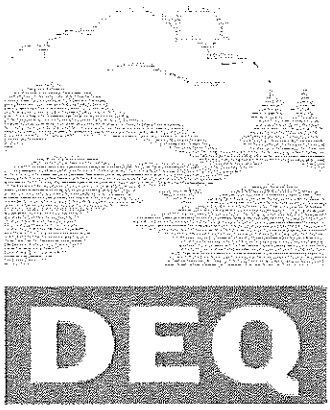
11/4/1988

OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS



State of Oregon
Department of Environmental Quality

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

OREGON ENVIRONMENTAL QUALITY COMMISSION MEETING

November 4, 1988
Conference Room 4
811 S. W. Sixth Avenue
Portland, Oregon 97204

8:00 a.m. - CONSENT ITEMS

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

A. Minutes of the September 9, 1988, EQC Meeting, August 12, 1988 Emergency Meeting, and August Retreat Notes.

B. Monthly Activity Report for August and September 1988.

C. Civil Penalties Settlement Agreements--None

D. Tax Credits for Approval.

8:00 a.m. Guest speaker William Young, Director of Water Resources

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

E. Request for Authorization to Conduct a Public Hearing on Proposed Environmental Cleanup Rules Regarding Delisting of Facilities Listed on the Inventory and Establishing a Process to Modify Information Regarding Facilities Listed on the Inventory, OAR Chapter 340, Division 122.

F. Request for Authorization to Conduct a Public Hearing on Revisions of Oregon Administrative Rule Chapter 340, Division 12, Civil Penalties, and Revision to the Clean Air Act State Implementation Plan (SIP).

G. Request for Authorization to conduct Public Hearings on Proposed Rules, OAR 340-160-005 through OAR 340-150-150 and OAR 340-150-067, for "Registration and Licensing Requirements for Underground Storage Tanks Service Providers" and Modifications to Existing Rules, OAR 340-150-010 through 340-150-150 and 340-012-067, for "Requirements Under Which Regulated Substances May be Placed Into Underground Storage Tanks.

H. Request for Authorization to Conduct a Public Hearing on New Industrial Rules for PM10 Emission Control in the Medford-Ashland AQMA and Grants Pass and Klamath Falls Urban Growth Areas (Amendment of OAR 340, Divisions 20 and 30)

The Commission will break from noon to 12:30 for lunch

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.

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 an item not having a set time should arrive at 8:15 a.m. to avoid missing the item of interest.

I. Request for Adoption of Proposed Cleanup Rules for Leaking Petroleum Underground Storage Tank Systems, OAR 340-122-201 to 340-122-260 and Amendments to OAR 340-122-010 and 340-122-030.

J. Proposing Adoption of an Order Regarding Stay Procedures for Contested Case Appeals for Facilities Listed on the Inventory of Confirmed Releases.

K. Proposed Approval of Changes in LRAPA Title 43, "Emissions Standards for Hazardous Air Pollutants" and LRAPA Title 34, "Air Contaminant Discharge Permits" (Asbestos Regulations).

L. Proposed Adoption of LRAPA PM10 Amendments, Including Changes to Title 14, 31, 38, 51, and the Oakridge PM10 Group II Committal SIP, as a Revision to the State Implementation Plan, OAR 340-20-047.

M. Informational Report: Report to the Legislature on Management of Solid Waste in Oregon.

N. Proposed Adoption of New Administrative rules for the Waste Tire Program. OAR 340-62: Reimbursement for Use and Cleanup of Waste Tires.

O. Request for Adoption of a Temporary Rule Amending OAR 340, Division 61 to Prohibit the Disposal in Solid Waste Disposal Facilities of Hazardous Waste Originating Out of State.

The Commission will have breakfast (7:30) at the DEQ Offices, 811 S. W. Sixth Avenue, Conference Room 4, Portland. Agenda items may be discussed at breakfast. The Commission will also have lunch at the DEQ offices.

The next Commission meeting will be Friday December 9. There will be a short work session prior to this meeting at 2:30 pm Thursday December 8.

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.

10/11/88 mlr

Approved_____
Approved with Corrections_____
Corrections made_____

MINUTES ARE NOT FINAL UNTIL APPROVED BY THE EQC

ENVIRONMENTAL QUALITY COMMISSION

Minutes of the One Hundred Ninetieth Meeting
September 9, 1988

Department of Environmental Quality
Conference Room 4
811 SW Sixth Avenue
Portland, Oregon 97204

Commission Members Present:

Bill Hutchison
Wallace Brill
Emery Castle
Genevieve Pisarski Sage
William Wessinger

Department of Environmental Quality Staff Present:

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

NOTE: Staff reports presented at this meeting, which contain the Director's recommendations, are on file in the Office of the Director, Department of Environmental Quality, 811 SW 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

Update on Gary Newkirk: Twin Rocks Sewer System

Dick Nichols, Division Administrator for Water Quality, reviewed the history of Gary Newkirk's problems with sewage backing up in his house. He addressed each item of concern expressed by Mr. Newkirk at the last Commission meeting. Mr. Nichols recommended that the department re-evaluate the district's pump station to assure that the sewage back-up and discharges to the bay are

prevented to the maximum extent practicable. A copy of this review and recommendation is attached to the minutes as part of this meeting's record.

Additional Air Monitoring in Bend

Nick Nikkila, Division Administrator for Air Quality, followed up a request from Joe Weller at the July 8 EQC meeting for additional air monitoring in the Bend area. Mr. Nikkila stated that there is a cost associated with additional monitoring. Next summer a nephelometer will be in place and Bend will be monitored regularly. Because of the increased workload associated with the additional monitoring in Bend, the department is investigating the possibility of contracting with an outside firm to conduct the monitoring.

Future EQC Meeting Dates

EQC members and staff were given a calendar of proposed dates for future EQC meeting through July of 1989. The next meeting scheduled for October 20 and 21 will be a retreat similar to the August retreat held at Silver Falls. The October retreat will be held at the Flying M Ranch in Yamhill County.

FORMAL MEETING

CONSENT ITEMS:

Agenda Item A: Minutes of the July 8, 1988 EQC Meeting.

Monica Russell, secretary for the Commission, asked that "A letter from Mr. Leonard Stark is attached as well." be added to the paragraph on page 7 which lists the attachments to the minutes.

> **Action:** It was moved by Commissioner Wessinger, seconded by Commissioner Brill, and unanimously passed to approve the minutes as amended.

Agenda Item B : Monthly Activity Report for June 1988.

> **Action:** It was moved by Commissioner Sage, seconded by Commissioner Castle, and passed unanimously to approve the monthly activity report for June 1988.

Agenda Item C: Civil Penalties Settlement Agreements

> **Action:** It was moved by Commissioner Castle, seconded by

Commissioner Wessinger, and unanimously passed to approve the settlement agreement for DEQ v Dave G. Bernhardt.

It was moved by Commissioner Wessinger, seconded by Commissioner Sage, and passed unanimously to approve the settlement agreement for DEQ v Loren Markee.

Agenda Item D: **Tax Credits for Approval**

Action: It was moved by Commissioner Castle, seconded by Commissioner Wessinger, and passed unanimously to approve tax credits T-2010 and T-2145.

Dave Ellis, representing First Interstate, stated that the statute covering tax credit eligibility can be read to include the asbestos abatement program as presented by the bank.

Kurt Burkholder, Assistant Attorney General, indicated that the proposed First Interstate project does not meet statutory requirements for eligibility for tax credit. Mr. Burkholder also stated that the bank has other alternatives and can pursue an evidentiary hearing in front of a hearings officer.

Action: It was moved by Commissioner Wessinger, seconded by Commissioner Brill, and passed unanimously to deny the preliminary tax credit certification by First Interstate Bank.

PUBLIC FORUM

Jeffrey Grant, representing the Oil Heat Institute, stated his concerns about including home heating oil tanks in the rule making for the Underground Storage Tank Program. He stated that small independent oil dealers are currently conducting studies of home heating tanks to determine what is actually going on in terms of leakage. He said reports on the subject are available.

The rule making for home oil tanks has been suspended.

HEARING AUTHORIZATIONS

Agenda Item E: **Request for Authorization to Conduct a Public Hearing on Proposed Recycling and Certification Rules and Amendments, OAR 340-60-101 through 110, and New Permit Fee Schedule for Recycling Implementation, OAR 340-61-120.**

ORS 459.305 passed as part of HB 2619 by the 1987 Oregon Legislature, requires that regional landfills not accept any wastes after July 1, 1988 from any local or regional government unit located within or outside of Oregon unless the government units have been certified by the department as having implemented an opportunity to recycle that satisfies the requirement of the Oregon Recycling Opportunity Act.

The proposed rules are designed to implement this statutory requirement and to supersede the temporary rule adopted by the Commission at the July 8, 1988 meeting. In addition amendments are proposed to clarify two existing recycling rules.

Action: It was moved by Commissioner Castle, seconded by Commissioner Sage and passed unanimously to approve the request to conduct a public hearing.

ACTION ITEMS

Agenda Item F: **Request for Adoption of Rules to Certify Wastewater System Personnel Under a Mandatory Certification Program.**

The 1987 Oregon Legislature enacted ORS 448.405 to 448.492 which requires wastewater system and water system personnel who supervise the operation of these systems to be certified. This certification program must be in place by September 1988.

Director Hansen, presented an amendment to the proposed rules clarifying certification of shift supervisors. This amendment was recommended to address concerns of the League of Oregon Cities who believed the department proposed to require shift operations have a certified shift supervisor. A letter submitted by the City of Portland supported the proposed change in rule language. Mr. Hansen briefly discussed the need for the clarifying rule language and stated that both letters were in favor of the changes as submitted in the amendment. A copy of both letters are a part of this meeting's record.

Chairman Hutchison requested clarification on why industrial wastewater treatment system operating personnel are not required to be certified.

Director Hansen responded that the department and Commission lack authority in law to cover industrial waste treatment and that in general those personnel operating industrial systems are well qualified.

Chairman Hutchison requested that the department work with the Health Division to encourage combination certificates for water system personnel.

Director's Recommendation: It is recommended that the Commission adopt the proposed final rules and fee schedule as summarized in Alternative 1 and presented in Attachment A of the staff report.

> **Action:** It was moved by Commissioner Wessinger, seconded by Commissioner Castle, and unanimously passed to approve the director's recommendation as modified by the September letter.

Agenda Item G was skipped to accommodate its assigned 9:30 scheduling.

Agenda Item H: **Request for Commission Approval of the FY 89 Construction Grants Management System and Priority List for Fiscal Year 1989.**

The FY 89 priority list is proposed to be the final list for funding grant projects. In addition, an option is presented for Commission approval for making a smooth transition from the grant program to a state revolving fund. This option involves limiting grant funding to Letter Class A, B, and C projects that correct documented water quality problems. The remaining federal funds will be used to capitalize a state revolving fund. A proposed rule modification for use of the Discretionary Authority is also included. The rule modification broadens project eligibility for grant funding of sewer replacement and rehabilitation while continuing to exclude funding for elimination of combined sewer overflows.

Director Hansen outlined the history of the construction grants program and the fiscal impact the program has on the federal budget. He explained that in 1987, congress decided to phase out the grants program and replace it with a State Revolving Fund program which would be capitalized by federal funds and by 20 percent matching funds from the state.

In response to a question from Commissioner Sage, **Tom Lucas**, Water Quality Division, stated that many communities are anticipating a grant and that local financing arrangements are based on receipt of grant funds.

In response to questions from Commissioners Castle and Hutchison, **Director Hansen and Mr. Lucas** stated that the rank order of grants has been contested in the past and historically, resolved by the

Commission. Only projects classified through letter class C would be eligible for grants, but all known water quality problems would be addressed. The list is proposed as a final list to allow program transition to the State Revolving Fund program (loan program). The rules do not require a final list, projects can be re-ranked, and other projects can be added to the list.

Director's Recommendation: The Director recommends that the Commission adopt the FY 89 Construction Grants Priority List as presented in Attachment G and make it the final list for grant awards. Any projects with a Letter Class A, B, or C would receive consideration for grant funding; all remaining federal funds would then be used to capitalize the SRF. The director further recommends Commission adoption of the proposed amendments to OAR 340-53-027 to make major sewer replacement and rehabilitation eligible for funding.

> **Action:** It was moved by Commissioner Castle, seconded by Commissioner Brill, and unanimously passed to approve the director's recommendation.

Agenda Item G: **Appeal of On-Site Sewage Disposal System Variance Denial by Lester W. and Norma J. Fread.**

The Freads are appealing a decision made by the department's variance officer, Sherman Olson, which denies granting variances to rules governing the minimum required separation distance between wells and on-site sewage treatment and disposal systems. A decision to deny the Freads' on-site variance requests was made in an April 27, 1988 letter after Mr. Olson concluded partially treated septic tank effluent from the system desired may result in the degradation of the areas' shallow aquifer and contaminate groundwater picked up by nearby wells used for drinking water. On May 13, 1988 the director's office received a May 9, 1988 letter from the Freads requesting the variance officer's decision be appealed to the Commission.

No supplemental information accompanied the Fread's appeal that was sufficient to show that strict adherence to on-site rules was unreasonable. A copy of variance alternatives the Freads can consider is made a part of this meeting's record.

Director's Recommendation: Based on findings in the summation, it is recommended that the Commission adopt the findings of the variance officer and uphold the decision to deny Lester and Norma Fread's proposal to vary from citing standards OAR 340-71-150(4)(a)(A)&(B) and well and property boundary setbacks required under OAR 340-71-220(2)(i); Table 1, Items 1 and 10.

Action: It was moved by Commissioner Wessinger, seconded by Commissioner Sage, and unanimously passed to approve the director's recommendation.

In addition to providing the Fread's with a letter from the director advising them of the EQC's decision, under a separate letter to the Deschutes County Board of Commissioners, Chairman Hutchison will apprise the board of the EQC's action and the basis for that action.

Agenda Item I: Request for Issuance of an Environmental Quality Commission Compliance Order for the City of Elgin Oregon.

The City of Elgin is affected by EPA's National Municipal Policy for meeting the secondary treatment criteria of the Clean Water Act. The Compliance Order requested would be used to resolve National Pollution Discharge Elimination System (NPDES) permit compliance problems and address other policy issues related to the Federal Water Pollution Control Act Amendments of 1973 (the Clean Water Act).

Chairman Hutchison asked if representatives from the city were in attendance.

Ken Vigil, Water Quality Division, responded that they were not. Mr. Vigil added that department staff had read through the staff report with community officials, they agreed with the report's recommendation, and the order had been signed by the mayor.

Director's Recommendation: Based on the summation the director recommends that the Commission issue the Compliance Order discussed in Alternative 4 by signing the document prepared as Attachment D.

Action: It was moved by Commissioner Wessinger, seconded by Commissioner Brill, and passed unanimously to approve the director's recommendation.

Agenda Item J: Request for Issuance of an Environmental Quality Commission Compliance Order for the City of Coos Bay Oregon for Treatment Plant No. 2.

The order for the City of Coos Bay requested would establish a schedule for compliance, would set interim discharge limits, and would set penalties for failure to comply.

Lynn Heusinkveld, attorney representing the Charleston Sanitary District, read a prepared statement expressing the district's

dissatisfaction with their arrangement with the City of Coos Bay for sewage treatment at Plant No. 2. The district intends to pursue construction of its own treatment plant, and requested the draft Compliance Order be modified in two respects to facilitate their entry into the facility planning process:

a. Page 4, paragraph 8(A)(2), after the words "Plant No. 2 improvements," add the words "or acceptable substitutes thereto".

b. At the end of the same subparagraph, add in parenthesis "(The Charleston Sanitary District may also submit alternatives by March 1, 1989.)"

A copy of Mr. Heusinkveld's testimony is made a part of this meeting's record.

Mark Lasswell, Century West Engineering, stated that the facility plan scope may be greater than originally anticipated, and the city desires to avoid being subjected to higher costs for special construction methods to accomplish a rushed completion. Thus an extension of time beyond the date specified in the order may be needed to allow for construction. The city desires to reserve the right to request additional time for compliance, if warranted by the conclusions of the facilities plan. In response to Chairman Hutchison's comments that 2 1/2 years for attaining compliance is already a long time, Mr. Lasswell noted that major treatment plant construction often requires over 2 years. Their preliminary evaluation indicates that the extent of required improvements may be greater than reported in the 1986 Facilities Plan. To allow only 2 1/2 years to accomplish planning, design, and construction may not be sufficient.

Michael Huston, Assistant Attorney General, noted that the Compliance Order may be modified at any time through mutual agreement of the city and the EQC, as specified in the order.

Responding to the request from the Charleston Sanitary District, **Mr. Lasswell** stated that construction of a separate treatment plant in Charleston is a reasonable alternative which would have to be addressed in any facility plan which could be approved. He pointed out that the wording in the proposed order does not preclude this alternative, and that the alternative may be beneficial to the city.

Director Hansen added that to receive EPA grant funds, federal rules require a systematic cost-effectiveness analysis of all alternatives. The wording requested by Charleston is not necessary to assure that all alternatives will be addressed.

Mr. Heusinkveld then suggested a clarification to the district's proposed revision by adding the sentence, "(The Charleston Sanitary District or other interested parties may submit their own plan by March 2, 1989 at their own expense)".

Director Hansen emphasized that the department staff have no objections to the proposed revisions. However, the relationship between Charleston and Coos Bay is a local issue which the order need not address.

Mary Halliburton, Water Quality Division, pointed out that the full range of alternatives is expected to be addressed. Staff have no objection to the proposed revisions, but there may be ramifications to having two plans. In any facilities plan, having two separate plans with different cost effectiveness analyses would necessitate reconciling the plans and their conclusions. This could extend the time needed to secure a facilities plan which could be approved and thus the time for compliance.

Director's Recommendation: The director recommends that the Commission issue the Compliance Order discussed in Alternative 4 by signing the document prepared as Attachment E.

> **Action:** It was moved by Commissioner Sage, seconded by Commissioner Brill, and unanimously approved to adopt the director's recommendation with the change (a above, "or acceptable substitute.") proposed by Mr. Heusinkveld, but not the second suggestion.

Agenda Item K: Proposed Adoption of Remedial Action Rules for Investigation and Cleanup of Contaminated Sites, OAR 340-122-010 through 120.

