines are not located in Group I areas.

Alternatives

The EQC may adopt the proposed rules, adopt revised rules, require 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, 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 EQC 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. The federal program does not use nonattainment designations for areas which exceed the PM_{10} standard. Consequently, Lowest Achievable Emission Rate (LAER) control technology for PM_{10} is not a 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 latter case, Best Available Control Technology (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.

The EQC could also adopt 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.

Summation

1. In July, 1987, EPA adopted PM_{10} (particulate matter less than ten micrometers in diameter) New Source Review regulations which must be implemented in Oregon by May 1, 1988.

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

3. The Department was granted authorization to hold public hearings on the proposed rule changes at the January 22, 1988, EQC meeting in Portland. As a result, public hearings were held in Portland, Medford, Bend and La Grande during the month of March, 1988.

4. The Department is proposing the use of Lowest Achievable Emission Rate (LAER) control technology and offsets for major PM_{10} sources in PM_{10} nonattainment areas. This is similar to what EPA and the Department require for sources of other criteria air pollutants. This is proposed even though EPA does not require this for PM_{10} problem areas so that pollution problems are not further worsened and economic growth potential is not further restricted.

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

6. While EPA dropped the total suspended particulate (TSP) air quality standards, the Prevention of Significant Deterioration (PSD) system based on TSP was left in place until a new PM_{10} increment system is devised in about two years. The main change proposed for the Oregon PSD regulations is to clarify that they apply to TSP rather than PM_{10}.

7. Major comments from EPA have been addressed in the proposed Rule modifications.

8. Major concerns by the Northwest Pulp and Paper Association that PM_{10} nonattainment areas are being prematurely designated and the state is being unnecessarily subjected to sanctions are not valid as state nonattainment designation will not occur until the EQC adopts area control strategies. EPA cannot officially designate PM_{10} problem areas as nonattainment which would subject them to automatic sanctions because PM_{10} control requirements are being administrated through "Section 110" not "Part D" of the Clean Air Act.

9. Concerns by the Northwest Pulp and Paper Association on preconstruction monitoring have been recognized. The proposed rules on PM_{10} preconstruction monitoring are now consistent with federal regulations.

Director's Recommendation

Based on the Summation, it is recommended that the EQC revise the New Source Review Rules (OAR 340-20-220 through -260) and Prevention of Significant Deterioration Rules (OAR 340-31-100 through -130) as proposed and that those revisions be incorporated into the State Implementation Plan.

Fred Hansen

Attachments:
1. Statements of Need for Rulemaking; Land Use; Fiscal and Economic Impacts
2. Hearings Officer Report (See Agenda Item)
3. Existing rules (OAR 340-20-220 through -260 and OAR 340-31-100 through -130)
4. Draft proposed Rule revisions
5. Letters of Comment

PLHanrahan
229-6048
AK459
April 15, 1988

ATTACHMENT 1

Agenda Item K, April 29, 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 and OAR 340-31-100 through -130. 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 PM10 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 Group I PM10 areas and any other Oregon locations which are determined to be in nonattainment with the Ambient Air Quality Standards for PM10.

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 24634-24723.

These documents are available for review during normal business hours at the Departments's office, 811 SW Sixth, Portland, Oregon, Seventh Floor.

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 was invited and no testimony was received on this issue.

It was also 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. Again, no testimony was received on this issue.

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.

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 most of the regulated community by retaining all air quality permit activities within the state.

These rules include some provisions which may require more stringent control of emissions in PM10 nonattainment areas. 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 and would primarily affect new sources locating in the Group I areas of Klamath Falls and Grants Pass. These sources may be subject to additional construction costs due to the requirement for Lowest Achievable Emission Rate (LAER) control technology. Sources in other Group I areas (Medford and Eugene) have existing requirements for this control technology.

Since these requirements are a component of the strategy for achieving compliance with the ambient air quality standards for PM10, 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.

Patrick L. Hanrahan:p
229-6048
April 14, 1988

Attachment 2
Agenda Item K
April 29, 1988 EQC Meeting

See Hearings Officer Report (Attached separately)
April 29, 1988 EQC Meeting

ATTACHMENT 3
Agenda Item
April 29, 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 4 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-

Table 2
(340-20-225)

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

	Emission Rate					
	Annual		Day		Hour	
Air Contaminant	Kilograms	(tons)	Kilograms	(lbs)	Kilograms	(lbs)
Particulate Matter (TSP)	4,500	(5.0)	23	(50.0)	4.6	(10.0)
Volatile Organic Compound (VOC)	18,100	(20.0)	91	(200)	--	--

Table 3
(340-20-225)

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

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

struct within 10 kilometers of a Class I area, and would have an impact on such area equal to or greater than 1 ug/m³ (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. 4-15-83

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) The 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.

* 20 *

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 4
Agenda Item K
April 29, 1988 EQC Meeting

PROPOSED RULE REVISIONS

Refer to Attachment 3 of this Agenda Item for the full text and location of these revisions.

Revision 1

Definitions
340-20-225

(8) "Emission Limitation" and "Emission Standard" mean a requirement established by a State, local government, or the Administrator of the U.S. Environmental Protection Agency which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.

Revision 2

[(8)] (9) "Emission Reduction Credit Banking" means ... .

[(9)] (10) "Emissions Unit" means ... .

[(10)] (11) "Federal Land Manager" means ... .

[(11)] (12) "Fugitive Emissions" means ... .

[(12)] (13) "Growth Increment" means ... .

[(13)] (14) "Lowest Achievable Emission Rate (LAER)" means ... .

Revision 3

[(14)] (15) "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)] (25) for any pollutant subject to ... .

[(15)] (16) "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)] (25)).

Revision 4

[(16)] (17) "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)] (18) Offset means ... .

Revision 5

(19) "Particulate Matter Emissions" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods.

Revision 6

(20) "PM_{10} emissions" means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal 10 micrometers, emitted to the ambient air as measured by applicable reference methods.

Revision 7

[(18)] (21) "Plant Site Emission Limit" means ... .

[(19)] (22) "Potential to Emit" means ... .

[(20)] (23) "Resource Recovery Facility" means ... .

[(21)] (24) "Secondary Emissions" means ... .

Revision 8

[(22)] (25) "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 9

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 10

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 11

[23] (26) "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 12

[24] (27) "Significant impairment" occurs when ... .

[25] (28) "Source" means ... .

[26] (29) "Visibility impairment" means ... .

Revision 13

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

340-20-245 (3) and (4)

(3) Exemption for Sources Not Significantly Impacting or Contributing to [Designated Nonattainment Areas] Levels in Excess of Air Quality Standards or PSD Increment Levels:

(a) A proposed source or major modification is exempt from OAR 340-20-220 to 340-20-270 if both parts (A) and (B) below are satisfied:

(A) The proposed source or major modification does not [have a significant air quality impact on a designated nonattainment area: and] cause or contribute a significant air quality impact to air quality levels in excess of any state or national ambient air quality standard; or to air quality levels in excess of any applicable increment established by the Prevention of Significant Deterioration requirements (OAR 340-31-110); or on a designated nonattainment area

(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

...

...

(xxvii)Charcoal production plants

Revision 14

(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 15

(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 Guideline on Air Quality Models (Revised):, EPA 450/2-78-027R, U.S. Environmental Protection Agency, September 1986, including Supplement A, July, 1987. ["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 "Guideline on Air Quality Models (Revised)"(including Supplement A) 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 16

(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 17

(5)(a)(D) When monitoring is required by OAR 340-20-245 (5)(a)(A) through (C), PM_{10} preconstruction monitoring shall be required according to the following transition program:

(i) Complete PSD applications submitted before May 31, 1988, shall not be required to perform new PM_{10} monitoring.