This agenda item establishes a new division to implement Senate Bill 122. The law establishes a comprehensive statewide program to identify, investigate, and clean up releases of hazardous substances in the environment. The law requires development of rules "establishing the levels, factors, criteria, or other provision for the degree of cleanup and the selection of the remedial actions necessary to assure protection of the public health, safety, welfare, and the environment". The purpose of these proposed rules is to establish the process and the criteria for making these decisions.

Jim Brown, representing chemical companies, and **Doug Morrison**, of Northwest Pulp and Paper, felt that there were problems with the rules as written. They felt that "background" levels of contamination were not well defined and often unattainable; that

statutory definitions should be included in the rules; and that the performance of the preliminary assessment should not be delegated to the potential responsible person (i.e. the person doing the preliminary assessment).

Several of the members of the Remedial Action Advisory Committee responded to these concerns stating that the technology for determining levels of hazardous waste is constantly changing. Setting the standard at the lowest level eliminates the need to revisit the site for more cleanup at more cost at a later date.

Statutory definitions are unnecessary in the rules because they are in the statutes, and those who will need those definitions have access to the statutes.

The performance of the preliminary assessment is not delegated and is ultimately the responsibility of the director.

Director's Recommendation: Based upon the summation it is recommended that the Commission adopt the proposed remedial action rules regarding degree of cleanup and selection of the remedial action.

> **Action:** It was moved by Commissioner Wessinger, seconded by Commissioner Castle, and unanimously passed to approve the director's recommendation.

Agenda Item L: Proposed Adoption of Amendments and New Rules Relating to the Opportunity to Recycle Yard Debris, OAR 340-60-015 through 125.

The proposed new amendments and new rules would require local governments to develop yard debris recycling plans, describe a range of acceptable alternative recycling methods for yard debris, establish performance standards for yard debris recycling programs, and provide a link between markets for yard debris products and yard debris collection program performance standards.

Rena Cusma, Executive Officer of Metro, read a statement regarding Metro's performance with regard to their Waste Reduction Plan submitted in 1986. A copy of Ms. Cusma's testimony is attached as part of this meeting's record. Ms. Cusma's testimony included both items L and N on the agenda.

Bob Koch, Commissioner for the City of Portland, briefly commented on the success and progress of the city's recycling program. He stated support and further stated that cooperation between DEQ, Metro, and the City of Portland is essential to the continued success of recycling programs.

Kenneth Mitchell, Mayor of Oregon City, was concerned about the ability of the market to absorb and increase in the amount of yard debris generated by these proposed rules. A copy of his letter to the Commission is made a part of this meeting's record.

Jeanne Roy, Chairman of Recycling Advocates, stated that the rules needed to be passed and that the burden of responsibility should be left with local entities. Ms. Roy reviewed the recycling activities in Seattle. She expressed the opinion that the minimum requirements for collection during certain months should include the summer months, and that residence source separation is a better method of recycling than to mix and then try to separate recyclables later. Ms. Roy's comments regarding this item and item N are made a part of this meeting's record.

John Charles, of the Oregon Environmental Council, stated that the argument regarding whether or not there is a market for recycling yard debris is not legitimate. No other markets are considered for other recycling programs and the option to not implementing these programs is to do nothing.

Director's Recommendation: It is recommended that the Commission adopt the proposed rules relating to yard debris recycling as presented by staff as Attachment Ic of this report.

> **Action:** Commissioner Sage then moved that the rules be adopted with a change in wording of 340-60-125 (2)(a) and (c) to read "..during the months of April through October" and in 340-60-120(7) which states, "...that a program which meets these minimum standards will produce more source separated yard debris than the processors or the local or regional government jurisdiction are capable of utilizing." Commissioner Castle seconded the motion, and it was passed unanimously.

Agenda Item M: Request for Approval of Portland Wasteshed Recycling Report, Proposed Recommendations, and Cancellation of EQC Order No. WR-87-01.

On March 13, 1987 the EQC directed the City of Portland to provide the opportunity to recycle by June 1, 1987 and report back to the Commission by July 1, 1988. The city has submitted a report which has been reviewed by the department and several external reviewers. This agenda item recommends approval of the Portland Wasteshed Recycling Report and proposed recommendations, and cancellation of EQC Order No. WR-87-01.

Dale Sherbourne, private citizen, stated that we have the technology and resources available to clean up our environment and that ability was clearly displayed during the war. He stated the garbage system is inefficient and that we would be better off addressing residents directly.

Director's Recommendation: It is recommended that the Commission approve the June 30, 1988 Portland Wasteshed Recycling Report with the delineated program recommendations to be addressed in the city's next required report, and cancel EQC Order No. WR-87-01.

> **Action:** It was moved by Commissioner Castle, seconded by Commissioner Brill, and passed unanimously to approve the director's recommendation.

Agenda Item N: Commission Action on Review of Metro Solid Waste Reduction Program.

Pursuant to the provisions of SB 662 (1985 legislative session), Metro submitted a Waste Reduction Program to the Commission, and the Commission approved Program on June 27, 1986. ORS 459.345 (HB 2619, 1987 legislative session) requires Metro to submit a report on implementation of the Solid Waste Reduction Program by July 1, 1988 (and every 2 years thereafter). ORS 459.350 requires the Commission to review the report to determine whether Metro's activities comply with the Waste Reduction Plan and whether the program and all disposal sites operated or used by the district continue to meet the requirements of ORS 459.015.

Metro submitted the required report on June 30, 1988. This report has been reviewed by the Department. Comments have also been received from several external reviewers. The department's review concluded that Metro has not adequately implemented their Solid Waste Reduction Program as required by statute. If the Commission concurs in this conclusion, ORS 459.055 authorizes the Commission to order implementation of the Waste Reduction Program. This agenda item proposes that the Commission authorize a hearing to afford Metro the opportunity to show cause why the EQC should not direct them to implement their approved Solid Waste Reduction Program.

Director's Recommendation: It is recommended that the Commission request that Metro show cause why the EQC should not order the implementation of their Solid Waste Reduction Program.

In discussion, **Director Hansen** elaborated on the bills which relate to the Metro plan; SB 925 regarding landfills in an exclusive farm use zone; SB 662 requiring Metro to submit a solid

waste reduction plan for approval; and HB 2619 requiring Metro to report on implementation and submit modifications to their plan to the Commission. Mr. Hansen further commented on the review of Metro's implementation of their plan and the important elements which the department felt Metro has not implemented according to their plan, i.e. certification for local collection services, rate incentives, post-collection recycling materials recovery, materials market assistance program, and system's maintenance.

Mr. Hansen suggested that the Commission seek answers to the following questions at a public hearing if a hearing is approved:

Should the existing plan be implemented?

If the plan should be altered, what changes should be made, and are those changes as effective as the original plan?

If changes are accepted, should there be timelines established for their implementation?

Should the Commission initiate steps to order the implementation of the existing plan?

There was some discussion regarding functional plans and Metro's planning authority. Michael Huston, Assistant Attorney General, advised the Commission that Metro has legal authority to adopt certain kinds of plans, including the authority to adopt functional plans speaking to particular topic areas such as solid waste, transportation, parks, etc. Through adoption of those plans, Metro acquires the authority to override local government plans. This is an attractive aspect of functional plans to Metro. For example, it would give them authority to site a transfer station where local planning has to date made efforts unsuccessful.

Rich Owings, Metro Solid Waste Director, advised the Commission that Metro's current plans were not adopted as functional plans and are badly out of date. Thus, they must go back and go through the legal steps to adopt as a functional plan before they have any authority to implement. He also noted that Metro has a variety of responsibilities in addition to Waste Reduction that have high priority. Securing a landfill, and obtaining a contract that does not become a barrier to recycling has been very important. Finally, he stated that Metro is committed to Waste Reduction.

Jeanne Roy, Chairman of Recycling Advocates, stated that a show cause hearing for Metro would be a waste of time. Ms. Roy felt that DEQ should prepare an order requiring Metro to implement specific parts of their waste reduction plan needed now to

increase recycling. Ms. Roy said that we would be taking a backward step if the Commission allows Metro to replace their current plan with a functional plan. Specifically she stated that residential recycling of plastics and scrap paper should be increased, rate incentives should be provided to encourage source separation of yard debris, there should be post-collection recycling materials recovery, certification for local collection services should be required, and a material's markets assistance program should be provided. A letter from Ms. Roy is a part of this meeting's record.

Commissioner Wessinger asked if Metro intended to present a functional plan by October to replace the current plan. **Rich Owings** responded that a Policy Document, part of the functional plan, would be adopted by October. This document identifies who does what, priorities, and provides for an annual work program between Metro and each local jurisdiction. The next step is then to take the Policy Document and produce program and facility plans and annual work programs. Thus, a complete functional plan to replace the current Waste Reduction Plan will not be finished by October.

Chairman Hutchison summarized the consensus of the Commission that a hearing was appropriate to determine whether Metro has adequately implemented their own Waste Reduction Plan. He then asked what course of action was available to the Commission in case of a finding of non-compliance. **Fred Hansen** noted that the Commission and Metro could agree on desirable changes to the plan and then require implementation of the modified plan. **Michael Huston** agreed and further advised that the Commission may not have authority to order Metro to make changes in the plan, but it clearly can order Metro to implement the original plan if an acceptable option is not presented.

> **Action:** It was moved by Commissioner Castle, seconded by Commissioner Wessinger and unanimously passed to authorize the department to conduct a public hearing to (1) determine whether Metro's implementation actions comply with the approved Waste Reduction plan pursuant to ORS 459.350, and (2) determine whether the Commission should order implementation of the approved Waste Reduction Plan pursuant to ORS 459.055.

Agenda Item O: Proposed Adoption of LRAPA Conflict of Interest Rules, Title 12, "Duties and Powers of Board and Director", as a Revision to the State Implementation Plan, OAR 340-20-047.

This agenda item proposes to amend the State Implementation Plan (SIP) by adopting Lane Regional Air Pollution Authority (LRAPA) conflict of interest rules that incorporate by reference section 128 of the Clean Air Act. Section 128 requires a majority of public interest representatives on boards or bodies that enforce the Clean Air Act or issue permits, and disclosure of conflict of interest. LRAPA adopted these rules in response to a settlement agreement between Oregon Environmental Council and the Environmental Protection Agency. The intent of the settlement agreement is to correct any deficiency in the SIP dealing with Clean Air Act conflict of interest requirements. Although LRAPA is subject to the state conflict of interest statute requiring disclosure, it needs to amend its rules and the SIP to conform directly with all requirements of section 128 of the Clean Air Act.

Director's Recommendation: Based on the summation it is recommended that the Commission adopt the revised LRAPA Title 12 rules section 12-025 as an amendment to the State Implementation Plan.

> **Action:** It was moved by Commissioner Wessinger, seconded by Commissioner Sage, and passed unanimously to approve the director's recommendation.

Agenda Item P: Proposed Adoption of Amendments to the Vehicle Inspection Operating rules and Test Procedure, OAR 340-24-300 through 24-350.

Highlights of the proposal changes are the correction of a typographical error in the legal description of the Medford-Ashland AQMA, changes in the information reported to the customer for failed vehicles, and a change in the tampering inspection criteria for 1975-79 cars and trucks as well as a simplification of the number of test standards for some specific 1972-74 vehicles. The procedural changes in test procedure and emission equipment examination received supportive testimony at the public hearings.

Bill Jasper, of the Vehicle Inspection Program, summarized some of the testimony from the hearings officer's report. Mr. Jasper indicated that there was no strong opposition to the rules although some entities will have to shoulder the financial burden. Responding to a Commissioner's question Mr. Jasper indicated seven of 29 affected fleets (of a total of 55) are school districts.

Director's Recommendation: Based upon the summation, it is recommended that the rule revisions be adopted. Program changes

in testing procedures would be effective September 13, 1988, the first day after filing of the rules with the Secretary of State. The decertification of the "BAR-74" exhaust gas analyzers would be effective December 31, 1989.

Action: It was moved by Commissioner Wessinger, seconded by Commissioner Sage, and passed unanimously to approve the director's recommendation.

Agenda Item Q: **Proposed Adoption of Revisions to Oregon Administrative Rules, Chapter 340, Division 12, Civil Penalties, and Revisions to the Clean Air Act State Implementation Plan.**

The proposed revisions would establish civil penalty schedules for polychlorinated biphenols and hazardous waste remedial action, allow the department to assess a civil penalty without warning notice for violations of asbestos abatement project work standards, make the list of factors considered when assessing a civil penalty consistent with statute, and revise civil penalty rules in the SIP.

Director's Recommendation: Based upon the summary it is recommended the Commission adopt the proposed revisions to the civil penalty rules, OAR Chapter 340, Division 12, and proposed revisions to the SIP.

Action: It was moved by Commissioner Castle, seconded by Commissioner Brill, and passed unanimously to approve the director's recommendation.

Agenda Item R: **Proposed Adoption of Rules Establishing Plan Requirements and Implementation Compliance Schedules for Achieving the Phosphorus and Ammonia Criteria for the Tualatin Basin Established in OAR 340-41-470(3) Special Policies and Guidelines.**

The department conducted an intensive water quality study and developed specific water quality criteria for phosphorus and ammonia-nitrogen in order to bring the river back into compliance with the established standards. The proposed rules require the department to establish Load Allocations and Waste Load Allocations, prepare guidance for the preparation of program plans, propose rules to control runoff from new development in the basin, and to develop a control strategy for container nurseries.

Bonnie Hays, Chair of the Washington County Board of Commissioners, and 18 other representatives from cities, counties, and private organizations commented on their concerns regarding adoption of the proposed rules. A list of participants is made a part of this meeting's record. The major concern of Ms. Hays'

group was that the five year time frame for compliance was not achievable. Also part of this meeting's record are a "Comprehensive Storm Drain Master Plan Status Update" from the City of Hillsboro, "Testimony to the Oregon Department of Environmental Quality on the Tualatin River Phosphorus Management Plan" by R.A. Gearheart, a letter to Bonnie Hays from Robert R. French of INTEL, a letter to the Commission from Bonnie Hays, a letter to the Commission from William Egan of Oregon Association of Nurserymen, the compliance schedule from USA, and review papers of USA activities and a statement submitted by State Representative Delna Jones.

The Commission acknowledged the need to review the time frame for compliance. Wording of the rule requires that this review occur following the described planning process for point and nonpoint sources.

Fred Robinson, Assistant State Forester for the Oregon Department of Forestry, expressed his concern that Forestry be included in the proposed rule as the management agency responsible for attaining the local allocation for forested areas within the basin. Mr. Robinson expressed the opinion of the Forestry Department that the allocation of loads is not consistent with existing nonpoint source control programs. A copy of a letter to Director Hansen from State Forester Jim Brown is made a part of this meeting's record.

Jack Smith, of Northwest Environmental Defense Council, stated that Oregon will be a leader in establishing water pollution policies and that we need to act now without further conveniencing polluters to clean up our environment. Mr. Smith stated that although the rules are not perfect, they at least provide a starting point for action.

Dick Nichols, Division Administrator for Water Quality, responded to Forestry concerns stating that if Forestry is not designated, they will in effect have no load allocations for the river. He further stated that inclusion will probably not affect Forestry operations because they are already basing activities on Best Management Practices (BMP) as described in the Forest Practices Act. He recommended retaining reference to Forestry in subsection H of the rules.

Mr. Nichols stated that section E of the rules allows flexibility to exceed loads prior to the implementation of plans in order to prevent total disruption of the economic development in Washington County.

Mr. Nichols reviewed paragraph I with revisions proposed since the July EQC meeting: the Commission approves or rejects plans, sets time for resubmittal, and invokes enforcement action as appropriate.

Director's Recommendation: Based on the summation it is recommended that the Commission adopt the proposed rules for establishing plan requirements and implementation compliance schedules for achieving the phosphorus and ammonia criteria for the Tualatin Basin established in OAR 340--41-470(3) Special Policies and Guidelines.

Action: It was moved by Commissioner Castle, seconded by Commissioner Wessinger, and passed unanimously to delete the word "approximately" in section 3 A & B and substitute "unless otherwise specified by the department" after the date.

It was moved by Commissioner Sage, seconded by Commissioner Wessinger, and passed unanimously to approve the subparagraph E as recommended by staff with the addition of the phrase "and USA is in compliance with the Commission approved program plan".

It was moved by Commissioner Castle, seconded by Commissioner Wessinger, and passed unanimously to adopt the staff language of section I as submitted.

It was moved by Commissioner Wessinger, seconded by Commissioner Castle, and passed unanimously to adopt the staff recommendation as amended.

mlr

EQC
Minutes from the August 22-23 Retreat
Silver Falls Conference Center

The meeting began with introductions of staff and a basic review of the retreat agenda. Present from the Department of Environmental Quality staff were:

Mike Downs	Lydia Taylor
Stephanie Hallock	Dick Nichols
Carolyn Young	Nick Nikkila
Hal Sawyer	Tom Bispham
John Loewy	Donny Adair
Fred Hansen	Monica Russell
Michael Huston	Al Hose

From the Environmental Quality Commission:

Emery Castle	Bill Hutchison
Genevieve Pisarski Sage	Wallace Brill
Bill Wessinger	

From interested outside parties:

Jack Churchill	Jack Smith
Terry Witt	Paulette Pyles
Bill Johnson	John Charles
Scott Ashcom	Brian Johnson
Janet Getze	

INTRODUCTION (Bill Hutchison)

The basic expectation and outcomes from the retreat developed by the group include--

Grounding in the issues
Clarification of methodology in approaching problems
Enhance/facilitate the Commission's policy setting role
Strategic planning - proactive
Setting program priorities
Sense of EQC directions/goals
Philosophy behind policies
Internal and external communications
How to evaluate success of policy implementation.

STATE ACCEPTANCE OF FEDERALLY DELEGATED PROGRAMS (Mike Downs)

Mike Downs discussed delegation and stringency. Mike stated that there are certain criteria that the state uses to determine whether or not that state will assume a federal program. One of the problems in taking a federal program is that the state will generally put more resources into a program than the federal government would. Funding and enforcement will sometimes then complicate the issue.

The industry position on delegation is that generally they prefer the state to run the programs. They are also interested in seeing consistency in rules and regulations from state to state.

It was also noted that federal programs tend to be abatement or clean up oriented, whereas the state has always placed more emphasis on prevention.

The group listed the following criteria for determining the assumption of federal programs:

Criteria for accepting delegation:
1. Public importance of the issue (perceived need)
2. Resource/Response requests
3. Importance of avoiding dual jurisdictions--What is the relationship to other state programs?
4. Federal incentives
5. Accept delegation if the state is to develop program in a federal area
6. Interstate issues/relations
7. Interdependence with other programs (implicit or explicit?)

Criteria for not accepting delegation:
1. Does the program cost to much to assume delegation?
2...7--flip side of above issues.

Another issue is the impact of the proposed program on the public in general -- in terms of risk, new fees or taxes, jobs, etc.

The Commission expressed the views that there should be a policy on delegation, and that policy should reflect a case by case decision on the merits, with no preconceived answer.

Consensus for Followup Action -- Acceptance of Delegated Programs

> **The Department should prepare, for Commission consideration, a draft for an explicit neutral policy on state acceptance of federally delegated programs, with criteria or a framework to guide evaluation of delegation proposals.**

STATE REQUIREMENTS MORE STRINGENT THAN FEDERAL REQUIREMENTS (Mike Downs)

There was also some brief introduction of the concerns that develop when proposed state requirements are more stringent than federal requirements.

Consensus for Followup Action -- More Stringent Requirements

The Commission expressed a desire for more discussion relative to a draft policy on when State requirements may appropriately be more stringent than federal requirements.

INTERAGENCY COORDINATION (Hal Sawyer)

Hal Sawyer introduced the topic of interagency coordination. Basically cooperation is determined by -

Statutes
governor's office
lead agency
public

The group identified the following things that enhance interagency coordination:

Participation is non-partisan
There is a perceived need to cooperate
There is a desire to cooperate
The agency heads encourage cooperation
Agencies are non-territorial
The governor's office encourages cooperation
It is in each agency's best interest to cooperate

Commissioner Castle suggested that the Department draft a statement to Gail Achterman that we recognize that interagency cooperation is an issue, that currently the situation is positive but we realize how fragile the balance is, and that we will strive to maintain that balance.

The commissioners also felt that review of other state agencies' policies should be a formal process.

Jack Churchill stated that we (DEQ & EQC) need to improve relationships with other resource agencies which are natural allies (Fish & Wildlife, Water Resources) and identify specific needs of our agencies.

Consensus for Followup Action: Interagency Coordination

The Department should draft, for Commission consideration, a Policy Statement on Interagency Coordination (which recognizes that interagency cooperation is an issue, that currently the situation is positive, that the balance is fragile, and that we will strive to maintain the balance); The policy should then be communicated to Gail Achterman; The Department should develop an "implementation strategy" which identifies opportunities to institutionalize the policy; defines proposed followup activities, including defining the Commissioners role in interagency coordination to foster cooperation, build better relationships, and minimize the chance for co-option by other agencies; and defines a more formalized process for review and input to other state agencies' policies.

It was recognized that cooperation between agencies and between our agency and local governments are separate issues.

ANTIDEGRADATION (Dick Nichols)

Dick Nichols introduced the topic of antidegradation with a discussion of water resources and recognized beneficial uses. DEQ is now facing the problems associated with classifying state waters which include making decisions about which bodies of water should be totally protected (i.e. no degradation) and/or to what extent other water can be used. Another issue raised is whether or not new rules/regulations need to be retroactive. Currently they are not.

Waste permits allow permittees to work within parameters of what is "practicable", which is basically defined as available technology which is tried and true and economically feasible. Issuing permits creates a right to perform a specific activity and this right can be revoked. Supposedly this creates an automatic desire to improve to keep ahead of the competition.

The group identified the following issues:

Is there a right to "efflute:? Does the issuance of a waste discharge permit convey a property right or a regulated privilege.

The Definition of practicable is not precise.

What are the agency's rights in requiring "Best Management Practices" if they are not as good as the best available technology?

What is the permit marketability?

What are criteria for the river classification system?

What are we going to protect--i.e. what measure do we use, background levels of contaminates? beneficial uses?

What are the Federal Clean Water Act Requirements? (ie 3 year review/re-examination)

Where should efforts be concentrated, on waters which have not been polluted or on waters which need to be cleaned up?

The first steps in answering these questions will involve identifying Total Maximum Daily Loads (TMDLs). The antidegradation policy will then follow from there.

John Charles, Executive Director of the Oregon Environmental Council, stated that a primary consideration in determining policy or action is how easy is the resource to repair. In terms of all resources considered, he feels that ground water is the most difficult to repair and should therefore be protected by the most stringent prevention techniques.

Consensus for Followup Action: -- Antidegradation

The Department should draft a thoughtful piece on Beneficial Use to serve as a basis for initial discussion on this issue. The Department should also get back to the Commission soon with a Strategy/Schedule proposal.

LAND USE / SECONDARY LANDS

This issue arose as an offshoot of the discussion on interagency coordination.

Michael Huston was asked what avenue of appeal exits for cases where another state agency, a city or a county have jurisdiction over an issue that affects the environment. **Michael Huston** responded that DEQ could appear before a land use planning commission and say that they are not conforming to DEQ standards. He also noted that DEQ could appeal land use actions to LUBA or could participate as a party in cases appealed by others. Through greater involvement, DEQ has the ability to be proactive and turn the land use process around into a better tool for prevention.

Consensus on Followup Action: -- Land Use

The Department was asked to prepare a briefing Paper on Land Use Planning Strategy for discussion at a subsequent breakfast meeting. This paper should better define potential problems and opportunities for EQC/DEQ input.

COMMISSION'S ROLE / OPERATIONS (Bill Hutchison)

THe group identified the following as significant parts of the role of the Commission:

The Commission is an "Outside Board".

The Commission form of Government is important.

The Commission formulates policy for the department. The staff then implements the policy.

The Commission is the eyes and ears of the public. The quality of the Commission's decisions then depends on the quality of the input they receive, the timing of that input, and what they hear/see from the public.

Commission roles are both formal and informal.

The Commission must play (at least) three roles in their service to the public and in directing the department: legislative, judicial, and administrative.

The Commissioners felt that in general they needed more time to review specific issues on each meeting's agenda. The actual paper work involved in preparing for each meeting was discussed and it was suggested an index to the packet might be helpful.

John Charles suggested that the Commission rethink its role with the legislature. He felt that the Commission could be missing opportunity by not being more available to the Legislature.

It was also suggested that the Commission and the Department become more proactive rather than reactive and driven by what pops up on the agenda. The Commission should make policy decisions which drive the programs rather than vise versa.

<u>Consensus on Followup Actions</u>: -- **Commission's Role/Operations**

The Commission decided to conduct a work session on the afternoon before the regular meeting to give the Commission better opportunity to become familiar with significant issues.

The Commission asked the Department to place Civil Penalty Settlements on the Consent Agenda for formal Commission action.

(This was included as Item C on 9/9/88 Agenda.)

The Department was asked to develop rule to delegate Air Quality Plan Approval authority to the Department. (This

will eliminate the need for Commission approval of the plans as part of the activity report.)

(Targeted for Hearing Authorization 11/4/88, Adoption 1/20/89 unless a problem is identified.)

A new format for staff reports is needed. Reports should be shorter (5 pages max.), greater use should be made of attachments where greater detail is needed, an index to the detail which in the attachments should be included, and a 1 page "Executive Summary" or "Request for Commission Action" should be prepared.

The Department should return to 9/9/88 Meeting with further refinement of Future Agenda Topics and alternatives for meeting locations and field trips.

(Future Agenda Topics list was revised to reflect scheduled meeting dates; Potential meeting locations and field trip options were noted; and the resultant list was provided to the Commission at the September 8-9, 1988 meeting.)

ENFORCEMENT (Tom Bispham)

Ordinarily civil penalties are determined via a matrix system which identifies a range of variables. Mitigating or aggravating circumstances are taken into account before setting a penalty.

It would be desirable to unify the enforcement policy over all programs (AQ, WQ, HSW). To do so requires:

-predictability, consistency
-flexibility-rules can allow flexibility with standards governing discretion
-federal guidance
-clear communication of actions and consequences

Consistency is lost when no action is taken, but when is it ok to take no action?

Where enforcement was previously carried out by a "generalist" who could cover all areas, Hazardous Waste and Environmental Cleanup are both programs which are becoming so complex they require specialists to carry out field inspections and enforcement. Where do these "new" people come from?

There is no unanimity of thought about what is going on--some expressed the following views:

-municipalities are treated differently
-there are bottlenecks--the enforcement should be more decentralized with regional offices given more authority

-fines are levied with respect to procedural violations not environmental harm
-the current system is too lax
-there should be a minimal level of fine

Mike Downs stated that we need stronger enforcement capability and criminal penalties. We should have stronger criminal penalty authority, criminal investigation capability, and be able to work through the AG's office.

We do have special emergency injunctive power.

We must deal with violators of degree, i.e individuals, small companies, and big companies.

Our policy should encourage compliance, and should not be driven by complaints.

Enforcement
by rule
seek criminal authority
enforcement should encourage compliance
should be predictable

Internally enforcement utilized "contracts" in the form of stipulated agreement which include penalties. This system forgoes contesting cases.

We can recover administrative fees in environmental cleanup, otherwise fines and penalties go to the common school fund.

Consensus on Followup Actions: -- **Enforcement**

Develop a single Penalty Policy applicable to all programs for enactment by rule. The public expects a greater degree of environmental protection, therefore the policy needs to tighten the rules, treat municipalities the same as industries, and include a penalty matrix.

In addition, the Department is to explore further the need for enhanced Criminal penalty authority.

EDUCATION vs PREVENTION (Carolyn Young)

Education is of limited effectiveness because we must deal with the public and while it heightens awareness, it does not motivate. There are other problems associated with education. How do you evaluate your programs? How do you enhance the bond between DEQ and the educational community? What role can the Commissioners play? People respond to incentives. Should you then initiate criminal penalties or can you just raise the public general awareness?

Genevieve Pisarski Sage stated that the framework for educational programs is different than an enforcement framework. That is the process of education requires creating awareness of problems, motivating people to deal with problems, teaching skills to deal with problems, and then maintaining the program. If we are committed to an educational program, we must commit to the entire process.

Consensus for Followup Action: -- Education

> **The Department should identify emerging issues where an "education environment" exists, and then efforts could be "ratcheted up a notch or two". The Department should evaluate existing educational programs, and explore alternatives in terms of components, costs, and potential for an educator on staff.**

BUDGET (Lydia Taylor)

The budget process starts in March and is submitted in August for implementation the following July. The process is available to public through the governor's office.

Generally speaking Oregon uses fees more than most states. Revenue obtained through these fees is dedicated to specific activities and limits the agency's flexibility.

SEA (State-EPA Agreement)-We get money for agreement to maintain or contribute to a program. We negotiate the amount of money we receive for the amount of work done. Sometimes this amounts to putting in 75% of the work required but receiving only 25% of the money necessary to complete that work.

The commission expressed the need for a meaningful process for involvement in the budget process.

STRATEGIC PLANNING

The discussion of the budget led to a broader discussion of planning. The Commission would like to see a strategic plan which includes the detail of our goals (directions and choices) and objectives. The process should involve opportunity for public input. The process of developing the budget for next biennium should logically follow the strategic planning process.

Consensus for Followup Action: -- Strategic Planning

> **A "Strategic Plan" is needed to guide the overall direction of Oregon's Environmental Program, including development of**

budgets, legislative agendas, etc. The Department and Commission should begin now to design the process for development of such a plan.

(Exploration of the Strategic Planning process has been initiated through background discussions with knowledgeable staff at Pacific Power. A copy of Pacific Power's 4 page Strategic Plan is attached for your information.)

EQC
Emergency Telephone Conference Call Meeting
August 12, 1988

The Environmental Quality Commission scheduled a meeting to consider emergency rules on field burning. This meeting was held as a telephone conference call on Friday, August 12 at 1:30 pm in the fourth floor conference room, Department of Environmental Quality, 811 SW Sixth Avenue, Portland.

Present on the telephone were:

Commissioner Hutchison
Commissioner Wessinger
Commissioner Sage
Commissioner Castle
Director Fred Hansen
Legal Counsel Michael Huston
Division Administrator Nick Nikkila

Director Hansen reviewed the reasons for scheduling the meeting. A highway accident on Interstate 5 which involved severe losses of property and life and may have been associated with field burning along the highway precipitated the meeting. The Governor requested that the department conduct a study of current field burning practices, investigate the contributing factors to the I-5 accident, and take action which would avoid reoccurrence of such an accident. Mr. Hansen issued an immediate moratorium on field burning activity in the Willamette Valley.

Mr. Hansen stated that basically the department is responsible for managing smoke, that is determining whether or not fields could be released for burning. On the day of the accident all department procedures were followed. The smoke which may have contributed to causing the accident was smoke from a wild fire which was started by an escaped field burn.

Study of the incident was conducted by the Department of Environmental Quality, the State Fire Marshal, the State Police, Risk Management, and the Department of Agriculture. The group determined that existing procedures were not a contributing factor to the accident, but that smoke caused from a wild fire may have been a factor.

To insure no recurrence of the tragedy it was suggested that fire barriers and protective measures be used possibly in the form of signing on the highway to slow traffic. The ability to slow traffic is, however, both difficult and dangerous, even for experienced state troopers. While signing may temporarily slow drivers down, their attention span appears to be short and they speed up again after only a short period of time. For this reason traffic on the freeway cannot be regulated, therefore the study group determined that smoke regulation must be the answer.

The major points addressed in the proposed temporary rules covered the following:

Fire Safety

For all open field burning there must be a 20 foot perimeter of non-combustible material; for propaning there must be a 10 foot perimeter of non-combustible material.

For fires less than 50 acres, three vehicles with a total holding capacity of 1000 gals must be present. The vehicles must have the ability to refill in three minutes.

For fires greater than 50 acres but less than 100 acres, four vehicles must be available with total capacity of 1500 gallons also able to refill within three minutes.

For fires greater than 100 acres, four vehicles must be available with total capacity of 2000 gallons and able to refill within three minutes.

For all field burning fires one vehicle must be staffed and patrolling on the downwind side of the field.

Burning is banned if the temperature is greater than 95 degrees, with low humidity and winds greater than 15 mph.

A fire safety buffer zone is required along the interstate and other traveled roads. The buffer zone must be 1/2 mile wide, 1/4 mile of that will have no burning at all, and the other 1/4 must be non-combustible material. There must be 1/2 strip on either side of the 1/2 mile buffer as well. On less travelled roads with high traffic volume, the buffer and "wings" are required to be 1/4 mile wide.

The anticipated result of these rules will be that more farmers use propaning to accomplish field burning.

The following propaning rules were also proposed.

PROPANING

The vehicle speed of the propaner must insure complete combustion and not exceed 5 mph.

There will be no propaning if the relative humidity is less than 65% and wind speed is 15 mph.

Excess regrowth should be mowed and removed.

If there if flaming, propaning must be stopped immediately.

Chairman Hutchison asked Michael Huston what the criteria for temporary rule making are.

Michael Huston replied that the rule must come back for review, the agency can adopt temporary rules at any time if the public is endangered, and the rule expires after 180 days.

Director Hansen added that the department would seek a hearing authorization from the Commission at its September 9 meeting.

Chairman Hutchison asked if the conditions to stop propaning were either (relative humidity > 65%, winds > 15 mph) or both.

Director Hansen replied that under either condition burning would be prohibited.

Chairman Hutchison asked if the fire equipment was mandatory.

Director Hansen replied that it is.

Chairman Hutchison asked what the potential for litigation from the Seed Council was under the current field burning ban.

Director Hansen replied that the ban was only in effect for 10 days.

Chairman Hutchison asked what the kernel of the Seed Council's argument would be.

Director Hansen replied that the Fire Marshal will be addressing the major issued regarding buffer zones, special weather pattern considerations, and safety equipment. The main issue of concern is that these rules will increase the demand for propaning and there is not enough equipment available to farmers to meet the demand.

Michael Huston added that the legal requirements for rule making are that the rule must comply with procedures, that the department act within its authority, and that there is no offense to any

constitutional provision. Parties objecting to rules file an appeal against the rules in the court of appeals.

Commissioner Sage asked how much can be burned.

Director Hansen answered that on the average 220,000 acres were burned each year. This year the burning was below average because of wet conditions during the month of June.

Commissioner Sage asked if 150,000 could be burned.

Director Hansen replied that it could but that it depended on the weather.

Commissioner Sage asked if the 1/4 mile buffer of non-combustible material could be propaned.

Director Hansen replied that yes that would be an acceptable procedure.

Commissioner Castle asked how the Department of Agriculture had reacted to this proposal for temporary rules.

Director Hansen replied that Bob Buchannan was a part of the study and that the decisions were reached by consensus. Some considerations regarding special weather patterns specific to land on the east and north sides of the valley will be addressed differently than the south and west sides if it is appropriate.

Chairman Hutchison then stated that Commissioner Brill was out of the country and that a majority was required to pass the temporary rule.

Michael Huston then read the findings and temporary rule to the commissioners.

In response to a question from Commissioner Castle, Michael Huston stated that the commissioners would be sent a copy of the findings.

Commissioner Sage asked if there was a requirement for an economic impact statement.

Michael Huston replied that an economic impact statement was not necessary for a temporary rule, but was necessary for permanent rules.

Chairman Hutchison stated that the economic consequences would be taken into account in formulating a permanent rule.

Jay Waldron of the Seed Council, stated that the council had no objection to the propaning rules, but asked that a statement in the finding which said that the accident "was directly related" to impaired visibility caused by smoke be changed to "**may** have been related" to avoid the possibility of future confusion.

Commissioner Castle moved to adopt the minimum language.

Commissioner Sage seconded the motion and the motion passed unanimously.

Commissioner Wessinger moved to adopt the temporary rule as proposed.

Commissioner Castle seconded the motion and the motion passed unanimously.

A copy of the temporary rule as adopted is attached.

mlr
8/29/88

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR COMMISSION ACTION

Agenda Item B, November 4, 1988, EQC Meeting

August, 1988 Activity Reports

SUMMATION

The report provides information to the Commission on the status of DEQ activities. In addition, the report contains a listing of plans and specifications for construction of air contaminant sources which by statute require Commission approval. Other plans and specifications reviewed by the Department do not require Commission approval.

DIRECTOR'S 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.