(ii) Complete PSD applications submitted after May 31, 1988, and before November 31, 1988 must use existing PM_{10} or other representative air quality data or collect PM_{10} monitoring data. The collected data may come from nonreference sampling methods. At least four months of data must be collected which the Department judges to include the season(s) of highest PM_{10} levels.

(iii) Complete PSD applications submitted after November 31, 1988, must use reference sampling methods. At least four months of data must be collected which the Department judges to include the season(s) of highest PM_{10} levels.

Revision 18

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 (Revised)" (including Supplement A). 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 19

(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 micrometers [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 14

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 20

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

PLH:k
AK455 (4/88)

Attachment 5
Agenda Item K
April 29, 1988 EQC Meeting

Letters of Comment

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 SIXTH AVENUE
SEATTLE, WASHINGTON 98101

MAR 16 1989

REPLY TO ATTN OF: AT-092

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
MAR 21 1989
AIR QUALITY CONTRO

John Kowalczyk, Manager
Planning & Development, Air Quality Division
Oregon Department of Environmental Quality
811 Southwest Sixth Avenue
Portland, Oregon 97204-1334

Dear Mr. Kowalczyk:

Members of EPA Region 10's PM_{10} Task Force have reviewed DEQ's draft rules submittal which included the PM_{10} Ambient Standard and Emergency Action Manual modifications, New Source Review (NSR) and Prevention of Significant Deterioration (PSD) rule revisions, and Group II committal SIP. We appreciate this opportunity to comment on your proposed rule revisions while they are still in draft.

It is our intent in reviewing and commenting on state rule revisions that changes conform with federal requirements, i.e. that these revisions are no less stringent than required by the federal Clean Air Act (CAA). Therefore, in our comments, we have tried to distinguish between those changes which must be made to your proposed rules in order to satisfy CAA and regulatory requirements and changes which are our recommendations.

Our comments appear in the enclosure and are organized by agenda item. If you have any questions regarding our comments, please feel free to contact me at (206) 442-4198 or Ann Williamson at (206) 442-8633.

Sincerely,

David S. Kircher, Chief
Air Programs Development Section

Enclosures 1 and 2

cc: Jim Herlihy, OOO
Ron Householder, DEQ

Enclosure 1

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

We have no comments on this agenda item.

Agenda Item E: Request for Authorization to Conduct a Public Hearing to Amend Ambient Air Standards (OAR-340-31-005 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-

Attachment 1- We have no comments on this portion of Agenda Item E.

Attachment 2- On the second page of the attachment under Items 2. and 5., it is incorrect to include particulate in a "dimensionless system". By definition and due to particulate matter's capacity to exist in two distinct phases (solid/liquid-gas), it must be expressed in terms of mass per unit standard volume (ug/m^3).

Attachment 3 (Definitions (340-31-005))- Our comments on Attachment 3 are divided into three sections: general definition requirements for ambient standards, general definition requirements for SIP revisions and specific comments on DEQ's proposed rule revisions. The ambient standards and general SIP revision comments are based on a comparison of the guidance EPA provided each of the state and local agencies in a letter dated February 4, 1988, and the proposed revisions as they appear in this draft submittal.

For Ambient Standards:

Although PM_{10} has been added to the section on ambient air quality standards (340-31-015), there appears to be no definition of PM_{10} including reference methods under 40 CFR Part 50, Appendix J or an equivalent method designated in accordance with 40 CFR Part 53 (40 CFR 50.6 (c)). A definition of PM_{10} is required.

For General SIP Revisions:

It is unclear from DEQ's submittal whether "particulate matter" or "particulate matter emissions" are defined anywhere in the Oregon rules. If they are not, then definitions for "particulate matter" (40 CFR 51.100 (oo)) and "particulate matter emissions" (40 CFR 51.100 (pp)) must be added to this rule revision. Neither "PM_{10}", including reference methods under 40 CFR Part 50, Appendix J or equivalent method designated in accordance with 40 CFR Part 53 (40 CFR 51.100 (qq)) nor "PM_{10} emissions" (40 CFR 51.100 (rr)) are currently defined in the rule. These definitions must be included. Further, revisions to requirements for sources to report PM_{10} emissions instead of (or in addition to, optional) particulate matter emissions, effective January 1, 1988 (40 CFR 51.322(a)(1) and (b)(1)), and revisions to the procedures for reporting PM_{10} emissions to EPA (40 CFR 51.323(a)(3)) do not appear to be included in the rule revisions. Unless these definitions are included elsewhere in the Oregon rules, they must be added.

A definition of "emission standard or limitation" was to have been provided as part of the PM_{10} rule changes as agreed to in a letter from Fred Hansen to Robie Russell dated October 23, 1987, for Oregon rules for Stack Heights and Dispersion Techniques. This definition must be added to your rules.

The following are specific comments on the proposed rule revisions as submitted in Attachment 3:

(1). The definition of ambient air as proposed in (1) is unacceptable as written. The current 40 CFR Part 50.1 definition states that "ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access. We could approve a definition of ambient air based on the 40 CFR Part 50 wording or the proposed DEQ definition modified by deleting the term "normally". It is unclear in the present context what "normally" means.

(2). A definition of "ambient air monitoring site" would only be acceptable to EPA if it indicates that a site must comply with applicable instrument and siting requirements (e.g. 40 CFR Parts 50, 53 and 58). Provisions which restrict who can establish a site, the purpose of the site, the area of representation and who needs to approve the site, are not acceptable.

The proposed definition of "ambient air monitoring site" does not account for sites established for PSD purposes or special purpose monitoring (SPM).

By stating in the proposed definition that "sites are intended to represent a relatively broad area" suggests that PM_{10} microscale or neighborhood scale siting is inappropriate.

Appendix E of 40 CFR Part 58 is sufficiently clear and specific in establishing "standard siting criteria". Any additional siting criteria approved by DEQ is unnecessary and could serve to misconstrue the Agency's intent in 40 CFR Part 58.

(3). Item (5) defining "equivalent method" must clearly state that EPA in 40 CFR Part 50 defines which methods are approved for NAAQS compliance purposes.

(4). The proposed change to each of the ambient standards (OAR 340-31-015, -020, -025, -030, -040, and -055) which would make them applicable only at an "ambient air monitoring site" is unacceptable. The ambient standards must apply at all locations in ambient air, regardless of whether or not a monitor is located on that specific piece of ground. This change would further preclude the use of dispersion modeling to estimate ambient concentrations at locations without monitoring sites, seriously undermining the SIP and new source review processes.

Attachment 4- While revisions to the emergency episode plan and area-specific contingency plan regulation changes were included in this submittal (OAR 340-27-010, 340-27-015 and 340-27-025), the implementation of the contingency plan was not. The rule should be revised to include by whom and how the contingency plans will be implemented (40 CFR Part 51, Appendix L Section 1.1). Please note that levels of significant harm for various pollutants are no longer listed in 40 CFR Part 51.16 as indicated in your rule revision on page 1 of Attachment 4, but rather appear in 40 CFR Part 51.151.

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)-

On page 5 of the Background and Problem Statement to the EQC, the statement is made that "no offset is required for PM_{10}" under the PM_{10} PSD/NSR program. This is untrue. As stated in 40 CFR 51.165(b) which describes the new PM_{10} NSR program, PM_{10} offsets must be obtained if emissions from a new major source or major modification to an existing source will cause or contribute to a violation of an ambient standard. PM_{10} emission offsets, either from the source itself or from other sources, must be obtained to reduce the impact of the new or modified source to less than the defined significance levels. This should be clarified.