AK1060

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, November 4, 1988, EQC Meeting

August, 1988 Activity Report

Discussion

Attached are August, 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.

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DEPARTMENT OF ENVIRONMENTAL QUALITY

Monthly Activity Report

AUGUST, 1988

Table of Contents

DEPARTMENT OF ENVIRONMENTAL QUALITY
MONTHLY ACTIVITY REPORT

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

August 1988
(Month and Year)

SUMMARY OF PLAN ACTIONS

	Plans Received		Plans Actions		Plans Disapproved		Plans
	Month	FY	Month	FY	Month	FY	Pending
Air							
Direct Sources	8	14	8	15	0	0	23
Small Gasoline Storage Tanks Vapor Controls							
Total	8	14	8	15	0	0	23
Water							
Municipal	20	31	16	26	0	0	36
Industrial	9	14	10	14	0	0	5
Total	29	45	26	40	0	0	41
Solid Waste							
Gen. Refuse	2	6	2	6	-	2	29
Demolition	-	1	-	-	-	-	2
Industrial	1	2	2	3	-	1	11
Sludge	-	-	-	-	-	-	2
Total	3	9	4	9	0	3	44
GRAND TOTAL	40	68	28	64	0	3	108

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DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION

MONTHLY ACTIVITY REPORT

DIRECT SOURCES
PLAN ACTIONS COMPLETED

Permit Number	Source Name	County	Date Scheduled	Action Description	Date Achieved
07	0003 CONSOLIDATED PINE, INC.	CROOK	06/30/88	COMPLETED-APRVD	08/02/88
09	0001 DAW FOREST PRODUCTS CO	DESCHUTES	06/07/88	COMPLETED-APRVD	08/09/88
10	0019 KELLER LUMBER CO.	DOUGLAS	08/12/88	COMPLETED-APRVD	08/22/88
18	0073 CRATER LAKE LUMBER CO.	KLAMATH	11/27/87	COMPLETED-APRVD	08/15/88
20	0529 BOHEMIA PARTICLEBOARD	LANE	08/03/88	COMPLETED-APRVD	08/16/88
22	0547 TELEDYNE WAH CHANG ALBANY	LINN	05/09/88	COMPLETED-APRVD	08/16/88
			07/19/88	COMPLETED-APRVD	08/15/88
24	8058 SILTEC EPITAXIAL CORP.	MARION	04/05/88	COMPLETED-APRVD	08/15/88

TOTAL NUMBER QUICK LOOK REPORT LINES 8

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

SUMMARY OF AIR PERMIT ACTIONS

	Permit Actions Received		Permit Actions Completed		Permit Actions	Sources Under	Sources Reqr'g
	Month	FY	Month	FY	Pending	Permits	Permits
Direct Sources							
New	3	3	2	6	10		
Existing	0	0	0	0	7		
Renewals	10	14	9	11	64		
Modifications	1	1	3	4	7		
Trfs./Name Chng.	8	9	0	1	8		
Total	22	27	14	22	96	1398	1422
Indirect Sources							
New	1	2	1	2	2		
Existing	0	0	0	0	0		
Renewals	0	0	0	0	0		
Modifications	0	0	0	0	0		
Total	1	2	1	2	2	288	290
GRAND TOTALS	23	29	15	24	98	1686	1712

Number of Pending Permits	Comments
10	To be reviewed by Northwest Region
18	To be reviewed by Willamette Valley Region
9	To be reviewed by Southwest Region
4	To be reviewed by Central Region
6	To be reviewed by Eastern Region
14	To be reviewed by Program Operations Section
28	Awaiting Public Notice
7	Awaiting end of 30-day Public Notice Period
96	

MAR.5
AA5323 (9/88)

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.
01 0028	BLUE MOUNTAIN ASPHALT CO	BAKER	07/06/88	PERMIT ISSUED	08/03/88	MOD
03 1793	CAFFAL BROS FOREST PROD	CLACKAMAS	04/04/88	PERMIT ISSUED	08/18/88	RNW
03 1934	ESTACADA ROCK PRODUCTS	CLACKAMAS	06/10/88	PERMIT ISSUED	08/18/88	RNW
03 2670	LONE STAR NORTHWEST	CLACKAMAS	06/14/88	PERMIT ISSUED	08/18/88	RNW
09 0026	BEND AGGREGATE & PVING	DESCHUTES	12/29/87	PERMIT ISSUED	08/18/88	RNW
15 0015	KOGAP MANUFACTURING	JACKSON	08/06/87	PERMIT ISSUED	08/03/88	MOD
18 0073	CRATER LAKE LUMBER CO.	KLAMATH	12/07/87	PERMIT ISSUED	08/03/88	MOD
26 2050	OREGON HEALTH SCIENCES U.	MULTNOMAH	07/03/86	PERMIT ISSUED	07/27/88	RNW
26 3100	THE KOBOS COMPANY	MULTNOMAH	03/08/88	PERMIT ISSUED	08/18/88	RNW
37 0305	J. C. COMPTON CONTRACTOR	PORT.SOURCE	05/24/88	PERMIT ISSUED	08/18/88	RNW
37 0306	BAYVIEW TRANSIT MIX, INC.	PORT.SOURCE	06/21/88	PERMIT ISSUED	08/18/88	RNW
37 0309	B & B ROADS, INC.	PORT.SOURCE	06/16/88	PERMIT ISSUED	08/03/88	RNW
37 0392	CALKINS SAND & GRAVEL INC	PORT.SOURCE	05/24/88	PERMIT ISSUED	08/18/88	NEW
37 0393	ALPHA REDI-MIX, INC.	PORT.SOURCE	06/06/88	PERMIT ISSUED	08/18/88	NEW

TOTAL NUMBER QUICK LOOK REPORT LINES 14

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

PERMIT ACTIONS COMPLETED

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Clackamas	Milwaukie Marketplace, 1,000 spaces, File No. 03-8805	08/08/88	Final Permit Issued

MAR.6
AD3488

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

PERMIT TRANSFERS & NAME CHANGES

Permit Number	Company Name	Type of Change	Status of Permit
05-2367	Oregon City Leasing Co. dba Lone Star Northwest	Transfer	Awaiting Issuance
10-0027	Fibreboard Corporation	Name Change	Awaiting Issuance
10-0123	Bohemia, Inc.	Transfer	Issued
10-0127	D & D Ag Lime & Rock Co.	Transfer	Awaiting Issuance
17-0046	White Consolidated Industries, Inc. dba Diamond Cabinets	NC	Issued
26-2777	James River II, Inc.	NC	Issued
26-2909	Hall-Buck Marine, Inc.	Transfer	Awaiting Issuance
34-2060	White Consolidated Industries, Inc. dba Diamond Cabinets	NC	Issued
36-8008	Conifer Plywood Co.	NC[1]	Being Drafted

[1]In conjunction with permit renewal.

[2]In conjunction with permit modification.

AD3481 (9/88)

DEPARTMENT OF ENVIRONMENTAL QUALITY
MONTHLY ACTIVITY REPORT

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

PLAN ACTIONS COMPLETED

MUNICIPAL WASTE SOURCES - 16

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Douglas	NCSD (North Canyonville Sanitary District) STEP System	8-24-88	Comments to District
Jackson	BCVSA (Talent) Larry Meyer Project Pressure Sewer	8-11-88	Provisional Approval
Linn	Lebanon Tektronix/Industrial Park	8-30-88	Provisional Approval
Yamhill	Sheridan North Park Addition No. 2	8-30-88	Provisional Approval
Marion	Stayton (Sublimity) Morning Crest Addition #3	8-30-88	Provisional Approval
Columbia	PGE Trojan STP	8-19-88	Comments to Engineer
Hood River	Mt. Hood Meadows STP	9-7-88	Provisional Approval
Benton	Philomath Applegate Street Sewer Extension	7-29-88	Provisional Approval
Coos	Charleston Sanitary Dist. Joe Ney Slough Bridge Sewer Crossing	7-29-88	Provisional Approval
Douglas	Green Sanitary District Little Valley Road Extension	8-19-88	Provisional Approval
Linn	Sunny Country Store Sand Filter Replacement	8-26-88	Comments to Owner
Douglas	RUSA Winchester Industrial Park	8-16-88	Provisional Approval

DEPARTMENT OF ENVIRONMENTAL QUALITY
MONTHLY ACTIVITY REPORT

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

PLAN ACTIONS COMPLETED

MUNICIPAL WASTE SOURCES -

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Douglas	RUSA Loma Vista Pump Station	8-16-88	Comments to Sanitary Authority
Jackson	Rogue River Foothills Sewers	8-17-88	Provisonal Approval
Coos	Coos Bay Pump Station No. 4 & 5 Rehabilitation	9-7-88	Provisional Approval
Coos	Coos Bay STP No. 1 Operations Building	8-24-88	Provisional Approval

Note: Provisional approvals include a standard requirement for the design engineer to inspect and to certify the construciton conforms to the approved plans. Provisional approval often requires design changes/additions, more stringent material testing standards, or more stringent performance acceptance criteria.

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DEPARTMENT OF ENVIRONMENTAL QUALITY
MONTHLY ACTIVITY REPORT

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

PLAN ACTIONS COMPLETED

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
INDUSTRIAL WASTE SOURCES - 10			
Marion	Siltec Epitaxial Corporation Wastewater Treatment Facility	8-15-88	Approval
Linn	Teledyne Wah Chang Enlargement of Storage Pond	8-18-88	Approved
Clackamas	Ore Best, Inc. Wastewater Collection & Treatment System	8-4-88	Approved
Clackamas	Vanport Manufacturing, Inc. Storm Runoff Collection & Treatment System	8-9-88	Approved
Clackamas	Ronald Bern Manure Control Facility	8-4-88	Approved
Tillamook	Pete Hurliman Manure Control Facility	8-23-88	Approved
Tillamook	River End Dairies Manure Control Facility	8-23-88	Approved
Columbia	Boise Cascade Corporation Leachate Collection System	8-22-88	Approved
Multnomah	Portland General Electric Co. Oil Stop Valve	8-10-88	Approved
Washington	Portland General Electric Co. Storage Building With Spill Containment	8-10-88	Approved

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DEPARTMENT OF ENVIRONMENTAL QUALITY
MONTHLY ACTIVITY REPORT

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

PLAN ACTIONS PENDING

MUNICIPAL WASTE SOURCES - 36

County	Name of Source/Project /Site and Type of Same	Date Received	Status	Reviewer
Deschutes	Sunriver Utilities WWTP Filter and Clarifier Expansions	5-15-87	Review Completion Projected 10-31-88	JH
Deschutes	Sunriver Utilities WWTP Aeration tank/digester expansion	10-13-87	Review Completion Projected 10-31-88	JH
Umatilla	Larry Greenwalt Shady Rest Mobile Home Court Bottomless Sand Filter	4-21-88	Review Completion Projected 10-31-88	JLV
Clackamas	Canby Redwood Interceptor Sewer (Revised)	5-6-88	Review Completion Projected 9-30-88	JLV
Clatsop	Warrenton Eastside Sewer Extension	7-11-88	Review Completion Projected 9-30-88	JLV
Clatsop	Astoria Williamsport Sewer L.I.D.	7-14-88	Review Completion Projected 9-30-88	JLV
Jackson	Medford Meadow Wood Apartments	7-27-88	Review Completion Projected 9-30-88	JLV
Jackson	BCVSA Bigham Road/Avenue "E"	7-22-88	Review Completion Projected 9-30-88	JLV
Linn	Millersburg MK Line Ext.	8-1-88	Review Completion Projected 9-30-88	JLV
Columbia	PGE-Trojan STP Preliminary Plans/ Specifications	9-25-88	Review Completion Projected 9-30-88	DSM
Lincoln	Coyote Rock RV Park Site Sewers, New Drainfield	9-30-88	Review Completion Projected 9-30-88	JLV
Douglas	Sutherlin SKP Parks of Oregon	8-11-88	Review Compltion Projected 9-30-88	JLV

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DEPARTMENT OF ENVIRONMENTAL QUALITY
MONTHLY ACTIVITY REPORT

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

PLAN ACTIONS PENDING

MUNICIPAL WASTE SOURCES

County	Name of Source/Project /Site and Type of Same	Date Received	Status	Reviewer
Clatsop	Astoria S.E. Sheridan Sewer Project	8-11-88	Review Compltion Projected 9-30-88	DSM
Polk	Dallas S.W. Walnut From Main Street to S.W. Levens Street	8-12-88	Review Compltion Projected 9-30-88	DSM
Douglas	Union Gap Sanitary District Sewer System Improvements	8-12-88	Review Compltion Projected 9-30-88	JLV
Douglas	Oakland Oakland Heights Sub-division	8-16-88	Review Compltion Projected 9-30-88	DSM
Deschutes	Mt. Bachelor Ski Area Pine Martin Lodge	8-17-88	Review Compltion Projected 9-30-88	JLV
Lane	Lowell Wastewater Plant Improvements	8-11-88	Review Compltion Projected 9-30-88	KMV
Deschutes	Bend Bend Millworks Sewer Extension	8-18-88	Review Compltion Projected 9-30-88	DSM
Lane	Siuslaw National Forest Horsfall Campground	8-19-88	Review Compltion Projected 9-30-88	JLV
Yamhill	Newberg Allen Fruit Industrial Pretreatment	8-22-88	Review Compltion Projected 9-30-88	JRH
Curry	Brookings Preliminary Plans for outfall	8-22-88	Review Compltion Projected 9-30-88	KMV
Douglas	Yoncalla Chlorination Chamber	8-23-88	Review Compltion Projected 9-30-88	JLV
Yamhill	Willamina Effluent Flow Meter Replacement	8-26-88	Review Compltion Projected 9-30-88	JLV
Josephine	Redwood SSSD Hansgen Haven Subdivision Avery Way Sewer	8-15-88	Review Compltion Projected 9-30-88	DSM

DEPARTMENT OF ENVIRONMENTAL QUALITY
MONTHLY ACTIVITY REPORT

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

PLAN ACTIONS PENDING

MUNICIPAL WASTE SOURCES —

County	Name of Source/Project /Site and Type of Same	Date Received	Status	Reviewer
- - - - - - - - - - - - - - -PROJECTS BELOW ARE "ON-HOLD"- - - - - - - - - - - - - -				
Columbia	Scappoose Sewage Treatment Plant Expansion	3-11-87	On Hold, Financing Incomplete	DSM
Deschutes	Romaine Village Recirculating Gravel Filter (Revised)	4-27-87	On Hold For Surety Bond	Not Assigned
Marion	Breitenbush Hot Springs On-Site System	5-27-86	On Hold, Uncertain Financing	JLV
Benton	North Albany County Service District Spring Hill-Crocker Creek Int.	1-21-87	On Hold, Project Inactive	Not Assigned
Curry	Whaleshead Beach Campground Gravel Recirculation Filter (Revised)	5-20-87	Holding for Field Inspection	JLV
Lincoln	Whalers Rest Sewers and Septic Tanks	3-23-88	Holding for New Drainfield Plans	JLV
Multnomah	Troutdale Frontage Road Sewage Pump Station Replacement	4-25-88	Bids Rejected, Being Redesigned	DSM
Curry	Brookings Brookings Meadows Subdivision	4-25-88	Holding for Revisions	DSM
Tillamook	South Fork Forest Camp Revised Plans	1-19-88	Awaiting Revisions	JLV
Wallowa	Wallowa Lake Co. Service District STEP System Equiment/Materials	6-6-88	Holding for Equipment Submittals	DSM
Douglas	RUSA Loma Vista Phase II Pump Station		Holding For Design	DSM

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DEPARTMENT OF ENVIRONMENTAL QUALITY
MONTHLY ACTIVITY REPORT

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

PLAN ACTIONS PENDING

County	Name of Source/Project /Site and Type of Same	Date Received	Status
INDUSTRIAL WASTE SOURCES - 5			
Yamhill	Allen Fruit Pretreatment Facility	11-24-87	Review Completion Projected 9-30-88
Polk	Willamette Industries Groundwater Protection & Monitoring System	7-22-88	Review Completion Projected 9-30-88
Marion	H. Hazenburg Dairy Manure Control Facility	8-16-88	Review Completion Projected 9-30-88
Yamhill	Irvin Hermans Manure Control Facility	8-25-88	Review Completion Projected 9-30-88
Washington	Wachlin Farms II Manure Control Facility	8-15-88	Review Completion Projected 9-30-88

WC3738

Summary of Actions Taken
On Water Permit Applications in AUG 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		2	1		5	1		1		1	2		4	17	1			
RW				1									2					
RWO	3	2		5	4			4		2	5		66	35				
MW													3					
MWO		1		1	3		1	1		1	1		3	5				
Total	3	5	1	7	12	1	1	6		4	8		78	57	1	224	195	29
Industrial																		
NEW		1	5	2	1	7		1	9		4	11	5	12	8			
RW	1			1									2					
RWO	1	1		2	4		1			2	1		22	24				
MW										1			4					
MWO	2	3	2	3	4	2	3	4		3	4			1	1			
Total	4	5	7	8	9	9	4	5	9	6	9	11	33	37	9	156	137	422
Agricultural																		
NEW												21						
RW																		
RWO					1								1	2				
MW																		
MWO																		
Total					1							21	1	2		2	8	624
Grand Total	7	10	8	15	22	10	5	11	9	10	17	32	112	96	10	382	340	1075

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

It does include applications pending from previous months and those filed after 31-AUG-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	NEW	OR003258-1	103960/A	HORIZON TECHNOLOGIES, INC.	LAKE OSWEGO	CLACKAMAS/NWR	15-AUG-88	31-DEC-90
General: Filter Backwash										
IND	200	GEN02	NEW	OR003259-0	103962/A	CANYONVILLE, CITY OF	CANYONVILLE	DOUGLAS/SWR	30-AUG-88	31-DEC-90
General: Log Ponds										
IND	400	GEN04	NEW	OR002759-6	24985/B	DOUGLAS COUNTY, INC. DBA	WINCHESTER	DOUGLAS/SWR	15-AUG-88	31-DEC-90
General: Suction Dredges										
IND	700	GEN07	NEW		103951/A	MAC DONALD, JOHN P. JR.		MOBILE SRC/ALL	02-AUG-88	31-JUL-91
IND	700	GEN07	NEW		103959/A	GOLGERT, GLEN A.		MOBILE SRC/ALL	10-AUG-88	31-JUL-91
General: Gravel Mining										
IND	1000	GEN10	NEW		103961/A	COBB ROCK, INC.	BEAVERTON	WASHINGTON/NWR	19-AUG-88	31-DEC-91
IND	1000	GEN10	NEW		14700/B	OREGON CITY LEASING COMPANY	SCAPPOOSE	COLUMBIA/NWR	25-AUG-88	31-DEC-91