Attachments 1 and 2-

Revision 6 on page 5 of Attachment 2 should cite Supplement A as well as "Guidelines on Air Quality Models (Revised)" as references for air quality modeling procedures (see Enclosure 2).

For PM_{10} NSR Revisions and PM_{10} PSD Revisions:

As noted in our review of earlier sections of DEQ's proposed rule revisions, it is unclear whether definitions exist for "particulate matter", "particulate matter emissions" anywhere in the Oregon rules. A definition of "PM_{10}" including reference methods under 40 CFR Part 50, Appendix J, or equivalent method designated in accordance with 40 CFR Part 53 (40 CFR 51.100 (qq)) and a definition of "PM_{10} emissions" (40 CFR 51.100 (rr)) must be added to the rules as well as definitions for "particulate matter" and "particulate matter emissions".

For PM_{10} NSR Revisions:

The major source permit program as described in 40 CFR Part 51.165(b) and the procedures for approving attainment area offsets as described in 40 CFR 51.165(b)(3) must apply to any new major stationary source (100 tons per year cutoff) and major modification locating in areas not violating NAAQS. The DEQ rule as currently written does not apply to all 100 ton per year sources since the exemption for sources not significantly impacting designated nonattainment areas (OAR 340-20-245(3)) exempts certain major stationary sources less than 250 tons per year from the attainment area NSR requirements. This must be revised to comply with 40 CFR 51.165(b).

For PM_{10} PSD Revisions:

If DEQ has defined "total suspended particulate" in their existing rules, this definition should either be revised or retained per the requirements identified in 40 CFR Part 51.100(ss)), or if a definition does not exist, one should be added per the referenced CFR cite above.

Attachment 3- Oregon State Implementation Plan Commitments for PM_{10} Group II Areas (Bend, La Grande and Portland)

EPA is requiring that all Group II committal SIPs be submitted for formal approval. Therefore, state and local agencies are required to submit committal SIPs containing a signed agreement to perform specific monitoring and reporting tasks per EPA guidelines. It is unclear from the committal SIP format we are reviewing whether the SIP will be submitted in a formal fashion.

Under Section 5.4.3 Reporting Exceedances To EPA, DEQ should identify the appropriate EPA regional office divisions (i.e. Air and Toxics Division and Environmental Services Division) who will be notified when an exceedance of the PM_{10} NAAQS is observed.

The use of the terms attainment and nonattainment when referring to the status of PM_{10} areas should appear in quotes since PM_{10} areas are not officially being designated as such (Sections 5.4.4 and 5.4.5).

Under Section 5.4.4 Notification Of Violations To EPA, the third sentence in the second paragraph is incomplete. We would recommend the sentence be revised as follows: "At sites where less than daily samples are being collected, if an exceedance is observed, an adjustment to account for missing samples will be made for all other days not sampled between the exceedance day and the next sample day."

The report on the final status evaluation of each of the Group II areas along with the inventory of actual and allowable emissions for these areas must be submitted to EPA by no later than August 30, 1990 not September 1, 1990. Corrections to Sections 5.4.6 Evaluation Of Area Status And Reporting To EPA and 5.4.7 Emission Inventory should be made to reflect this requirement.

ENCLOSURE 2

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 SIXTH AVENUE
SEATTLE, WASHINGTON 98101

March 15, 1988

REPLY TO ATTN OF: AT-092

MEMORANDUM

SUBJECT: Revision of PSD Programs to Incorporate Revised Modeling Guidelines

FROM: David C. Bray, Technical Advisor
Air Programs Development Section

TO: State Air Coordinators

On January 6, 1988 (53 FR 392), EPA revised the requirements for prevention of significant deterioration (PSD) programs concerning modeling procedures. It is now necessary for all state and local agencies with EPA-approved or delegated PSD programs to incorporate Supplement A of the Modeling Guidelines, as well as the 1986 version of the Guideline on Air Quality Modeling.

Each of the Region 10 state and local agencies which implement the PSD program have previously indicated that they will be incorporating the 1986 Modeling Guidelines into their programs at the same time as they adopt the new PM_{10} permitting provisions. It appears that it would be an easy matter to include Supplement A in these revisions as well as the 1986 Guidelines.

Please provide a copy of the attached Federal Register notice to each of your state and local agencies which implements the PSD program and discuss with them the need for including Supplement A in their forthcoming PSD rule revisions. We will also mention the need to incorporate this Supplement when we comment on proposed PM_{10} rule revisions.

If you have any questions on the changes needed in the state or local rules, please give me a call at FTS 399-4253. If you have any questions on the Modeling Guidelines themselves, contact Rob Wilson at FTS 399-1531.

Attachment

cc: G. Abel
D. Kircher
A. Williamson
R. Wilson

NORTHWEST
PULP&PAPER

March 18, 1988

Spencer Erickson
Department of Environmental Quality
811 SW Sixth Avenue
Portland, OR 97204

SUBJECT: NWPPA COMMENTS ON DEQ PROPOSALS TO IMPLEMENT EPA'S NEW PM-10 STANDARD

Dear Mr. Erickson:

Thank you for the information that the deadline for comments has been extended to March 21, 1988. The proposed rule changes entail some complex issues and the additional time is appreciated. NWPPA's comments pertain to four issues:

- the proposal to exceed the federal concept for Group I areas by prematurely treating them as legal nonattainment areas for PM-10 (thereby triggering LAER and offset requirements for new major sources instead of BACT);
- not including a phase-in period for preconstruction monitoring for PM-10 where current data is not available;
- general approach to woodstoves; during air pollution episodes; and
- adequacy of fiscal and economic impact analysis.

These issues pose two overall concerns.

First, it appears that the package of proposals to implement the PM-10 standard is based on an approach which is more stringent toward stationary sources to compensate for a perceived lack of authority to adequately address woodstoves.

Such an approach is ill-advised because it could inadvertently cause greater emissions of PM-10. It is well recognized in the various Oregon emission inventories that woodstoves are the single largest contributors of PM-10 and together with soil and road dust account for approximately two-thirds of the total; whereas major point sources account for approximately one-fifth. Given these levels of contribution, it is unlikely that increasingly stringent measures aimed at point sources will achieve enough incremental gain to compensate for woodstoves. More importantly, more stringent requirements for point sources could worsen air quality problems under two scenarios. One is that many sources would attempt to keep obsolete equipment longer rather than to

modernize and apply LAER. The other is that those with power boilers needing modernization might go to cogeneration to offset some of the increased costs. Utilities would be required to purchase the power and if residents perceived this as increasing their electricity rates might increase reliance on woodstoves. It must be remembered that woodstove users sometimes react to subjective views of utilities and costs rather than rational views of air quality.

Secondly, the fiscal and economic impact analysis does not address many of the known impacts that exceeding federal requirements will have on either the regulated community or the DEQ. For the regulated community there are the increased costs of additional pre-construction monitoring, additional permit application costs with LAER review, and additional construction costs. For the agency there are additional costs in staff resources in reviewing all of the above, as well as costs of additional document preparation and sorting out unnecessary legal complications. There may be a cost difference in preparing a SIP for nonattainment areas versus a control strategy document to bring Group I areas into compliance in three years. EPA estimates that it requires up to four years work and $250,000 to develop a SIP for each nonattainment area. Then, there would be the cost and time involved in de-designating the nonattainment areas if the control strategies are successful. The legal confusion and cost may outlast the actual nonattainment problems.

Designating an area as legal nonattainment is a momentous decision and one which should not be made lightly. According to DEQ statements in EQC Agenda Item D, control strategies for Group I areas will be the subject of a separate rulemaking following the adoption of this package. Consequently, it appears that the DEQ could delay its decision regarding legally designating Group I areas as nonattainment until the subsequent strategies are determined.

At a minimum, NWPPA requests delay in the decision to designate Group I areas as nonattainment until a complete package of control strategies can be developed or until actual data warrants this legal classification.

These problems are explained in the detailed comments which are attached.

Thank you for your consideration.

Sincerely,

Llewellyn Matthews

Llewellyn Matthews
Executive Director

LM:sd

Attachment: Specific Comments

ATTACHMENT

SPECIFIC COMMENTS

ISSUE I: Designating Group I areas as legal nonattainment areas for PM-10

In promulgating a new PM-10 standard for particulate, EPA devoted a great deal of consideration (and much of the July 1, 1987 preamble) to the subject of the legal pathway for implementation. Out of the lengthy and somewhat tortuous prose of the preamble, EPA offered two concepts which bear on this issue.

First, EPA determined that the applicable procedures for new PM-10 nonattainment areas should be derived from Section 110 of the Federal Clean Air Act and not Part D which governs areas which were in nonattainment in 1977 and failed to meet the compliance deadlines. Part D sanctions are not of immediate concern unless the new area fails to come into compliance within the applicable time frame.

Secondly, EPA offered the following concept for designating nonattainment areas. If there is sufficient PM-10 data to define an area as nonattainment in accordance with Appendix K of 40 CFR Part 50 (three years of valid data) then the need for SIP revision can be determined relatively easily. For areas where there is insufficient data, a three-step process is to be used to classify areas preliminarily as Group I, II or III. Group I areas have a high probability of exceeding the PM-10 standard but are not legal nonattainment areas until further determinations are made. This second approach is based on probabilities where there is limited or uncertain data when the uncertainties are resolved with actual data, then a different legal procedure and schedule applies. Thus, there are two different designation schemes with distinct legal consequences.

The Oregon DEQ has correctly used the preliminary classification system but then mixes up the two available legal procedures by further classifying Group I areas as nonattainment, reasoning this is immediately necessary "to avoid federal sanctions."

As mentioned above, EPA interprets Part D sanctions as not immediately applicable. This is explained further below. Also, the DEQ, in EQC Agenda Item D, states that control strategies for Group I areas must be coordinated with local governments and cannot be completed until May 1, 1988. Thus, there is no real need to classify Group I areas as nonattainment at this time.

Some of the problems of prematurely designating Group I areas as nonattainment include:

1. Inconsistency with EPA's legal definition of nonattainment may be "arbitrary and capricious"

Section 171(2) of the federal Clean Air Act defines a "nonattainment area" as:

> "for any air pollutant an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the Administrator to be reliable) to exceed any NAAQs for such pollutant." (emphasis added)

Historically (prior to the current efforts to develop a PM-10 standard and determine PM-10 nonattainment areas), nonattainment designations were among the most

thoroughly litigated administrative choices under the Clean Air Act. With respect to designations based on modeling versus monitoring, the cases have upheld agency discretion but have made it clear that modeling exercises will be reversed if assumptions are undisclosed or inadequately explained. See Columbus and Southern Ohio Electric Company v. Costle, 638 F. 2d 910, 912 (6th Cir. 1980) and Cincinnati Gas and Electric Company v. Costle, 632 F. 2d 14, 19 (6th Cir. 1980).

In the present instance, EPA notes there is reason to doubt PM-10 monitoring data that is available for designation purposes and it is partly for this reason that it devised the preliminary classification system. Specifically, at page 24680, footnote 7, of the July 1988 Federal Register, the preamble states that EPA has found some uncertainty exists in the PM-10 measurements collected prior to 1987 with the PM-10 instruments available at that time; depending on the instrument, there is a zone of uncertainty of +/- 20 percent around the standard for the purpose of calculating the probability of attainment.

Oregon's baseline PM-10 data is from the 1984-1986 period and design values for proposed Group I areas are considered approximate.

Given the probability guidelines developed by EPA for preliminarily classifying Group I areas, and the time frame of the Oregon baseline data, it is probably correct to classify certain areas as Group I; however it is probably arbitrary and capricious to go further at this time and classify Group I areas as legal nonattainment.

2. Designating Group I areas as legal nonattainment areas may increase, instead of decrease, the probability of federal sanctions

The EQC Agenda Item F at page 3 states: "Failure to have an adequate strategy to achieve compliance in Group I areas could lead to federal funding and construction sanctions." A similar statement is made in EQC Agenda Item D. The rationale for designating Group I areas as nonattainment is that this is necessary as part of having an adequate strategy to avoid federal sanctions. Ironically, as a legal matter, this proposal accomplishes the opposite and increases the probability of federal sanctions sooner.

EPA explained in the July 1, 1988 Federal Register preamble pages 24677-82, that Section 110 SIP requirements apply to newly designated PM-10 nonattainment areas and to a certain extent areas preliminarily classified as Group I. Part D sanctions (for nonattainment that failed attainment deadlines in first round SIPs) do not apply. EPA (page 24682) is clear that federal intervention is provided for under Section 110(c)(1) if a state fails to submit a plan at all or the plan submitted is inadequate for attainment compliance with PM-10.

EPA does not suggest Section 110 sanctions would be considered for areas preliminarily categorized as Group I, but does raise the question (suggesting the possibility) as to whether the sanctions apply to actual PM-10 nonattainment areas. EPA states its intention to explore the legal issues, appropriateness and authority for imposing construction bans and funding sanctions under Section 110 to actual PM-10 nonattainment areas.

Assuming EPA resolves these questions in the affirmative, the DEQ proposal to designate Group I areas as nonattainment actually increases the exposure to federal sanctions. Also, although EPA clearly did not intend such a result, it appears the DEQ's proposed designation of Group I areas as nonattainment areas means DEQ intends Part D review

procedures to apply. This raises another legal uncertainty in whether DEQ is also unnecessarily increasing Oregon's exposure to Part D sanctions.

3. Prematurely designating Group I areas as nonattainment will discourage future growth/modernization

If the DEQ defers designating Group I areas as nonattainment, it could proceed to develop control strategies pursuant to EPA requirements and decide as part of the pending process on a case-by-case basis, whether more stringent new source reviews (LAER or other) are necessary. Thus, the DEQ would have flexibility based on actual needs that emerge as part of developing the control strategies.

If the DEQ designates Group I areas as nonattainment, then presumably full federal Clean Air Act review requirements under Part D, Section 173 would be required, including:

- offsets or "further reasonable progress" demonstration for the region;
- compliance with lowest achievable emission rate (LAER);
- all major sources owned by the applicant are in compliance or on a schedule for compliance; and
- the applicable implementation plan is being carried out for the nonattainment area.

The problems for stationary sources seeking to expand or modernize center primarily around the second and fourth requirements.

LAER means the most stringent level of control for the particular source category unless the applicant shows it is not achievable. The problems with LAER have to do with the practicality of identifying some uncertain technology that exceeds NSPS. The agency and applicant are cast in an adversarial position of arguing whether some extreme control technology required in another situation is or is not too radical. In the final analysis, the single most discouraging type of review for a new source and modernization is LAER.