CAT	PERMIT NUMBER	TYPE	SUB-TYPE	OR NUMBER	FACILITY	FACILITY NAME	CITY	COUNTY/REGION	DATE ISSUED	DATE EXPIRES
General: Oily Stormwater Runoff										
IND	1300	GEN13	NEW	OR003254-9	103826/A	EUGENE NATIONAL GUARD ARMORY	EUGENE	LANE/WVR	23-AUG-88	31-JUL-93
IND	1300	GEN13	NEW	OR003260-3	103963/A	GEORGIA-PACIFIC CORPORATION	MYRTLE POINT	COOS/SWR	24-AUG-88	31-JUL-93
NPDES										
IND	100039	NPDES	MWO	OR003140-2	100025/B	HALL-BUCK MARINE, INC.	PORTLAND	MULTNOMAH/NWR	10-AUG-88	31-JAN-90
IND	100178	NPDES	MWO	OR002302-7	51360/A	FIBREBOARD CORPORATION	DILLARD	DOUGLAS/SWR	15-AUG-88	31-MAR-91
IND	100504	NPDES	RWO	OR002228-4	13290/A	CAFFALL BROS. FOREST PRODUCTS, INC.	OREGON CITY	CLACKAMAS/NWR	16-AUG-88	31-JUL-93
IND	100234	NPDES	MWO	OR000040-0	21354/A	JAMES RIVER II, INC.	PORTLAND	MULTNOMAH/NWR	18-AUG-88	30-SEP-91
DOM	100249	NPDES	MWO	OR002696-4	60335/B	NESKOWIN REGIONAL SANITARY AUTHORITY	NESKOWIN	TILLAMOOK/NWR	30-AUG-88	30-SEP-91
WPCF										
IND	3710	WPCF	MWO		69550/B	GOLDEN REEF MINING CO.	SUNNY VALLEY	JOSEPHINE/SWR	02-AUG-88	30-JUN-88
DOM	100503	WPCF	RWO		49388/A	WESTERN OREGON CONFERENCE ASSOCIATION OF SEVENTH DAY ADVENTISTS	LAURELWOOD	WASHINGTON/NWR	03-AUG-88	30-JUN-93
DOM	100239	WPCF	MWO		100141/B	CHILES, EARLE M. AND VIRGINIA H. DBA	PORTLAND	MULTNOMAH/NWR	12-AUG-88	30-JUN-91
IND	100242	WPCF	MWO		87150/B	SNOWY BUTTE FOODS, INC.	KLAMATH FALLS	KLAMATH/CR	16-AUG-88	31-JUL-91
IND	100505	WPCF	NEW		103408/A	BLUE MT. FOREST PRODUCTS, INC.	LONG CREEK	GRANT/ER	16-AUG-88	30-JUN-93
DOM	100506	WPCF	RWO		32862/A	GEORGIA-PACIFIC CORPORATION	EUGENE	LANE/WVR	16-AUG-88	31-MAY-93

CAT	PERMIT NUMBER	TYPE	SUB-TYPE	OR NUMBER	FACILITY	FACILITY NAME	CITY	COUNTY/REGION	DATE ISSUED	DATE EXPIRES
DOM	100507	WPCF	RWO		65532/A	OUR LADY OF GUADALUPE TRAPPIST ABBEY	CARLTON	YAMHILL/WVR	16-AUG-88	30-JUN-93
DOM	100508	WPCF	RWO		85932/A	SUNRIVER UTILITIES COMPANY	SUNRIVER	DESCHUTES/CR	16-AUG-88	31-JUL-93
IND	100093	WPCF	MWO		100063/A	ELF ASPHALT, INC.	MADRAS	JEFFERSON/CR	18-AUG-88	06-JUN-90
IND	100396	WPCF	MWO		69494/B	NEWPORT SHRIMP COMPANY, INC.	ALBANY	LINN/WVR	22-AUG-88	31-OCT-92
DOM	100509	WPCF	NEW		100051/A	BIG OAK MARINA, INC.	PORTLAND	MULTNOMAH/NWR	25-AUG-88	31-AUG-93

PERMIT TRANSFERS

Part of
Water Quality Division Monthly Activity Report

(Period August 1, 1988 through August 31, 1988)

Permit No.	Previous Facility Name	Facility	New Facility Name	City	County	Date Transferred
100039	Port of Portland	100025	Hall-Buck Marine, Inc.	Portland	Mult/NWR	08/10/88 (Ownership)
100239	Chiles, E.M. & V.H.*	100141	Added RIM CO. (ABN)	Portland	Mult/NWR	08/12/88 (Name Chg.)
GEN04	Douglas Co. Lbr. Co.*	24985	Douglas County, Inc., dba Douglas County Forest Products	Winchester	Doug/SWR	08/15/88 (Ownership)
100178	Louisiana-Pacific*	51360	Fibreboard Corporation	Dillard	Doug/SWR	08/15/88 (Name Chg.)
100242	T.P. Packing Co.	87150	Snowy Butte Foods, Inc.	Klamath Falls	Klam/CRO	08/16/88 (Ownership)
100234	James River Corp.*	21354	James River II, Inc.	Portland	Mult/NWR	08/18/88 (Name Chg.)
100093	Elf Aquitaine Asph.*	100063	Elf Asphalt, Inc.	Madras	Jeff/CRO	08/18/88 (Name Chg.)
100396	United Foods, Inc.	69494	Newport Shrimp Company, Inc.	Albany	Linn/WVR	08/22/88 (Ownership)
GEN10	Cascade Aggregates	14700	Oregon City Leasing Company	Scappoose	Colu/NWR	08/25/88 (Ownership)
100249	Neskowin Lodge Inv.*	60335	Neskowin Regional SA*	Neskowin	Till/NWR	08/30/88 (Ownership)

* Names abbreviated.

WH2930 (JDH)

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

PLAN ACTIONS COMPLETED

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Clatsop	James River II, Inc. Wauna	8/1/88	Phase II plans, partial approval.
Lincoln	Agate Beach Balefill	8/15/88	Plan approved.
Marion	Silverton Forest Products	8/31/88	Plan approved.
Gilliam	Gilliam County Landfill	8/31/88	Plan approved.

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Hazardous and Solid Waste Division (Reporting Unit) — August 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	
Storage	0	0	
Disposal	0	0	

INSPECTIONS

	COMPLETED		PLANNED
	No. This Month	No. FYTD	No. in FY 88 *
Generator	0	0	
TSD	0	0	

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	
Storage	0	0		0	0	
Disposal	0	0		0	0	

* To be determined.

SB5285.A
MAR.2 (9/88)

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

PLAN ACTIONS PENDING - 44

County	Name of Facility	Date Plans Rec'd.	Date of Last Action	Type of Action and Status	Location
Municipal Waste Sources - 29					
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
Yamhill	River Bend	11/14/86	11/14/86	(R) Plan received	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
Klamath	Klamath Falls Landfill	7/6/87	7/6/87	(R) 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	3/3/88	(N) Supplemental 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

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
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
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
Marion	Woodburn Landfill	1/22/88	1/22/88	(R) As built plans rec'd.	HQ
Multnomah	Riedel Composting	5/5/88	5/5/88	(N) Plans received	HQ
Umatilla	Pendleton Landfill	6/6/88	6/6/88	(R) Plans received	HQ
Marion	Woodburn Landfill	6/24/88	6/24/88	(R) Wastewater storage plans received	HQ
Coos	Les' Sanitary Service TS	6/30/88	6/30/88	(N) Plans received.	HQ
Malheur	Brogan-Jameson Lndfl	7/1/88	7/1/88	(C) Plans received.	HQ
Malheur	Brogan TS	7/1/88	7/1/88	(N) Plans received.	HQ
Klamath	Bio-Waste Management, Inc.	7/14/88	7/14/88	(N) Plans received	HQ
Marion	Marion Recycling Center, Inc.	7/20/88	7/20/88	(N) Plans received	HQ
Marion	Woodburn Landfill	7/15/88	7/15/88	(M) Plans received	HQ
Tillamook	Tillamook Landfill	7/16/88	7/16/88	(M) Plans received	HQ
<u>Demolition Waste Sources</u> - 2					
Washington	Hillsboro Landfill	1/29/88	1/29/88	(N) Expansion plans received	
Marion	Browns Island Lndf.	6/8/88	6/8/88	(N) Plans received	HQ

(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 - 11					
Klamath	Weyerhaeuser, Klamath Falls	3/24/86	11/25/86	(N) Add'l. info. requested	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	4/21/88	(C) Additional information requested.	HQ
Columbia	Boise Cascade St. Helens	4/6/88	4/6/88	(N) As built plans received.	HQ
Douglas	Sun Studs	6/20/88	6/20/88	(R) Plans received	HQ
Douglas	Sun Studs	7/1/88	7/1/88	(R) Operational/groundwater plans received	HQ
Douglas	IP, Gardiner	8/16/88	8/16/88	(N) Plans received	HQ
Sewage Sludge Sources - 2					
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

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
Sewage Sludge Sources - 2					
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

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

SUMMARY OF SOLID WASTE PERMIT ACTIONS

	Permit Actions Received		Permit Actions Completed		Permit Actions	Sites Under	Sites Reqr'g
	Month	FY	Month	FY	Pending	Permits	Permits
General Refuse							
New	-	3	-	-	7		
Closures	-	1	-	1	5		
Renewals	-	-	2	3	11		
Modifications	5	16	4	15	2		
Total	5	20	6	19	25	180	180
Demolition							
New	-	1	-	-	1		
Closures	-	-	-	-	-		
Renewals	-	-	-	-	1		
Modifications	-	2	-	2	1		
Total	0	3	0	2	3	11	11
Industrial							
New	-	-	-	-	4		
Closures	-	-	-	-	1		
Renewals	-	1	5	6	6		
Modifications	5	8	5	8	-		
Total	5	9	6	6	11	107	107
Sludge Disposal							
New	1	1	1	1	1		
Closures	-	-	-	-	1		
Renewals	-	-	-	-	-		
Modifications	-	1	-	-	-		
Total	1	2	1	1	2	18	18
Total Solid Waste	11	34	12	35	41	315	315

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

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

PERMIT ACTIONS COMPLETED

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Jackson	Ashland Landfill	8/3/88	Permit issued.
Coos	Allegany Shop	8/5/88	Addendum issued.
Coos	Scale Shack	8/5/88	Addendum issued.
Curry	Brookings Energy Facility	8/5/88	Addendum issued.
Curry	Wridge Creek	8/5/88	Addendum issued.
Yamhill	Riverbend	8/5/88	Addendum issued.
Yamhill	Newberg TS	8/5/88	Addendum issued.
Jackson	South Stage	8/19/88	Permit issued.
Crook	Les Schwab Tire	8/19/88	Addendum issued.
Douglas	Round Prairie Lumber	8/19/88	Addendum issued.
Douglas	Fibreboard, Inc.	8/19/88	Addendum issued.
Multnomah	Bob's Sanitary	8/22/88	Letter authorization issued.

MAR.6 (5/79) SB78111

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

PERMIT ACTIONS PENDING - 41

County	Name of Facility	Date Appl. Rec'd.	Date of Last Action	Type of Action and Status	Location
Municipal Waste Sources - 25					
Clackamas	Rossmans	3/14/84	2/11/87	(C) Applicant review (second draft)	HQ/RO
Baker	Haines	1/30/85	6/20/85	(R) Applicant review	HQ
Malheur	Adrian	11/7/85	7/11/88	(C) Applicat review	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	6/22/88	(R) Applicant review	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	Willowcreek Lndfl.	6/22/87	7/11/88	(C) Applicant review	HQ
Klamath	Klamath Falls Landfill	7/6/87	7/6/87	(R) Application filed	RO
Malheur	Harper Landfill	8/17/87	7/11/88	(C) Applicant review	HQ
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	12/21/87	(R) Draft received	
Curry	Port Orford Lndfl.	12/14/87	8/18/88	(R) Applicant review	HQ

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
Washington	Hillsboro TS	1/15/88	4/12/88	(N) Draft received	HQ
Umatilla	Pendleton Lndfl.	3/10/88	3/10/88	(A) Application received	HQ
Multnomah	Riedel Composting	5/5/88	5/5/88	(N) Application received	RO/HQ
Coos	Les' Sanitary Service TS	6/30/88	8/19/88	(N) Draft received	HQ
Malheur	Brogan-Jameson	7/1/88	7/1/88	(C) Application received	RO
Malheur	Brogan TS	7/1/88	7/1/88	(N) Application received	RO
Klamath	Bio-Waste Mgmt. Co.	7/14/88	7/29/88	(N) Applicant review	HQ
Marion	Marion Recycling Center, Inc.	7/20/88	7/20/88	(N) Application received	RO
Tillamook	Tillamook Landfill	8/16/88	8/16/88	(N) Applicantion received	RO
Demolition Waste Sources - 3					
Coos	Bracelin/Yeager (Joe Ney)	3/28/86	9/2/86	(R) Draft received	HQ
Washington	Hillsboro Lndfl.	1/29/88	1/29/88	(A) Application received	HQ
Marion	Browns Island Demolition	6/8/88	8/18/88	(N) Applicant review	HQ
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
Klamath	Weyerhaeuser, Klamath Falls (Expansion)	3/24/86	11/25/86	(N) Add'l. info. requested	HQ
Curry	South Coast Lbr.	7/18/86	7/18/86	(R) Application filed	RO

County	Name of Facility	Date Appl. Rec'd.	Date of Last Action	Type of Action and Status	Location
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	3/3/88	(N) Draft received	HQ
Wallowa	Sequoia Forest Ind.	11/25/87	11/25/87	(N) Application filed	RO
Douglas	Glide Lumber Prod.	3/8/88	8/18/88	(R) Applicant review	HQ
Marion	Silverton Forest Products	5/5/88	8/31/88	(C) Applicant review	HQ
Douglas	Hayward Disp. Site	6/7/88	8/18/88	(R) Applicant review	HQ
Sewage Sludge Sources - 2					
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

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Noise Control Program (Reporting Unit) — August, 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	14	31	13	26	193	192
Airports			3	4	0	2

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

FINAL NOISE CONTROL ACTIONS

County	Name of Source and Location	Date	Action
Multnomah	Alpenrose Dairy, Portland	8/88	In compliance
Multnomah	Galvanizers, Inc., Portland	8/88	No violation
Multnomah	Richard Klein Diesel Engine Rebuilding, Portland	8/88	In compliance
Multnomah	Metro Auto Body Shop, Portland	8/88	Referred to City of Portland
Multnomah	Ross Island Sand & Gravel, Portland	8/88	In compliance
Multnomah	Sakrete, Inc. of Pacific NW, Portland	8/88	In compliance
Multnomah	Wy'east Color, Inc., Portland	8/88	In compliance
Washington	Stadelman Industries, Inc., Forest Grove	8/88	In compliance
Washington	Wolf Creek Highway Water District, Cooper Mountain, Aloha	8/88	In compliance
Marion	Deluxe Ice Cream, Salem	8/88	In compliance
Marion	Willamette Pool, Salem	8/88	In compliance
Jackson	Miller Aggregate, Ashland	8/88	In compliance
Jackson	Oregon Shakespearean Festival, Ashland	8/88	Referred to the City of Ashland

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

FINAL NOISE CONTROL ACTIONS

County	* Name of Source and Location	* Date	* Action
Washington	Lincoln Center Heliport, Tigard	8/88	Boundary approved
Grant	Seneca Emergency Airstrip, Seneca	8/88	Exception granted
Yamhill	Belt's Ultralight Park, Yamhill	8/88	Boundary approved

CIVIL PENALTY ASSESSMENTS

DEPARTMENT OF ENVIRONMENTAL QUALITY
1988

CIVIL PENALTIES ASSESSED DURING MONTH OF AUGUST, 1988:

Name and Location of Violation	Case No. & Type of Violation	Date Issued	Amount	Status
Space Age Fuels, Inc. Portland, Oregon	AQ-NWR-88-60 Failed to use vapor return hoses when unloading gasoline and failed to maintain vapor return hoses in good working condition.	8/8/88	$500	Paid 8/29/88.
Pennwalt Corporation Portland, Oregon	Stipulation and Final Order No. WQ-NWR-88-36 Stipulated civil penalty for waste discharge limitation violations occurring from 12/15/87 through 6/30/88.	8/30/88	$3,000	8/30/88

GB7812

October, 1988
DEQ/EQC Contested Case Log

ACTIONS	LAST MONTH	PRESENT
Preliminary Issues	0	0
Discovery	0	0
Settlement Action	7	3
Hearing to be scheduled	0	5
Department reviewing penalty	0	0
Hearing scheduled	5	2
HO's Decision Due	2	5
Briefing	0	0
Inactive	1	3
SUBTOTAL of cases before hearings officer	15	18
HO's Decision Out/Option for EQC Appeal	0	0
Appealed to EQC	0	0
EQC Appeal Complete/Option for Court Review	0	0
Court Review Option Taken	1	0
Case Closed	1	4
TOTAL Cases	17	22

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

October, 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	New permit under negotiation. May resolve contested issues.
WAH CHANG	04/78	04/78		Prtys	03-P-WQ-WVR-78-2012-J NPDES Permit Modification	New permit under negotiation. May resolve contested issues.
DANT & RUSSELL, INC.	05/31/85	05/31/85	03/21/86	DEQ	15-HW-NWR-85-60 Hazardous waste disposal Civil Penalty of $2,500	Settlement agreement submitted to Bankruptcy Court for approval.
BRAZIER FOREST PRODUCTS	11/22/85	12/12/85	02/10/86	DEQ	23-HSW-85-60 Declaratory Ruling	Tentative settlement reached. Order to be prepared for EQC consideration.
~~MERIT USA, INC.~~	~~05/30/87~~	~~06/10/87~~	~~09/14/87~~		~~4-WQ-NWR-87-27 $3,500 civil penalty~~	~~Court of appeals dismissed petition on 7/29/88 because it was untimely.~~
CITY OF KLAMATH FALLS			05/03/88	DEQ	1-P-WQ-88 Salt Caves	Appeal of 1987 application abated pending approval or denial of new application.
ZELMER, dba RIVERGATE AUTO	3/2/88	3/3/88	07/12/88	Hrgs	AQOB-NWR-88-03 $1,000 Civil Penalty	Hearing concluded 8/4/88. Decision due.
~~MARKEE~~	~~4/1/88~~	~~4/11/88~~		~~Resp~~	~~WQ-WVR-88-22 $3,000 Civil Penalty~~	~~EQC mitigated the penalty to $500 on 9/9/88.~~