Also, the applicant would be required to show the SIP is being carried out for the nonattainment area. Since the major category of PM-10 emissions in Oregon's Group I areas is woodstoves and because the DEQ doubts its legal authority with respect to woodstoves, it is unlikely that a private applicant will be able to satisfy this requirement if DEQ itself is uncertain.

4. Prematurely designating Group I areas as nonattainment will create legal problems with respect to the demonstration needed to de-designate the area

EPA requires states with Group I areas to submit complete SIPs within nine months of promulgation of the PM-10 standard that will demonstrate attainment as expeditiously as possible but not later than three years from SIP approval.

Assuming the control strategies proposed for Group I areas are successful and attainment is demonstrated at the end of the specified three years, the legal consequences of nonattainment status need not be triggered. If Group I areas are classified as nonattainment now (in advance of three years valid data) questions are created as to what

is the applicable date from which three good years of valid data must be shown in order to de-designate the areas.

ISSUE II: No phase-in exemption periods for pre-construction monitoring where current PM-10 data is not available is inconsistent with federal rules and may adversely affect new proposals

The proposed DEQ regulations do not include a phase-in exemption periods for pre-construction monitoring required in support of a new source review (NSR) in PSD areas. Normally under PSD rules, one year of monitoring is required but sources may rely on other applicable monitoring in the proximity. EPA, in promulgating the PM-10 standards, recognized problems to applicants with plans underway and provided three phase-in exemption period depending on when the PSD application is complete.

The DEQ rationalizes disallowing the three phase-in exemption period for monitoring in EQC Agenda Item F by stating, "No proposed NSR sources are currently known by the Department to be doing pre-construction monitoring in Oregon for particulate matter, so no current programs are known to be affected."

This reasoning appears to be an error in interpreting how EPA visualized the phase-in exemption periods for monitoring to be applied. First, EPA's proposal specifies that a NSR applicant is eligible for the phase-in monitoring depending on when a complete PSD application is submitted (page 24686). Eligibility does not have to do with commencing pre-construction monitoring by June 1988 as suggested by the DEQ.

Specifically, EPA established the following phase-in periods:

- Complete PSD applications submitted within 10 months after the new PM-10 standard have no new monitoring requirements;
- complete PSD applications submitted within 10-16 months may use existing PM-10 or PM-15 representative data or collect data which can come from non-reference methods and will involve at least 4 months of data;
- complete PSD applications submitted within 16-24 months must use reference methods and have at least 4 months of data.

Although DEQ may be correct that there appear to be no project proponents who will have pre-construction monitoring in place by June 1988, this is not the criteria for eligibility for one of the phase-in exemptions. It is entirely likely that there are project applicants who could qualify for the second or third of EPA's three exemptions. For example, any modernization replacement at a pulp mill. As another example, there appears to be progress in the proposal for a groundwood mill in Southern Oregon. In the latter case, requiring a full year of reference method PM-10 monitoring could cause the project proponents to consider locating in Northern California instead.

ISSUE III: General approach to woodstove curtailments during air pollution episodes

The EQC Agenda Item E document states that clarification is needed that wood and coal space heating shall be curtailed when future legal authority exists to do so. Meanwhile the proposal amendments to the Air Pollution Episode requirements appear to be very

minimal with respect to woodstoves compared to point sources. For Warning and Emergency Levels, woodstoves and fireplace use is prohibited if legal authority exists whereas point sources are required to shutdown and to "assume economic hardships."

Again, this illustrates relative leniency toward woodstoves, the major sources of PM-10 while elsewhere requirements for point sources are more stringent than federal requirements.

ISSUE IV: *Adequacy of fiscal/economic impact analysis*

In the foregoing comments, a number of economic impacts were identified which were not mentioned in the DEQ statements. These are summarized together as follows:

- Increased costs to DEQ for SIP preparation and resolving legal ambiguities for Group I areas which are prematurely designated legal nonattainment;
- increased costs to DEQ for data demonstrating that a legal nonattainment area may be de-designated;
- increased pre-construction monitoring costs for NSR applicants under DEQ's proposal as opposed to EPA's phase-in exemptions (several applicants will experience cost differences due to 12 months as opposed to 4 months of monitoring);
- increased permit application costs to the agency and applicant in going through full nonattainment review procedures as opposed to Group I area control strategies envisioned by EPA;
- increased costs for point source curtailment as opposed to woodstoves.

March 21, 1988

ASSOCIATED OREGON INDUSTRIES

Mr. Spencer Erickson
Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, Oregon 97204

Subject: Comments on DEQ proposed rules to implement the new PM-10 Standards

Dear Mr. Erickson:

We have reviewed the submittal of Northwest Pulp and Paper, and we find ourselves in agreement with the concerns that have been raised above the rules as proposed.

We are particularly interested in the concern raised about designating an area as legal nonattainment. We agree there is enough basic data to classify those areas as Group I that have been classified, but we concur that that data does not, at this time, require a designation of such areas as legal nonattainment.

The further concern that the designation as legal nonattainment may speed up the potential for EPA sanctions should be studied carefully. Those sanctions will be imposed on the local government, not on DEQ, and the local governments should be fully appraised of the potential. It is doubtful that local governments are aware of the pitfalls for them in the proposed rules. They should also be aware of the difficulties in being de-designated, particularly if the proposed SIP does achieve attainment within the EPA time frame.

The documentation of the contribution of woodstoves of PM-10 by the DEQ is overwhelming. However, DEQ has no direct control over woodstove operation and must, lacking legislative authorization, depend on the voluntary cooperation of local governments to achieve attainment. Under the circumstances, it appears to us that in view of the complexity of the issue, the cost to the agency and the regulated community, that DEQ should take as much time as federal law and rules allow to develop and implement an overall program to achieve attainment. Forcing the industrial-commercial community to assume LAER or BACT in the area of the State that already has imposed on it the most stringent air quality rules is not called for. This will not be cost effective and will not solve the overall PM-10 issues.

We urge you to re-examine the issues raised by Northwest Pulp and Paper and to reform the proposed rules as they propose.

Sincerely,

Thomas C. Donaca
General Counsel

TCD:ab

United States Department of the Interior

BUREAU OF MINES

WESTERN FIELD OPERATIONS CENTER
EAST 360 3RD AVENUE
SPOKANE, WASHINGTON 99202

February 8, 1988

Ms. Wendy Sims
Oregon Department of Environmental Quality
Air Quality Division
811 SW Sixth Avenue
Portland, Oregon 97204

Dear Ms. Sims:

RE: PROPOSED AMENDMENT OF OAR 340-20-220 THROUGH 340-20-260 TO INCLUDE PM_{10}

Our concerns relate to mineral issues. What are the present emission levels from industrial plants and mining related operations? How will these new air quality standards affect the minerals industry? Is it economically feasible for the sources of particulate in the mining industry to apply the best available control technology for PM_{10}? Sources of fine particulate in mining range from open-pit blasting, which causes ambient dust particles, to emissions from processing plants. The impacts to these and other mineral issues must be considered prior to the approval of different air quality standards.

Thank you for the opportunity to review and comment on these amendments.

Sincerely,

D'Arcy P. Banister, Supervisor
Mineral Issues Involvement Section
Branch of Engineering and Economic Analysis

TESTIMONY OF SUE JOERGER,
EXECUTIVE VICE PRESIDENT,
SOUTHERN OREGON TIMBER INDUSTRIES ASSOCIATION,
BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY,
MARCH 7, 1988

Thank-you for this opportunity to offer comments on the proposed changes to Oregon's air pollution control program. It is our understanding that the proposed rule changes are being made in response to the Environmental Protection Agency's newly adopted revisions to national ambient air quality standards for particulate matter.

SOTIA is a trade association in Jackson, Josephine and South Douglas counties, of mill operators, contract loggers, log truckers and road builders and associates who provide goods and services to the industry. SOTIA currently has 130 members.

The SOTIA Environmental Affairs Committee has reviewed the proposed Oregon PM10 ambient air quality standards, amendments to the emergency action plan, amendments to the new source review rules, and amendments to the prevention of significant deterioration rules.

I am happy to report that the Committee's review concluded that the staff of the Department of Environmental Quality has one an excellent job of incorporating the new EPA standards into the Oregon administrative rules. Therefore, SOTIA has no comments on these new standards and proposed changes.

It is our understanding that a public hearing on the proposed control strategies for Group I areas will be held in April. SOTIA will present its detailed comments on the strategies at the appropriate time, however, I would like to put these control strategies in context of the other issues that are facing the industry in Southern Oregon.

In 1986, according to the Western Wood Products Association, Jackson, and Josephine Counties produced 15% of the softwood lumber consumed by the nation. Since the price of softwood lumber is set in national markets, manufacturers in Southern Oregon are unable to pass increased costs of doing business on to consumers and expect to remain competitive.

The forest products industry in Southern Oregon is not only important to the nation, it is important to the economies of Jackson and Josephine County. Almost 50% of the employment in these two counties is either directly or indirectly attributable to our industry. In addition, the receipts from the harvest of timber on O & C lands and national forests is the source of almost 50% of these counties total revenues.

There are three major issues on facing the forest products in-

dustry here in Southern Oregon which will not only have a major impact on its competitiveness in nationwide markets, but will effect the survival of the industry as it is today.

First, the Forest Service has submitted for public review, the draft forest plans for the Rogue River and Siskiyou National Forests. The cumulative reduction in timber supply from these forests is 94 million board feet or 26%: a 36% reduction in the annual timber sale program from the Rogue and a 10% reduction on the Siskiyou. Regional competition for less timber, from Roseburg to Yreka, and Klamath Falls to Brookings, will significantly increase raw material costs and the price of lumber and plywood.

Second, a proposal to convert the Siskiyou National Forest to a national park is another very serious and major threat. If this happens, coupled with a reduction on the Rogue, we are talking about a 71% decrease in timber supply. If this happens, not only will raw material and lumber and plywood prices increase, I believe there won't be much left of the forest products industry.

The third issue is PM10. As you are well aware, the industry in Jackson County has reduced its emissions by 69% since the late 1970's. Today only 13% of the worst day and 21% of the average annual day problem is attributable to the industry. The real problem is with smoke from wood stoves which provide 65% of the worst day problem and 41% of the annual average problem. If the DEQ closed the forest products industry down, the PM10 problem would still exist in the AQMA.

Yet, in spite of the fact that further regulating the industry will not solve the PM10 problem, the DEQ is proposing rules for Medford-White City which will cause increased capital expenditures, at a time when the industry's existence is seriously threatened by a timber supply shortage.

Furthermore, these rules will not treat all Group I areas the same. The Medford-White City rules include a change in the offset ratio to 1.3 to 1. Not only are our competitors better off being located outside of a Group I area, they are also better off and more competitive if they are in any Group I area except Medford-White City. We do not support these inequities.

If timber supply decreases as proposed and the DEQ passes its proposed rules for PM10 for the Medford-White City Group I area, manufacturers in Jackson and Josephine Counties will be unable to compete effectively in national markets. In fact, many companies may not be able to afford the capital outlays needed to comply with the new PM10 rules.

The real issue is smoke from wood stoves. We urge the DEQ to deal with the real problem.

TIMBER PRODUCTS CO.
Executive Office

POST OFFICE BOX 269
SPRINGFIELD, OREGON 97477-0055
PHONE 503 747-3321

March 3, 1988

Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, OR 97204

Gentlemen:

The proposed changes in the air quality rules for the State of Oregon are required because of the implementation of new standards (PM10) by the U.S. Environmental Protection Agency.

The proposed rules seem in general to be a duplication of the EPA regulations with one exception. Oregon will retain a TSP standard which was deleted in the Federal rule. It is my view that retention of this rule is unnecessary, requiring duplicate testing of some point sources.

Very truly yours,

Henry E. Rust
Director, Environmental Affairs

HR/DN

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 L, April 29, 1988, EQC Meeting

Proposed Adoption of Rules 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.

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.

Since the national significant harm levels are 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.

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

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

Public Comments Received

The Environmental Quality Commission authorized the Department to hold public hearing on the proposed revision to this rule. Hearings were held in Portland on March 2 and 3, Medford on March 7, Bend on March 9 and La Grande on March 10, 1988. The majority of the comments came from a review by EPA based on legal acceptability of the rule. Other comments from both industrial and environmental groups were received.

The Environmental Protection Agency offered several comments on the acceptability of the proposed revisions to the Air Quality Standards (OAR-340-31) and the Emergency Action Plan (OAR-340-27).

COMMENT

EPA pointed out that the reference to a "dimensionless system" of measurement in the Chance to Comment Section does not apply to the measurement of particulate matter.

DEPARTMENT'S RESPONSE

The Department concurs with that correction.

COMMENT

EPA commented that there is no definition of PM_{10} in the documents submitted for comment and that such a definition was required.

DEPARTMENT'S RESPONSE

The Department feels that PM_{10} in ambient air was adequately defined in OAR-340-31-015 by the statement "Concentrations of suspended particulate matter at an ambient air monitoring site, as measured by 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}) ..." The definition of "approved method" as described in OAR 340-31-005(3) makes specific reference to Appendix E of 40 CFR 58 wherein the EPA "reference methods" for PM_{10} is described and the EPA "equivalent methods" are referenced. Since PM_{10} is defined in terms of the methods by which it is measured in ambient air, the Department considers the definition sufficient for the purpose at hand.

COMMENT

EPA objected to the definition of "ambient air" as being that which is "normally used for respiration by plants or animals." They indicate that the meaning of the word "normally" is unclear in the context of the definition and should be removed. They further point out that the definition of ambient air in 40 CFR 50 is "that portion of the atmosphere, external to building, to which the general public has access", is less restrictive than limiting the definition to that air which is "normally used for respiration", but that the proposed definition would be acceptable if the word "normally" were removed.

DEPARTMENT'S RESPONSE

The fundamental point is that EPA's definition includes <u>all</u> air to which the public has access, not just that which the public would normally be expected

to breath while the proposed definition would limit the application of the ambient air quality standards to such air that is used for respiration. The EPA definition of ambient air would apply to that air in the middle of a freeway, at the exhaust pipe of an automobile or at the edge of a field burn regardless of whether actual exposure would be expected. The Department feels that such a definition potentially leads to unrealistic application of the ambient air quality standards never intended by Congress in the adoption of the Clean Air Act. However, since removal of the word "normally" would make the definition more acceptable to EPA, the Department is willing to concur.

COMMENT

EPA objected to the definition of an "ambient air monitoring site" as one that had been "established by the Department" and that "such sites are intended to represent a relatively broad area." In particular, EPA contends that 1) such siting restrictions do not allow data from monitoring stations beyond those established by the Department and 2) EPA siting criteria as referenced in 40 CFR 58 Appendix E as amended by the promulgation of the new PM_{10} standards on July 1, 1987, allow for the establishment of "microscale" sites for PM_{10} that would not be expected to represent the air quality over a "broad area." Furthermore, EPA states that, in their opinion, the siting criteria in Appendix E of 40 CFR 58 are sufficient and additional siting criteria are not necessary.