October, 1988
DEQ/EQC Contested Case Log

Pet/Resp Name	Hrng Rqst	Hrng Rfrrl	Hrng Date	Resp Code	Case Type & No.	Case Status
CSSI	3/31/88	4/19/88		Prtys	Permit 089-452-353	A stipulated order resolving certain disputed terms will be submitted to EQC for approval; others will be adjudicated.
NEU-GLO CANDLES	6/9/88		07/25/88	Hrgs	AQAB-NWR-88-33 Asbestos $1,000 Civil Penalty	Decision due.
~~COMMERCIAL SECURITIES~~			~~10/4/88~~	~~Prtys~~	~~AQAB-NWR-88-49 $1,000 Civil Penalty~~	~~Hearing request withdrawn in Stipulation and Final Order dated 9/30/88.~~
GUARANTEE CONSTRUCTION			10/4/88	Hrngs	AQAB-NWR-88-31 $2,000 Civil Penalty	Hearing held on 10/4/88.
GEORGE FOX COLLEGE			9/7/88	Hrngs	AQAB-WVR-88-38 $3,750 Civil Penalty	Hearing held on 9/7/88.
ELLIOTT-JOCHIMSEN			9/7/88	Hrngs	AQAB-WVR-88-50 $7,000 Civil Penalty	Hearing held on 9/7/88.
~~BERNHARDT~~			~~9/1/88~~	~~Prtys~~	~~AQOB-SWR-88-44 $1,000 Civil Penalty~~	~~EQC mitigated the penalty to $500 on 9/9/88.~~
~~BESTGO, Inc.~~			~~9/9/88~~	~~Prtys~~	~~AQOB-NWR-88-48 $500 Civil Penalty~~	~~Hearing request was withdrawn on 8/31/88.~~
CLAUDE ST. JENN	9/15/88		11/10/88	Prtys	OS-SWR-88-68 $500 Civil Penalty	Hearing scheduled.
GLENEDEN BRICK & TILE WORKS	9/15/88			Hrngs	AQ-WS-88-70 $1,500 Civil Penalty	Hearing to be scheduled.
JOHN BOWERS	9/19/88		11/8/88	Prtys	AQOB-CR-88-58 $1,500 Civil Penalty	Hearing scheduled.

October, 1988
DEQ/EQC Contested Case Log

Pet/Resp Name	Hrng Rqst	Hrng Rfrrl	Hrng Date	Resp Code	Case Type & No.	Case Status
CITY OF SALEM	9/26/88			Hrngs	Deparment Order	Hearing to be scheduled.
DAVIS dbA TRI-COUNTY STOVE AND CHIMINEY SERVICE	9/27/88			Hrngs	AQ-WS-88-69 $1,500 Civil Penalty	Hearing to be scheduled.
IRVING HERMENS	9/27/88			Hrngs	WQ-WVR-88 61A $2,500 Civil Penalty and-62B, Department Order	Hearing to be scheduled.
ARIE JONGANEEL dba A.J. Dairy	10/3/88			Prtys	WQ-WVR-88-73A $2,500 Civil Penalty and -73B, Department Order	Settlement Action.

40

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR COMMISSION ACTION

Agenda Item D, November 4, 1988, EQC Meeting

Pollution Control Tax Credit

ISSUES

There is a request for an extension of 180 days from Willamette Industries, Inc. on submission of their final application for tax credit on a pollution control device which was given preliminary approval by the Department in 1985. Applicants are required to make final application within two years of facility completion. Only the Commission can grant an extension under the statute. The facility where pollution control equipment was to have been installed burned and required a complete rebuild of the facility. Because the construction included both the facility and the pollution control equipment, it is legitimate to concur that the company may need added time to determine which portions are costs associated with the pollution control equipment. The Department is thus recommending approval of their request.

There is a request for the revocation and reissuance of a pollution control tax credit from Columbia-Willamette Leasing (Ogden-Martin) to Pacific Corp. When the pollution control tax credit was issued on the Ogden Martin marion County Garbage burner, the tax credits were sold to a company called Columbia Willamette Leasing. This sale was allowable under Department of Revenue statutes. During the 1987 Legislative Session the sale of tax credits was deleted as an allowable practice. Pacific Corp. has received a ruling from the Department of Revenue indicating that sale of a company which holds tax credits they purchased under the previous law is allowable. Our statute provides that we will revoke and reissue tax credits in accordance with provisions of the Department of Revenue statute. The item included in this report handles this revocation and reissuance as it would any typical sale of a business and relies upon the Department of Revenue ruling as an interpretation of the sale being in accordance with their statutory provisions. The staff report recommends approval by the EQC of the tax credit transfer.

Director's Recommendation

1. Issue tax credit certificates for pollution control facilities listed in the report.

2. Revoke Certificate #1902 issued to Columbia-Willamette Leasing (Ogden-Martin) and reissue to Pacific Corporation.

3. Extend, for a period of 180 days, Willamette Industries Final Tax Credit filing deadline.

AD3772

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item D, November 4, 1988, EQC Meeting

TAX CREDIT APPLICATIONS

Issue tax credit certificates for pollution control facilities:

Appl. No.	Applicant	Facility
T-1902	Portland General Electric Oak Grove Plant	Oil spill containment
T-2116	Smurfit Newsprint Corp.	Sludge Dewatering System
T-2160	Portland General Electric Madras Plant	Oil Collection System
T-2341	Timber Products Co.	Cartridge Dust Filter
T-2468	Portland General Electric Round Butte	Oil Spill Containment
T-2500	Nehalem Valley Sanitary Service	Recycling Equipment
T-2501	Eagle-Picher Minerals, Inc.	7 Baumco Baghouses

Proposed November 4, 1988 Totals:

Air Quality	$ 1,112,854
Water Quality	1,228, 030
Hazardous/Solid Waste	11,805
Noise	-0-
	$ 2,352,689

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

Air Quality	$ 5,990,698
Water Quality	428,877
Hazardous/Solid Waste	167,142
Noise	-0-
	$ 6,586,717

C. Nuttall:d
(503) 229-6484
October 10, 1988
AD3710

Application No. T-1902

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Portland General Electric Company
121 SW Salmon Street
Portland, OR 97204

The applicant owns and operates an electric utility company with sub-stations throughout Oregon.

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

2. Description of Facility

The facility is an oil spill containment system at the Oak Grove Plant in Three Lynx, Oregon.

Claimed Facility Cost: $126,258.40*

3. Procedural Requirements

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

The facility met all statutory deadlines in that:

a. The request for preliminary certification was filed July 16, 1985, less than 30 days before construction commenced on July 25, 1985. However, according to the process provided in OAR 340-16-015(1)(b) the application was reviewed by DEQ staff and the applicant was notified that the application was complete and that construction could commence.

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

c. Construction of the facility was substantially completed on November 23, 1986, and the application for final certification was found to be complete on September 3, 1987, within 2 years of substantial completion of the facility.

---

* (Accountant's Certification was provided).

4. Evaluation of Application

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

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

Prior to installation of the claimed facility, there were no means to contain oil spills. To comply with the federal requirements, the applicant installed oil spill containment facility. The two switch yards were paved and each was provided with curbs around the perimeter. These curbed areas form a collection basin for any spilled oil. Any runoff from this basin, including oil, is routed through oil stop valves located in catch basins which are connected to storm drains in the substation. With this system in place, all drainage from the substation is controlled prior to entering Clackamas River.

b. Eligible Cost Findings

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

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

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

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

There is no return on investment from this facility.

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

Concrete slabs and clay liners were considered. Concrete slabs must contain expansion joints but caulking (filler) within these joints deteriorates and form leaks. Clay blankets, which must be buried to protect them from surface-loading, can not be inspected.

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

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

5) Any other factors which are relevant in establishing the portion of the actual cost of the facility properly allocable to the prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or properly disposing of used oil.

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

5. Summation

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

b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the federal Environmental Protection Agency to prevent water pollution and accomplishes this purpose by the containment of industrial waste as defined in ORS 468.700.

c. The facility complies with DEQ statutes and rules.

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

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $126,258.40 with 100 percent allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1902.

R.C. Dulay:hs
WH2875
(503) 229-5876
August 1, 1988

Application No. T-2116

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Smurfit Newsprint Corp.
427 Main Street
Oregon City, OR 97045

The applicant owns and operates a pulp and paper mill in Oregon City, Oregon. Application was made for tax credit for a water pollution control facility.

2. Description of Facility

The claimed facility is a sludge dewatering system consisting of two Tasster "F" screw presses, associated pipes, valves, tanks, motors, controls, support structures, conveyors and miscellaneous equipment.

The purpose of the facility is to control the accumulation of primary and biological solids in the aerated lagoons. Excessive solids have caused odor problems and permit violations.

Claimed Facility Cost: $1,014,833
(Accountant's Certification was provided).

3. Procedural Requirements

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

The facility met all statutory deadlines in that:

a. The request for preliminary certification was filed May 30, 1986, less than 30 days before installation commenced on June 11, 1986. However, according to the process provided in OAR 340-16-015(1)(b), the application was reviewed by DEQ staff and the applicant was notified that the application was complete and that installation could commence.

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

c. Installation of the facility was substantially completed on July 23, 1986, and the application for final certification was found to be complete on July 22, 1988, within 2 years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the sole purpose of the facility is to reduce a substantial quantity of water pollution. This reduction is accomplished by redesign to eliminate industrial waste as defined in ORS 468.700.

In 1985, the year preceding the start-up of the facility and a lagoon sludge dredging project, BOD and TSS violations as high as 50% of permit limits occurred frequently because of large accumulations of bottom sludge. The reduced lagoon retention time and the unstable solid-liquid boundary at the sludge surface greatly impaired effluent quality. Without a reduction of the amount of suspended solids in the lagoon influent (primary clarifier discharge), the lagoon sludge accumulation, which was decreased via 1986-87 dredging, could not have been controlled, and future violations like those of 1985 would have resulted.

b. Eligible Cost Findings

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

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

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

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

This facility operates at a net expense, hence there is no return on investment.

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

The method chosen is the accepted method for control of sludge dewatering. This method is the least cost and most effective method of controlling the rate of sludge accumulation in the treatment lagoon.

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

There is no savings from the facility. The net cost of

maintaining and operating the facility is estimated at $904,100 over the first five years.

5) Any other factors which are relevant in establishing the portion of the actual cost of the facility properly allocable to the prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or properly disposing of used oil.

The two Galigher pumps used in this facility were from a previously certified facility but no value was claimed other than relocation costs. Modifications to the previously certified facility were additional construction costs.

The actual cost of the facility properly allocable to pollution control as determined by using these factors is 100%.

5. Summation

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

b. The facility is eligible for final tax credit certification in that the sole purpose of the facility is to reduce a substantial quantity of water pollution and accomplishes this purpose by the redesign to eliminate industrial waste as defined in ORS 468.700.

c. The facility complies with DEQ statutes and rules, and NPDES permit conditions.

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

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $1,014,833 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-2116.

Jerry E. Turnbaugh:kjc
WJ912
(503) 229-5374
August 12, 1988

Application No. T-2160

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Portland General Electric Company
121 S.W. Salmon St., Tax Dept., TB 10
Portland, Oregon 97204

The applicant owns and operates a 100-megawatt hydroelectric plant ten miles north of Madras, Oregon.

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

2. Description of Facility

The claimed facility is an oil collection system around the electrical switchyard at the Pelton powerhouse to contain possible transformer/switch oil spillage. The collection system consists of a concrete curb at the edge of the asphalt-covered switchyard and a concrete catch basin equipped with an oil stop valve to catch and prevent oil from entering the stormwater drain.

Claimed Facility Cost: $47,409.08
(Accountant's Certification was provided).

3. Procedural Requirements

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

The facility met all statutory deadlines in that:

a. The request for preliminary certification was filed August 11, 1986 less than 30 days before construction commenced on September 1, 1986. However, according to the process provided in OAR 340-16-015(1)(b) the application was reviewed by DEQ staff and the applicant was notified that the application was complete and that construction could commence.

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

c. Construction of the facility was substantially completed on August 31, 1987 and the application for final certification was found to be complete on September 21, 1988 within 2 years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the sole purpose of the facility is to prevent, a substantial quantity of water pollution. This prevention is accomplished by the elimination of industrial waste as defined in ORS 468.700.

No oil spills have occurred at this site but the potential has existed for spilled oil to enter the stormwater system and the Deschutes River. The transformers and circuit breakers located within the switchyard contain oil. Each of the four main transformers, for example, contains approximately 3,000 gallons.

With this containment system, cleanup crews can reach the site and take care of spills that will be contained rather than running into the river.

b. Eligible Cost Findings

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

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

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

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

This facility does not produce revenue so there is no return on the investment.

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

Other alternatives were considered but rejected because of higher installation/maintenance costs.

4) Any related savings or increase in costs which occur or may occur as a result of the installation of the facility. There is no savings from the facility.

5) Any other factors which are relevant in establishing the portion of the actual cost of the facility properly allocable to the prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or properly disposing of used oil.

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

The actual cost of the facility properly allocable to pollution control as determined by using these factors is 100%.

5. Summation

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

b. The facility is eligible for final tax credit certification in that the sole purpose of the facility is to prevent a substantial quantity of water pollution and accomplishes this purpose by the elimination of, industrial waste as defined in ORS 468.700.

c. The facility complies with DEQ statutes and rules.

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

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $47,409.08 with 100 percent allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-2160.

Jerry E. Turnbaugh:crw
WC3827
(503) 229-5374
September 23, 1988

Application No. T-2341

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Timber Products Company
P.O. Box 1669
Medford, OR 97501

The applicant owns and operates a particleboard and plywood manufacturing facility in Medford, Oregon.

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

2. Description of Facility

The facility to be certified is a cartridge dust filter located on an existing sander dust storage silo.

Claimed Facility Cost: $8,423.00
(Accountant's Certification was provided).

3. Procedural Requirements

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

The facility met all statutory deadlines in that:

a. The request for preliminary certification was filed on August 26, 1987, less than 30 days before construction commenced on August 30, 1987. However, according to the process provided in OAR 340-16-015(1)(b), the application was reviewed by DEQ staff and the applicant was notified that the application was complete and that construction could commence.

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

c. Construction of the facility was substantially completed on March 3, 1988, and the application for final certification was found to be complete on September 26, 1988, within 2 years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the sole purpose of the facility is to reduce a substantial quantity of air pollution.

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

b. Eligible Cost Findings

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

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

The facility does not recover or convert a waste product into a salable or usable commodity. The sanderdust collected is negligible.

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

There is no return on the investment for this facility.

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

The company did not consider any other method or equipment for controlling emissions. The filter is believed to be a reasonably cost effective control for this application.

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

There is no savings from operating this facility. The cost of maintaining the facility is $879 annually and there is no income from its operation.

5) Any other factors which are relevant in establishing the portion of the actual cost of the facility properly allocable to the prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or properly disposing of used oil.

The dust filter was installed for the sole purpose of controlling wood dust emissions emitted to atmosphere.

The actual cost of the facility properly allocable to pollution control as determined by using these factors is 100%.

5. Summation

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

b. The facility is eligible for final tax credit certification in that the sole purpose of the facility is to reduce a substantial quantity of air contaminant emissions.

c. The facility complies with DEQ statutes and rules and permit conditions.

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

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $8,423.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-2341.

D. Neff:d
AD3553
(503) 229-6480
September 29, 1988

Application No. T-2468

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Portland General Electric Company
121 S.W. Salmon St., TB 10
Portland, Oregon, 97204

The applicant owns and operates a hydroelectric generating facility at Round Butte near Madras, Oregon.

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

2. Description of Facility

The claimed facility is a secondary containment structure at the Round Butte plant to contain transformer oil in the event of a spill.

The facility consists of a concrete curb around the transformers and a series of drain pipes to carry any spillage to an unused fish chamber. The fish chamber has been modified to seal it off from the rest of the structure so that any spilled oil would not find its way into water.

Claimed Facility Cost: $39,530.17
(Accountant's Certification was provided).

3. Procedural Requirements

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

The facility met all statutory deadlines in that:

a. The request for preliminary certification was filed March 13, 1984, more than 30 days before construction commenced on October 15, 1985.

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

c. Construction of the facility was substantially completed on October 30, 1987 and the application for final certification was found to be complete on September 22, 1988, within 2 years of substantial completion of the facility.

4. Evaluation of Application

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

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

Prior to construction of this facility there was a potential for approximately 17,000 gallons of oil to leak into Lake Simtustus in the event of a major spill. Cleanup crews can now reach the site and clean up any spillage because it will be contained.

b. Eligible Cost Findings

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

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

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

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

This facility generates no income so there is no return on the investment.

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

Other alternatives considered included installing an oily-water separator or stop valve to trap the oil in the event of a spill. However, these alternatives were found be to be more expensive than the constructed facility and did not provide any better containment.

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

There are no savings from the facility.

5) Any other factors which are relevant in establishing the portion of the actual cost of the facility properly allocable to the prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or properly disposing of used oil.

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

The actual cost of the facility properly allocable to pollution control as determined by using these factors is 100%.

5. Summation

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

b. The facility is eligible for final tax credit certification in that the sole purpose of the facility is to prevent a substantial quantity of water pollution and accomplishes this purpose by the elimination of industrial waste as defined in ORS 468.700.

c. The facility complies with DEQ statutes and rules.

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

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $39,530.17 with 100 percent allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-2468.

Jerry E. Turnbaugh:crw
WC3828
(503) 229-5374
September 22, 1988

Application No. T-2500

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Nehalem Valley Sanitary Service
917 Madison
Vernonia, OR 97064

The applicant owns and operates a garbage collection and recycling service at Vernonia, Oregon.