DEPARTMENT'S RESPONSE

Because of another comment that EPA had about each of the standards being referenced to measurements being taken at an ambient air monitor site, the Department is removing the definition of "Ambient air monitoring site" and replacing it with a definition of "Ambient air monitoring site criteria." A reference to air at locations meeting the ambient air monitoring site criteria in 40 CFR 58 Appendix E is made in the specific ambient air quality regulation.

COMMENT

EPA commented that "equivalent method" as defined in OAR 340-31-005(5) must "clearly state that EPA in 40 CFR 50 defines which methods are approved for NAAQS [National Ambient Air Quality Standard] compliance."

DEPARTMENT'S RESPONSE

The inclusion of a definition of "equivalent method" in this rule was intended to allow the use of methods beyond those described by EPA for comparison to the Oregon ambient air quality standards. The primary reason for inclusion of the methods in OAR 340-31-005(5) was that Oregon has some air quality standards beyond those described by EPA (i.e. the Particle Fallout and Calcium Oxide standards in OAR 340-31-045 and -050) that must

have methods described for them. In a closer reading of the proposed regulations, this purpose does not seem clear and a revision to the section has been made to clarify the intent. In addition, definition of "equivalent methods" will be limited to those other pollutants for which EPA has no standards and therefore no methods. The EPA reference and definition of "equivalent method" is fully contained in 40 CFR 50 and needs no additional references in these regulations.

COMMENT

EPA objects to the wording of the ambient air quality rules in OAR-340-31-015, -020, -025, -030, -040, and -055 that restrict application of these standards to measurements taken at ambient air monitoring sites. Their contention is that the standards should apply to all locations in ambient air, regardless of whether or not a monitor is located at that specific place.

DEPARTMENT'S RESPONSE

The Department has replaced the reference to an ambient air monitoring site with a reference to air at a location meeting the ambient air monitoring site criteria in 40 CFR 58 Appendix E.

COMMENT

Mr. D'Arcy Bannister, U.S. Department of Interior, Mineral Issues Involvement Section, requested information on present emission levels from industrial and mining related operations and how the new standards would affect the industry. He further stated that the impact on mineral industries should be examined before such a standard is adopted.

DEPARTMENT'S RESPONSE

When the Environmental Protection Agency first proposed a fine particle standard, consideration of mineral industries was made. The initially proposed fine particle standard had an upper size limit of 15 microns. Because of a consideration for mining operations and reduced evidence that particles in the range of 10-15 microns had an adverse health impact, the standard upper size limit was revised to 10 microns before adoption.

COMMENT

Mr. John Charles, Oregon Environmental Council, testified that a PM_{10} standard with an averaging time less than 24 hours was needed to address problems related to short-term peak levels from primary sources such as from field and slash burning.

DEPARTMENT'S RESPONSE

The difficulty in adopting such a standard is that there is virtually no health effects data available for impacts of shorter term than 24 hours. Development of the necessary data to justify the adoption of new standards is prohibitively expensive for states. EPA has been apprised of the desire for a shorter term health standard but it is unlikely they will undertake the work necessary to adopt such a standard in the near future.

COMMENT

Ms. Llewellen Matthews, Northwest Pulp and Paper Association, commented that the Department's position on emergency control of wood and coal use for space heating is too lenient compared to the control measures placed in industry.

DEPARTMENT'S RESPONSE

The comment seems to stem from the language in the proposed rule indicating that woodstove and fireplace use be prohibited "where legal authority exists" at the Warning and Emergency levels. The reason such language is necessary is that the Department does not have authority to make such prohibitions regardless of the air quality levels measured. Such authority exists solely at the local level and there only provided that the necessary regulations have been adopted.

A summary of the public testimony collected during the hearing is presented in the Hearings Officer report in Attachment 2 to this report.

Proposed Rule Summary

Attachment 3 contains the Department's proposed revised amendments to the ambient air quality standards and Attachment 4 contains the Department's proposed amendments to the Emergency Action Plan rules.

Modifications to the State ambient air quality standards consist of adoption of a standard for fine particulate (PM_{10}), deletion of two outdated and unused standards (the monthly TSP and the hydrocarbon standards) and revision of the gaseous standards units of measurements to be consistent with those specified in the National Ambient Air Quality Standards. The principal impacts on the revision to this rule on the State of Oregon will be the need to monitor areas for the new standard and to develop and implement control strategies for those areas found not in compliance with it.

Modifications to the State Emergency Action Plan consist of replacement of references to Total Suspended Particulate levels with references to PM_{10} levels, deletion of an unused emergency action criteria for the product of TSP and sulfur dioxide and clarification of the curtailment strategy when

the major source of pollutant is wood or coal space heating. The principal changes brought on by the revision to this rule will be in the administration of the emergency rules.

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.

6. The Department was granted authorization to hold public hearings on the proposed rule changes at the January 22, 1988, EQC meeting in Portland.

7. Announcement of the public hearings was published in the Secretary of State's bulletin on February 1, 1988.

8. Public hearings were conducted in Portland on March 2 and March 3, 1988, in Medford on March 7, 1988, in Bend on March 9, 1988 and in La Grande on March 10, 1988.

9. Several comments were received that resulted in relatively minor changes to the proposed rules. The most significant changes involve modification of the ambient standard in terms of where the standards should apply. These changes were made so that the proposed rules are not less stringent than the National Ambient Air Quality Standards. The proposed rule changes satisfy the requirements of EPA for approvability.

Director's Recommendation

Based on the Summation, it is recommended that the EQC revise the Ambient Air Standards (OAR 340-31-005 through -055) and Emergency Action Plan (OAR 340-27-005 through -012) as proposed.

Lydia Taylor
Fred Hansen for

Attachments:
1. Statement of Need for Rulemaking
2. Hearings Officer Report (see separate attachment)
3. Proposed Rule Revision OAR 340-31-005 through -055
4. Proposed Rule Revision OAR 340-27-005 through -012

SLErickson
229-6458
April 14, 1988
AD1951A

Attachment 1
Statement of Need for Rulemaking

Agenda Item L, April 29, 1987, 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.

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 could 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.

AD1956A (4/88)

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 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 criteria" means the general probe siting specifications as set forth in Appendix E of 40 CFR 58.

(3) "Approved method" means an analytical method for measuring air contaminant concentrations which are described or referenced in 40 CFR 50 and Appendices. 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] Oregon standard method" means any method of sampling and analyzing for an air contaminant [deemed] approved 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. Such method shall be equivalent to the method or methods approved by the Federal Environmental Protection Agency.] Oregon standard methods are kept on file by the Department of Environmental Quality.

(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 placed 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.]

Note: The publications referred to in this rule are available for inspection at the office of the Department of Environmental Quality.

Stat. Auth.: ORS Ch. 468

Suspended Particulate Matter

340-31-015 Concentrations of suspended particulate matter at a [primary air mass station] location meeting ambient air monitoring site criteria and 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 equal to or less than 10 microns in aerodynamic diameter, (PM_{10}), [by and on file with the Department of Environmental Quality, or by an equivalent method,] 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 a 24-hour average 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.

Note: The publications referred to 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,] location meeting ambient air monitoring site criteria and as measured by [a method approved] an approved method [by and on file with the Department of Environmental Quality, 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 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 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,] location meeting ambient air monitoring site criteria and as measured by [a method approved] an approved method, [by and on file with the Department of Environmental Quality 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,] location meeting ambient air monitoring site criteria and as measured by [a method approved] an approved method [by and on file with the Department of Environmental Quality, 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.]

Note: The publications referred to in this rule are available for inspection at the office of the Department of Environmental Quality.

Stat. Auth.: ORS Ch. 468

[**Hydrocarbons**

340-31-035 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,] location meeting ambient air monitoring site criteria and 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 as measured by an Oregon standard method at a [primary air mass station, primary ground level station, or special station,] location approved by the Department of Environmental Quality, [as measured by a method approved by and on file with the Department of Environmental Quality, 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 total suspended particulate, (TSP), as measured by an approved method at a [primary air mass station] location [, as measured by a method] approved by [and on file with] the Department of Environmental Quality, [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 as measured by an Oregon standard method at a [primary air mass station, primary ground level station, or special station] location [, as measured by a method] approved by [and on file with] the Department of Environmental Quality, [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 as measured [at any individual sampling station, using sampling and analytical methods on file with the Department,] by an approved method at a location meeting ambient air monitoring site criteria, shall not exceed 1.5 [ug/m^3] micrograms per cubic meter as an arithmetic average concentration of all samples collected at that [station] location during any one calendar quarter. [period.]

Stat. Auth.: ORS. Ch. 468

AD1959A (4/88)

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 x 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 x 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°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.

AD1960A (4/88)

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 M, April 29, 1988, EQC Meeting

Proposed Adoption of Revisions to the State Implementation Plan (OAR 340-20-047) to include Commitments for Monitoring PM_{10} Group II areas (Section 5.4).

BACKGROUND

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 monitoring 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 August 30, 1990.

5. Submit a full control strategy within 6 months of determining the inadequacy of the SIP which demonstrates compliance within 3-5 years of the date EPA approves the committal SIP.

ALTERNATIVES AND EVALUATION

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 a moderate potential for exceeding the daily standard PM_{10} standard with impacts primarily from wood space heating. La Grande has a moderate 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 obtain 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 August 30, 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.

Public Comments Received

The Environmental Quality Commission authorized the Department to hold public hearings on the proposed revision to this rule. Hearings were held in Portland on March 2 and 3, Medford on March 7, Bend on March 9 and La Grande on March 10, 1988. Only two commentors provided comments specific to this proposed rule adoption.

COMMENT

Mr. John Charles, Oregon Environmental Council, objected to the classification method by which areas were grouped into the three groups for further PM_{10} investigation. He felt that those areas of over 60% probability should have been included in Group I rather than the 95% used by EPA and that the Department should establish stricter criteria than EPA on designation of the Group I areas.

DEPARTMENT'S RESPONSE

The Department agrees with the general concept of classification used by EPA in generating the grouping of areas in the state. While the use of a lower probability of non-compliance may have resulted in more areas being classified Group I, it would have decreased the confidence that the areas in Group I would really not meet the standard. Inclusion of areas that did meet the standard in Group I would have resulted in the costly development of control strategies. The intent of the classification system was to allow investigation of such areas without unnecessary and undue regulatory requirements. If any of the Group II areas do demonstrate non-compliance with the standard, the regulatory requirement for compliance attainment is the same as for those areas in Group I.

COMMENT

The Environmental Protection Agency commented that the terms "attainment" and "nonattainment" should not be used in reference to an area's compliance status with the PM_{10} standard. Further, they point out that the final status report to EPA of the actual and allowable inventory of emissions for Group II areas is to be submitted to EPA not later than August 30, 1990, not September 1, 1990. In addition, EPA requested that the specific EPA regional office divisions to whom notification of PM_{10} exceedances will be made be identified in the SIP revision.

DEPARTMENT'S RESPONSE

The necessary corrections have been made to the proposed SIP revision for Group II areas.

Several other comments were received during the public hearing process that did not directly affect the proposed Group II SIP revision and were not relevant to the proposed rule revisions but the Department feels they should be addressed.

COMMENT

One commenter stated that if there is insufficient data to determine that an area is not in compliance with the standard, such an area may have a high probability of violating the standard but still not be a legal nonattainment area until further determinations are made.

DEPARTMENT'S RESPONSE

All of the areas in Oregon that were classified as Group I were done so based on PM_{10} monitoring data showing conclusively that the area did not meet the proposed standard. Any area that had not actually demonstrated non-compliance with the standard was classified as Group II.

COMMENT

Several other comments were received offering advice on how control strategies should be, and should not be, developed in Group II areas. Commenters indicated that they were uncomfortable with the idea that DEQ would develop and implement control strategies in their particular area without regard to local conditions of source impacts and economics.

DEPARTMENT'S RESPONSE

The normal procedure for the development of control strategies for areas that are demonstrated to be in non-compliance with the standards is to form an advisory committee, with the assistance of local government, to review all possible strategies and work with the community to choose the most cost effective one that will achieve the required air quality by whatever deadlines are required. Control strategies are not required for Group II areas since they have not been demonstrated to violate the PM_{10} standards. Should data be collected to demonstrate non-compliance with the standard, the area will be so designated and strategies will be developed. An upcoming EQC agenda item dealing with the Group I areas will address the procedures required for areas not in compliance with air quality standards.

Proposed Rule Summary

The proposed amendment to the State Implementation Plan will supply the legal commitment by the Department to monitor air quality in areas designated by the Environmental Protection Agency as Group II for the new fine particulate (PM_{10}) standard. The revision will commit the Department to a operate a minimum monitoring network in Bend, La Grande and Portland, development of an emission inventory of each of the three areas and to report the it's finding to the Environmental Protection Agency by August 30, 1990.

Should monitoring in any of the above areas demonstrate non-compliance with the PM_{10} standard before August 30, 1990, the Department is committed to report the condition to EPA and initiate development of an enforcable control strategy to attain and maintain the standard within a timeframe of three to five years from the data EPA approves this SIP revision.

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 August 30, 1990. Within 6 months of determining that a Group II area is in non-compliance, 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.

5. The Department obtained authorization to conduct public hearing on the proposed revision to the State Implementation Plan at the January 22, 1988 EQC meeting.

6. Announcement of the public hearings was published in the Secretary of State's bulletin on February 1, 1988.

7. Public hearings were conducted in Portland on March 2 and March 3, 1988, in Medford on March 7, 1988, in Bend on March 9, 1988 and in La Grande on March 10, 1988.

8. Few comments were received on the proposed SIP revision. The most substantive comments were received from EPA requiring minor changes to make the revised SIP legally approvable. The required revisions to the proposed SIP were made in response to those comments.

DIRECTORS RECOMMENDATION

Based on the Summation, it is recommended that the Commission adopt the proposed 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.

Fred Hansen

Attachments:
1. Statement of Need for Rulemaking
2. Hearings Officer Report (see separate attachment)
3. Proposed Committal State Implementation Plan Revision for Group II areas (Bend, La Grande and Portland) OAR 340-20-047 Section 5.4

Spencer Erickson:sle
229-6458
April 14, 1988
AD1950A

Attachment 1
Statement of Need for Rulemaking

Agenda Item M, April 29, 1988, EQC Meeting.

STATEMENT OF NEED FOR RULEMAKING

Pursuant to ORS 183.335(7), these statements provide information on the intended action to ammend a rule.

(1) 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.

(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.

(3) Principal Documents Relied Upon

a. Clean Air Act as Amended (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 Ave., 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 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.

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.

Spencer Erickson:sle
229-6458
April 14, 1988
AD1953A

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, Air and Toxics Division and Environmental Services Division, 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, Air and Toxics Division and Environmental Services Division, 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 will be 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, Air and Toxics Division and Environmental Services Division, 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 August 30, 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 August 30, 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 August 30, 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.

AD1954A (4/88)