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

2. Description of Facility

The facility consists of equipment to furnish a recycling center and load recyclables for shipment to market. Major components are:

HL-3 Hooklift system
10 yd. glass box (3 compartment)
16.5 yd. open top drop box (for newsprint)

Claimed Facility Cost: $11,805

3. Procedural Requirements

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

The facility met all statutory deadlines in that:

a. The request for preliminary certification was filed January 29, 1988 less than 30 days before installation commenced on February 5, 1988. However, according to the process provided in OAR 340-16-015(1)(b) the application was reviewed by DEQ staff and the applicant was notified that the application was complete and that installation could commence.

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

c. Installation of the facility was substantially completed on April 28, 1988 and the application for final certification was found to be complete on June 1, 1988 within 2 years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the Department to recycle. The requirement is to comply with ORS 459.180 and OAR 340-60.

Recycling rules require that recycling facilities be provided at a landfill or at a location more convenient to the public. The applicant chose to locate the facility in the city of Vernonia rather than at the landfill.

The facility is currently in compliance with all Department rules.

b. Eligible Cost Findings

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

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

All waste products are converted into a salable or usable commodity consisting of glass cullet and newsprint.

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

Annual average cash flow consists of a $5,282 loss. This is based on a five-year income of $24,948 and operation costs of $51,362.

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

There are no known alternatives.

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

There is no savings from the facility. The cost of maintaining and operating the facility is $10,272 annually.

5) Any other factors which are relevant in establishing the portion of the actual cost of the facility properly allocable to the prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or properly disposing of used oil.

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

The actual cost of the facility properly allocable to pollution control as determined by using these factors is 100%.

5. Summation

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

b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department to recycle. The requirement is to comply with ORS 459.180 and OAR 340-60, which requires a landfill permittee to provide a place to recycle.

c. The facility complies with DEQ statutes and rules.

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

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $11,805.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-2500.

R.L. Brown:b
SB7755
(503) 229-6237
August 15, 1988

Application No. T-2501

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Eagle-Picher Minerals, Inc.
Subsidiary of Eagle-Picher Industries, Inc.
1755 E. Plumb Lane
Reno, NV 89502

The applicant owns and operates a diatomacheous earth processing plant near Vale, Oregon.

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

2. Description of Facility

The proposed facilities for tax credit relief consists of seven (7) Baumco Baghouses and related construction costs and equipment, waste bin and related equipment for containment of fugitive dust and hoppers for waste containment and storage; particulate materials captured by the baghouses are transported back to the quarry and buried.

Also included for tax relief are costs for asphalt paving beneath and surrounding the baghouses and process equipment to permit vacuuming and cleaning of spilled product.

Claimed Facility Cost: $1,104,431.62
(Accountant's Certification was provided).

3. Procedural Requirements

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

The facility met all statutory deadlines in that:

a. The request for preliminary certification was filed August 30, 1984 before construction commenced on May 1, 1985.

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

c. Construction of the facility was substantially completed on July 18, 1986, and the application for final certification was found to be complete on May 27, 1988, within 2 years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the Department to control air pollution. The requirement is to comply with Air Contaminant Discharge Permit number 23-0032.

This new facility started operations on or about July 18, 1986. It does not emit sufficient quantities of particulate matter to be subject to New Source Review, but must comply with Best Available Control Technology.

The projects completed and for which tax credit are herein applied, are considered to be Best Available Control Technology.

b. Eligible Cost Findings

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

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

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

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

There is no economic benefit to the applicant and there is no return on the investment in the facility.

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

The methods for controlling particulate matter chosen by the company are the best available; other control measures are inappropriate and would not be considered satisfactory by the Department.

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

There are no savings or increase in costs as a result of the installation of the facility.

5) Any other factors which are relevant in establishing the portion of the actual cost of the facility properly allocable to the prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or properly disposing of used oil.

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

5. Summation

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

b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department to prevent air pollution.

c. The facility complies with DEQ air pollution control statutes, rules and permit conditions.

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

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $1,104,431.62 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-2501.

Robert Harris:d
AD3443
(503) 229-5259
October 14, 1988

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION FILING EXTENSION

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1. Applicant

Willamette Industries, Incorporated
Executive Offices
3800 First Interstate Tower
Portland, OR 97201

2. Summation:

A fire at the facility which had received preliminary certification for tax relief was cause for a complete rebuild of the facility. Willamette Industries needs added time to determine which costs are associated with pollution control in order to complete the final application.

3. Recommendation:

It is recommended that a 180 day extension period be granted to Willamette Industries, Incorporated.

Christie Nuttall
October 10,1988

Willamette Industries, Inc.

Executive Offices

3800 First Interstate Tower

Portland, Oregon 97201

503/227-5581

September 23, 1988

State of Oregon
Department of Environmental Quality
Management Services Department
811 SW Sixth Avenue
Portland, OR 97204

Re: Willamette Industries, Inc.
Extension Request for Filing Application for Final Certification
AQ File 22-0143, NC 2112

Gentlemen:

Willamette Industries, Inc. herby requests an extension of 180 days until March 27, 1989, pursuant to OAR 340-16-020(1)(e), to complete and receive approval for the above-reference Application for Final Certification of Pollution Control Facility for Tax Relief Purposes.

Per our books and records, Willamette's Duraflake Project #153 - Dry Material Systems Revision was totally completed and placed in service on September 30, 1986. A portion of this project had been preliminarily certified as qualifying for the Oregon Pollution Control Credit (AQ File 22-0143, NC 2112). Since the completion of this project, Willamette has been trying to gather and document data which breaks down the project between components eligible for the pollution control credit and those not eligible. Of the approximately $2.5 million project, only roughly 40% appears eligible for the credit. We have experienced difficulty in documenting the eligible portion of this project in a manner which will satisfy the Certified Public Accountants who certify to the eligible costs of the project. Because of this difficulty, we are unable to meet the two year deadline for filing the DEQ's Application for Final Certification pursuant to OAR 340-16-020(1)(d) of September 30, 1988. We therefore request an extension of 180 days until March 27, 1989, pursuant to OAR 340-16-020(1)(e), to complete and receive approval for the above-reference Application for Final Certification of Pollution Control Facility for Tax Relief Purposes. Please note that we intend to file the application within 90 days of today's date, but we are requesting a 180 day extension in case the DEQ requests additional information.

Cordially,

WILLAMETTE INDUSTRIES, INC.

Jim Aden
Assistant Tax Manager

JPA/jm

State of Oregon

Department of Environmental Quality

REISSUANCE OF POLLUTION CONTROL FACILITY CERTIFICATION

1. Certificate issued to :

Columbia Willamette Leasing, Inc.
101 SW Main Street, Suite 850
Portland, OR 97204

The certificate was issued for a Solid Waste resource recovery facility.

2. Summation:

In December of 1986, the EQC issued pollution control facility Certificate #1902 to Columbia Willamette Leasing. PacifiCorp Financial Services is purchasing the facility and it is requested that the certificate be revoked and reissued to PaciCorp.

3. Director's Recommendation:

It is recommended that Certificate Number 1902 be revoked and reissued to PacifiCorp Financial Services; the certificate to be valid only for the time remaining from the date of the first issuance.

C. Nuttall
229-6484
October 11, 1988

Certificate 1902

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Date of Issue 22 Dec 1986

Application No. T-1841

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To:	Location of Pollution Control Facility:
Columbia Willamette Leasing, Inc. 101 SW Main St., Suite 850 Portland, OR 97204	Brooks, Oregon

As: ☐ Lessee ☐ Owner ☒ Beneficial Interest Holder

Description of Pollution Control Facility:

Solid Waste resource recovery facility

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

Date Pollution Control Facility was completed: September 30, 1986 Placed into operation: Sept. 30, 1986

Actual Cost of Pollution Control Facility: $2,135,027.00

Percent of actual cost properly allocable to pollution control:

75 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 818, 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. Peterson

Title James E. Peterson, Chairman

COLUMBIA WILLAMETTE LEASING, INC.

October 11, 1988

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

Re: Columbia Willamette Leasing: Pollution Control Facility Tax Credit Transfer

Dear Ms. Taylor:

Attached are several documents related to the pending transfer of the remaining Pollution Control Tax Credits to PacifiCorp Financial Services:

1) Letter from Columbia Willamette Leasing giving notice of the sale;

2) A draft of a letter from PacifiCorp Financial Services requesting reissuance of the Pollution Control Facility Tax Credit Certificate;

3) A copy of the ruling from the Department of Revenue.

PacifiCorp Financial Services will send an executed copy of the letter by the end of the week. Thank you for your assistance in this matter, and if there are any questions, please do not hesitate to call.

Sincerely,

Joseph M. Hirko
Vice President

JMH:cwr
Enclosures

COLUMBIA WILLAMETTE LEASING, INC.

October 10, 1988

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

Re: Columbia Willamette Leasing: Pollution Control Facility Tax Credit Transfer

Dear Ms. Taylor:

In December of 1986, Columbia Willamette Leasing purchased from Ogden Corporation the Pollution Control Tax Credits associated with the Solid Waste Resource Recovery Facility located in Brooks, Oregon. On December 22, 1986, Columbia Willamette Leasing was issued Oregon Pollution Control Facility Tax Credit Certificate No. 1902, Application No. T-184T. On or before November 3, 1988, Columbia Willamette Leasing will sell to PacifiCorp Financial Services all remaining credits along with the preferred stock in Ogden Land, the vehicle which established the beneficial interest.

The transaction has received a favorable ruling from the Department of Revenue, which is attached for your review. After tax year 1987, Columbia Willamette Leasing will not claim the Pollution Control Tax Credits associated with this facility. PacifiCorp Financial Services will presumably request reassignment of the credit to them.

Please let me know if there are any questions.

Sincerely,

Joseph M. Hirko
Vice President

JMH:cwr

PACIFICORP
FINANCIAL
SERVICES

Steven F. Rafoth

111 S.W. Fifth Avenue, Suite 2900
P.O. Box 1531
Portland, Oregon 97207
503/274-6535 FAX 503/274-6545

Executive Vice President
Chief Financial Officer

October 13, 1988

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

Re: Columbia Willamette Leasing - Pollution Control Facility Tax Credit Transfer

Dear Ms. Taylor:

On or before November 3, 1988, PacifiCorp Financial Services, Inc. will purchase from Columbia Willamette Leasing the preferred stock of Ogden Land along with the remaining Oregon Pollution Control Facility Tax Credits associated with the Solid Waste Resource Recovery Facility in Brooks, Oregon. Columbia Willamette Leasing was originally issued Pollution Control Facility Certificate No. 1902 on December 22, 1986.

Please take the necessary action to reissue the Certificate in the name of PacifiCorp Financial Services, Inc. Beginning with the tax year 1988, PacifiCorp Financial Services will claim the remaining credits as provided in the attached ruling provided by the Department of Revenue. If you have any questions regarding this matter, please let us know.

Best regards,

Steven F. Rafoth
Executive Vice President and
Chief Financial Officer

SFR:kap

Enclosure

cc: Joe Hirko, Columbia Willamette Leasing

NEIL GOLDSCHMIDT
GOVERNOR

Oregon Department of Revenue

REVENUE BUILDING
955 CENTER STREET, N.E.
SALEM, OREGON 97310

October 6, 1988

PacifiCorp Financial Services, Inc.
Attn: Mr. William E. Peressini, Vice President, Finance
111 SW Fifth Ave., Suite 2800
Portland, OR 97204

Columbia Willamette Leasing
Attn: Mr. Joseph M. Hirko, Vice President
121 SW Salmon St., Suite 1000
Portland, OR 97204

Ms. Cheryl Chevis
Perkins Coie
111 SW Fifth Ave., Suite 2500
Portland, OR 97204

Pollution Control Facility Tax Credit
for Ogden Martin Facility in Marion County

By letter dated April 25, 1988, you requested a ruling from the Oregon Department of Revenue on the tax incidents of a proposed transfer of the preferred stock of Ogden Martin Land Corporation, an Oregon corporation ("Land") from Columbia Willamette Leasing, Inc., an Oregon corporation ("Columbia") to PacifiCorp Financial Services, Inc., an Oregon corporation ("PFS"). By a ruling dated December 11, 1986, (the "Letter Ruling"), the Oregon Department of Revenue (the "Department") ruled that the stock in Land which is the subject of the proposed transfer represented a beneficial interest in the mass burn, solid waste disposal, electric power generating, resource recovery facility (the "Facility") constructed in Marion County, Oregon, and operated by Ogden Martin Systems of Marion, Inc. ("Ogden Marion"). The Environmental Quality Commission ("EQC") has previously certified 75 percent of the Facility's actual cost as allocable to pollution control. In particular, rulings regarding the ability of PFS to claim the pollution control facility tax credits (the "Credits") for which the facility was certified were requested.

I. PARTIES AND BACKGROUND FACTS

1.01 Facility. The Facility has been certified by the EQC for Oregon pollution control facility tax credits pursuant to ORS 468.155 et seq. On December 22, 1986, the EQC issued its Pollution Control Facility Certificate (the "Certificate") to Columbia which certified 75 percent of the $52,335,027 costs incurred with respect to the Facility as costs properly allocable to pollution control.

1.02 Land. Land, TIN 13-3369730, was incorporated September 16, 1986. Land acquired the land (the "Site") on which the Facility is located on December 11, 1986. By reason of owning the Site and leasing it to the owner and operator of the Facility, land acquired a beneficial interest in the Facility, as concluded in the Letter Ruling (§ 3.01(2)(a)). Land's only activity is the owning and leasing of the Site to Ogden Martin Systems of Marion, Inc., an Oregon corporation, the owner and operator of the Facility.

1.03 Columbia. Columbia, an Oregon corporation, TIN 93-0851591, was incorporated February 1, 1984. On December 22, 1986, Columbia acquired all of Land's preferred stock. Such stock is "participating," that is, the owners of the preferred stock are entitled to annual preferred dividends which are, in part, based on the rent received from the Facility for lease of the Site. Columbia paid Ogden Marion for the allocation of the costs and, therefore, the pollution control facility Credits to Columbia. Because of this ownership of Land's preferred stock, and because of the amount paid for the Credits, Columbia was determined to hold a beneficial interest in the Facility, as stated in the Letter Ruling (§ 3.01(2)(a)).

1.04 Allocation and Amortization of Tax Credits. Pursuant to a Statement of Allocated Costs dated December 22, 1986, (the "Transfer Agreement"), Columbia was allocated all "certified costs" of the Facility certified by the EQC in the Certificate as properly allocable to pollution control. This entitled Columbia to claim all the Credits, including all Credits available in 1986. Based on the Certificate and former ORS 316.097 and ORS 317.116, the total amount of Credits allowable with respect to the Facility was $19,625,635. Pursuant to ORS 316.097(2)(a) and ORS 317.116(2)(a), the Credits must be claimed or "amortized" within a ten tax-year period beginning in 1986, the year in which the Facility was certified. The maximum amount of Credit allowed in any year is $1,962,563.50 (one-tenth of the total amount of Credits) or the tax liability of the taxpayer, whichever is less, with any excess of $1,962,563.50 over such tax liability being carried forward to subsequent years, as provided in ORS 316.097 and ORS 317.116 and as held in the Letter Ruling (§§ 3.01(2)(c) and (3)).

1.05 Use of Credits. For its taxable year ended December 31, 1986, Columbia was eligible to claim $1,962,563.50 of the Credits against its Oregon Corporation Excise Tax liability.

For its taxable year ended December 31, 1987, Columbia will be eligible to claim the same amount of Credits against its Oregon Corporation Excise Tax liability for such year and carry over any excess to apply against future Oregon Corporation Tax liabilities, as provided by law.

1.06 Legislative Changes. The statutory provisions providing for pollution control facility tax credits were modified by 1987 Oregon Laws, Chapter 596 (sometimes referred to as the "1987 legislation"), which took effect September 27, 1987.

Sections 2 and 3 of 1987 Oregon Laws, Chapter 596 changed the wording of ORS 316.097(4) and ORS 317.116(4), respectively, to delete the references to "beneficial interests" and to indicate that such tax credits are available to an owner or lessee of a certified pollution control facility. The provisions of 1987 Oregon Laws, Chapter 596, do not expressly address their effect on the pollution control facility tax credits for a facility relating to costs that were first certified by the EQC prior to September 27, 1987, the transferability of a beneficial interest in such a facility, or the allocation of such credits upon transfer of a beneficial interest.

1.07 Administrative Rule. In December 1987, the Department amended its administrative rule OAR 150-316.097(4) (the rule as amended, the "Administrative Rule"), to take into account the passage of 1987 Oregon Laws, Chapter 596. The Administrative Rule provides, in relevant part, as follows:

> "(2)(a) For a resource recovery facility certified on or after November 1, 1981, and prior to September 27, 1987, the credit is allowable to taxpayers who own, lease, or have a beneficial interest in the facility. "Beneficial interest" refers to the right to receive a profit, benefit, or other advantage from the facility. That right must be conveyed by a contract or other written document. A capital investment is required. Beneficial interest includes but is not limited to a partner's interest in a partnership owning part or all of the facility, or a contract purchaser's interest in a facility. If more than one taxpayer has an interest in the facility, the cost may be allocated between them. It is not necessary that the cost be allocated according to percentage of interest. The total costs allocated cannot exceed the total certified cost.
>
> ". . .
>
> "(c) For purposes of (a) . . . it is not necessary that the taxpayer receiving the credit operate or use the facility in the business.
>
> "(d) The taxpayer to whom the certificate is issued must file a written statement with the Department of Revenue not later than the final day of the first tax

year for which a tax credit is claimed. For resource recovery facilities certified prior to September 27, 1987, the statement must designate the persons to whom the certified costs have been allocated and the cost allocated to each."

1.08 PFS. PFS, TIN 93-0369631, was incorporated May 26, 1949. PFS presently has no legal interest in the Facility.

II. PROPOSED TRANSACTIONS

2.01 Transfer of Beneficial Interest. Subject to receipt of the requested rulings, Columbia has agreed to transfer to PFS, and PFS has agreed to purchase from Columbia, the preferred stock of Land now owned by Columbia. The parties' intent and desire is that this stock transfer will transfer Columbia's beneficial interest in the Facility, and with it, the right to claim the remaining unamortized Credits allocable to taxable years beginning after December 31, 1987. The parties intend to allocate to PFS all the Credits for taxable years beginning on or after January 1, 1988, and the remaining unamortized Credits allocable to taxable years beginning in 1989 through 1995.

III. RULINGS

3.01 Based upon the foregoing, the following rulings are given:

(1) The amendments enacted by 1987 Oregon Laws, Chapter 596, do not apply to the Facility to deny, recapture, or diminish the total Credit available with respect to the Facility which were based on and determined by the costs certified by the EQC as of December 22, 1986.

(2) The amendments enacted by 1987 Oregon Laws, Chapter 596, do not apply to Columbia to deny, recapture, or diminish the Credits allowable to Columbia.

(3) Upon the transfer of the preferred stock in Land to PFS, PFS will be treated as having a "beneficial interest" in the Facility within the meaning of ORS 316.097(4)(a)(C) and ORS 317.116(4)(a)(C) as in effect prior to the enactment of 1987 Oregon Laws, Chapter 596, and as a result PFS will be entitled to claim the unamortized Credits, provided PFS obtains a transferee certificate from EQC, if necessary, and provided the facility continues to be used for pollution control under the provisions of law applicable. The amount of the Credits available to PFS are the amounts not yet allowable to Columbia, based on and determined by the costs certified by the EQC as of December 22, 1986.

(4) Upon transfer of the preferred stock in Land to PFS, pursuant to written agreement between PFS and Columbia, all the Credits for taxable years beginning on or after January 1, 1988, may be properly allocated to, and claimed entirely by, PFS.

(5) Upon transfer of the preferred stock in Land to PFS, all Credits for taxable years beginning in 1989 through 1995, with respect to the Facility may be claimed entirely by PFS.

(6) Under ORS 316.097(2) and ORS 317.116(2), the maximum amount of Credits claimed by PFS in any one year will be limited to the lesser of (i) the amount of Oregon income or excise tax liability for such year of the unitary group filing a consolidated Oregon tax return of which PFS is a member or (ii) one-tenth of the total Credits with respect to the Facility, with allowance for carry forwards as provided in ORS 316.097(9) and ORS 317.116(9).

(7) The Credits carried forward shall be claimed in the order of the year in which they accrue. In other words, the earliest carry forwards shall be used prior to later carry forwards or Credits for the then current tax year which may otherwise be available.

(8) Any carry forward may be added to the one-tenth of the total Credits allowable in each year, so that in carry forward years, more than one-tenth of the total Credits may be used if Columbia's or PFS's, as the case may be, tax liability is otherwise sufficiently large.

(9) Any unused Credits of Columbia being carried forward may continue to be used by Columbia (subject to the limitation of ORS 316.097(9) and ORS 317.116(9)) (i) after Columbia sells all of its preferred stock in Land and (ii) even if the EQC certificate has been revoked, except as otherwise provided under the recapture rules in ORS Chapter 468.

(10) Any unused Credits of PFS being carried forward may continue to be used by PFS (subject to the limitation of ORS 316.097(9) and ORS 317.116(9)) (i) after PFS sold the preferred stock in Land and (ii) even if the EQC certificate has been revoked, except as otherwise provided under the recapture rules in ORS Chapter 468.

(11) Upon transfer of the preferred stock in Land to PFS, PFS can claim the Credits allocable to it, starting in its taxable year beginning in 1988, regardless of the timing of the use, if any, of any unused Credits of Columbia carried forward by Columbia.

(12) There is no provision for recapture of properly claimed Credits except as provided under ORS 468.185(3), and the collection procedures specified by ORS 314.255.

(13) If PFS transfers, or otherwise disposes of any of its stock in Land, the transferees would have to qualify for the available unamortized credits according to the provisions contained in ORS 316.097, or 317.116, and the administrative rules thereunder.

(14) After the transfer of the preferred stock in Land from Columbia to PFS, PFS shall contact the EQC for the purpose of either confirming that the current certificate is valid, or obtaining a transferee Pollution Control Facility Certificate.

(15) These rulings are binding on the department and may be relied upon by Ogden Marion, Land, Columbia, and PFS and their successors or assigns to the same extent as though it were separately addressed to them, provided that the facts and circumstances are not different from those set forth in the ruling request and upon which the ruling was issued.

Department of Revenue

By: Cynthia A. Chinnock
Title: Supervisor, Corporation Section, Audit Division

cc: Elizabeth Stockdale
Donald H. McNeal
Jack Strauss

mb/0300U

Wrong Tax credit

Environmental Quality Commission

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

REQUEST FOR COMMISSION ACTION

Agenda Item D, November 4, 1988, EQC Meeting

Pollution Control Tax Credit

ISSUES

There is a request for an extension of 180 days from Willamette Industries, Inc. on submission of their final application for tax credit on a pollution control device which was given preliminary approval by the Department in 1985. Applicants are required to make final application within two years of facility completion. Only the Commission can grant an extension under the statute. The facility where pollution control equipment was to have been installed burned and required a complete rebuild of the facility. Because the construction included both the facility and the pollution control equipment, it is legitimate to concur that the company may need added time to determine which portions are costs associated with the pollution control equipment. The Department is thus recommending approval of their request.

There is a request for the revocation and reissuance of a pollution control tax credit from Columbia-Willamette Leasing (Ogden-Martin) to Pacific Corp. When the pollution control tax credit was issued on the Ogden Martin marion County Garbage burner, the tax credits were sold to a company called Columbia Willamette Leasing. This sale was allowable under Department of Revenue statutes. During the 1987 Legislative Session the sale of tax credits was deleted as an allowable practice. Pacific Corp. has received a ruling from the Department of Revenue indicating that sale of a company which holds tax credits they purchased under the previous law is allowable. Our statute provides that we will revoke and reissue tax credits in accordance with provisions of the Department of Revenue statute. The item included in this report handles this revocation and reissuance as it would any typical sale of a business and relies upon the Department of Revenue ruling as an interpretation of the sale being in accordance with their statutory provisions. The staff report recommends approval by the EQC of the tax credit transfer.

Director's Recommendation

1. Issue tax credit certificates for pollution control facilities listed in the report.

2. Revoke Certificate #1902 issued to Columbia-Willamette Leasing (Ogden-Martin) and reissue to Pacific Corporation.

3. Extend, for a period of 180 days, Willamette Industries Final Tax Credit filing deadline.

AD3772

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item D, November 4, 1988, EQC Meeting

TAX CREDIT APPLICATIONS

Issue tax credit certificates for pollution control facilities:

Appl. No.	Applicant	Facility
T-1902	Portland General Electric Oak Grove Plant	Oil spill containment
T-2116	Smurfit Newsprint Corp.	Sludge Dewatering System
T-2160	Portland General Electric Madras Plant	Oil Collection System
T-2341	Timber Products Co.	Cartridge Dust Filter
T-2468	Portland General Electric Round Butte	Oil Spill Containment
T-2500	Nehalem Valley Sanitary Service	Recycling Equipment
T-2501	Eagle-Picher Minerals, Inc.	7 Baumco Baghouses

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR COMMISSION ACTION

Agenda Item E, November 4, 1988, EQC Meeting

Request for Authorization to Conduct a Public Hearing on Proposed Environmental Cleanup Rules Regarding Delisting of Facilities Listed on the Inventory and Establishing a Process to Modify Information Regarding Facilities Listed on the Inventory, OAR 340-122-310 to 340.

SUMMATION

In 1987 the Legislature enacted a provision in the Oregon superfund law to determine the extent and nature of hazardous substance releases throughout the state. A portion of that statute, codified as ORS Chapter 466, requires the Department to develop and compile an Inventory of confirmed releases of hazardous substances.

While the statute provided a detailed process for adding sites to the Inventory, the statute did not provide a mechanism for removing sites from the list or modifying information about the sites. To that end, the Department proposes that the Commission authorize the Department to take testimony at a public hearing on the proposed rules. These rules provide a procedure and criteria for delisting facilities from the Inventory and for modifying information contained in the Inventory.

DIRECTOR'S RECOMMENDATION

It is recommended that the Commission authorize a public hearing to take testimony on the proposed rules to provide a procedure and criteria for delisting facilities from the Inventory and modifying information in the Inventory regarding facilities.

October 19, 1988

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item E, November 4, 1988, EQC Meeting

Request for Authorization to Conduct a Public Hearing on Proposed Environmental Cleanup Rules Regarding Delisting of Facilities Listed on the Inventory and Establishing a Process to Modify Information Regarding Facilities Listed on the Inventory, OAR 340-122-310 to 340.

BACKGROUND

The 1987 Oregon Legislature enacted Senate Bill 122, codified as ORS Chapter 466, to provide for discovery, assessment and cleanup of hazardous substance releases throughout the state. A portion of the statute requires the Department to develop and compile an Inventory of confirmed releases of hazardous substances.

ORS 466.557(1) states that "for the purpose of public information, the Director shall develop and maintain an Inventory of all facilities where a release (of hazardous substance) is confirmed by the Department." The Inventory is being developed by reviewing Department files and other government agency information, and requesting input from the public. Evidence such as laboratory data, an observation by a Department inspector, or an admission by the facility owner is used to confirm a release of a hazardous substance. The Inventory is a state-wide list of facilities covering all Department programs and will contain specific information regarding each facility. ORS 466.557(5) requires the Department to submit the Inventory to the Governor, the Legislative Assembly and the Environmental Quality Commission on or before January 15, 1989 and annually thereafter. The portion of the statute referring to the Inventory, ORS Chapter 466, is attached (Attachment V).

While the statue clearly outlines how a facility is listed on the Inventory, it did not contemplate a similar process for removing facilities from the list. The Department wanted to provide a mechanism for delisting facilities at completion of cleanup so owners who act responsibly are not penalized and the cloud on the property title can be removed. Furthermore, the U.S. Environmental Protection Agency maintains a list similar to the Inventory, the CERCLIS, where there is no provision for delisting. The Department did not want to there to be the same problems with the Inventory as owners and the public have experienced with the CERCLIS due to the lack of delisting provisions.

The purpose of these proposed rules is to provide a process and the criteria for delisting facilities from the Inventory and making modifications to information on the Inventory. The proposed rules provide a formal procedure for both owners of facilities and the Department to delist facilities from the Inventory. Additionally, the proposed rules provide a formal procedure for owners, other persons listed on the Inventory pursuant to ORS 466.557(3)(d), and the Department to modify information included in the Inventory. ORS 466.553 provides the Commission with the authority to "adopt rules necessary to carry out the provisions of ORS 466.540 to 466.590 and 466.900."

Pursuant to requirements of ORS 466.555, the Department obtained advice from the Remedial Action Advisory Committee (RAAC). The committee consists of 22 members representing citizens, local governments, environmental organizations and industry. A draft of the proposed rules was provided to the RAAC for their review and comment. The RAAC met on October 4, 1988. A list of advisory committee members is attached. (Attachment IV.) In addition, legal counsel from the Department of Justice reviewed and provided comments on the proposed rules.

ALTERNATIVES AND EVALUATION

The Department considered three alternatives to address the issues of delisting and modification to the Inventory. These alternatives, discussed below, include: 1) no action, 2) use of the contested case procedure provided in ORS 466.557(4), and 3) current recommendation to propose rules for delisting and modifications to the Inventory.

Alternative #1: No Action

Initially, the Department considered using only ORS 466.557, which did not provide a mechanism for removing facilities from the Inventory. The statute also did not contemplate modifications to the Inventory when new data or changes in facility conditions might require updating facility information. For these reasons, the Department decided to reject the no action alternative.

Alternative #2: The Contested Case Appeal Procedure

Pursuant to ORS 466.557(4), the decision of the Director to add a facility may be appealed in writing to the Commission. The facility owner has 15 days from the date of receiving notice of the initial listing to request a contested case appeal. If the Commission so decides, a facility may be delisted using the contested case appeal process. This alternative does not allow for delisting a facility from the Inventory following the first 15 days after the owner has received notice nor does it allow for modifications to information contained in the Inventory. It also does not allow for the Director to initiate the delisting or modification process. For these reasons, the Department decided to reject the use of the contested case procedure as the only mechanism for delisting from the Inventory.

Alternative #3: Propose Rules to Provide for Delisting of Facilities from the Inventory and Modifications to Inventory Information

The Department and the RAAC, of those who were present, recommend the proposed rules to provide standard procedures for delisting facilities from the Inventory and modifying Inventory information.

According to the statute, the purpose of the Inventory is to provide public information on contaminated facilities. It would not serve the statutory purpose for facilities to remain on the Inventory when contamination had been satisfactorily addressed. Furthermore, responsible parties who have remediated facilities by meeting the criteria set forth in the proposed rules should not be disadvantaged by the continued listing of the facility.

SUMMARY OF MAJOR ELEMENTS AND IMPACT

Definitions 340-122-315

The definition in the proposed rules is in addition to those provided in ORS 466.540. It is a statutory term that needs clarification.

Delisting Process 340-122-320

The rules require an owner to submit a written petition to the Director which demonstrates compliance with the criteria set forth in OAR 340-122-330(2) and (3). The proposed rules also provide a parallel procedure for use by the Department. OAR 340-122-330(4)

Public Notice and Participation 340-122-325

Before delisting a facility, the proposed rules require the Department to provide public notice and opportunity to comment. The notice includes a brief description of the reason for delisting and information on how to get a copy of the delisting

petition or proposal. The rules require the Department to publish notice in the Secretary of State's Bulletin, notify a local paper of general circulation, and make a reasonable effort to identify and notify interested community organizations. The rules require the Department to conduct a public meeting upon written request by 10 or more persons or by a group having 10 or more members.

A category of sites on the Inventory that may submit delisting petitions is leaking underground storage tanks being cleaned up pursuant to OAR 340-122-245, the soil cleanup matrix. These sites will be subject to public notice upon delisting but not the public hearing opportunity. Cleanup resulting from leaking underground storage tanks is usually conducted on an expedited basis before public comment can be submitted or considered and is often limited to removal of petroleum contaminated soils.

The proposed rule requires the Department to make delisting petitions and proposals and pending and completed delisting actions available to the public.

Determination by the Director 340-122-330

The proposed rules require the Director to consider written delisting petitions submitted by an owner. They also provide an opportunity for the Department to initiate delisting proposals. The Director shall delist a facility under three circumstances. First, the Director shall delist a facility if actions performed at the facility have attained a degree of cleanup that assure protection of present and future public health, safety, welfare and the environment. Secondly, the Director shall delist if no action is required to assure protection of present and future public health, safety, welfare and the environment. Third, the Director shall delist if it is determined that no release of a hazardous substance has occurred and the facility does not meet the statutory requirements for listing on the Inventory.

The proposed rules also identify a type of facility that the Director shall not delist. Facilities where continuing environmental controls or restrictions are necessary to assure protection of present and future public health, safety, welfare and the environment shall not be delisted. This is necessary because artificial controls may be disturbed over time and contamination on-site still remains. The public must continue to be aware of these facilities until such time as the controls are no longer necessary.

The proposed rules require the Director to issue an administrative order stating the reasons for granting or denying the petition or proposal for delisting.

To provide the most current information to the public, the proposed rules require updating the Inventory as soon as the

Director determines to delist or modify information regarding a facility.

Appeal Process 340-122-335

An appeal process is provided for the owner if the Director denies the delisting petition. The appeal shall be conducted in accordance with the provisions of ORS 183.310 to 183.550 governing contested cases. (Attachment VI) This is the same contested case appeal procedure an owner may use to contest the initial listing of the facility on the Inventory.

Request for Modification 340-122-340

Based on adequate documentation or investigation, the owner, other persons listed in the Inventory pursuant to ORS 466.557(3)(d), and the Department have the opportunity to modify information regarding Inventory facilities. This is a much less complex process than delisting, without the opportunity for public comment and the Director's formal determination. It will be used to update information about the facility which may be required due to a change in facility ownership or clarification of facility specific conditions.

DIRECTOR'S RECOMMENDATION

It is recommended that the Commission authorize a public hearing to take testimony on the proposed rules to provide a procedure and criteria for delisting facilities from the Inventory and modifying information in the Inventory regarding facilities.

Fred Hansen

Attachments

I. Proposed OAR 340-122-310 to 340
II. Rulemaking statements: Statement of Need for Rulemaking, Land Use Consistency, Fiscal and Economic Impact
III. Public Hearing Notice
IV. List of Remedial Action Advisory Committee Members
V. ORS 466.540 to 466.590
VI. ORS 183.310 to 183.550

Sara Laumann:sll
229-6704
October 19, 1988

Attachment I
Agenda Item E
November 4, 1988
EQC Meeting

PROPOSED DELISTING AND MODIFICATION RULES
OAR 340-122-310 to 340-122-340

340-122-310 PURPOSE

These rules establish the process to remove a facility from listing on the Inventory.

These rules also establish the process to modify information regarding a facility listed on the Inventory.

340-122-315 DEFINITIONS

Terms defined in this section have the meanings set forth in ORS 466.540. The additional term is defined as follows:

(1) "Inventory" means the list of facilities and information regarding facilities developed and maintained by the Department pursuant to ORS 466.557.

340-122-320 **DELISTING PROCESS**

(1) An owner of a facility listed on the Inventory may request that the Director delist a facility from the Inventory.

(2) The owner making the request shall submit a written petition to the Director setting forth the grounds of the request. The petition shall contain any information as may be reasonably required by the Director to enable the Director to determine whether the facility shall be delisted, including but not limited to information regarding the criteria set forth in OAR 340-122-330(2) and (3).

(3) The Department may initiate a delisting in accordance with OAR 340-122-310, 340-122-315, 340-122-325, and 340-122-330.

340-122-325 **PUBLIC NOTICE AND PARTICIPATION**

(1) Prior to approval of a delisting petition submitted by an owner or a delisting proposal developed by the Department, the Department shall:

(a) Publish a notice and brief description of the proposed action in the Secretary of State's Bulletin, notify a local paper of general circulation and make copies of the proposal available to the public;

(b) Make a reasonable effort to identify and notify interested persons or community organizations;

(c) Provide at least 30 days for submission of written comments regarding the proposed action,

(d) Upon written request by 10 or more persons or by a group having 10 or more members, conduct a public meeting at or near the facility for the purpose of receiving verbal comment regarding the proposed action, except for a petition submitted by an owner pursuant to a cleanup action completed in accordance with OAR 340-122-245; and

(e) Consider any written or verbal comments before approving the delisting of the facility from the Inventory.

(2) If public notice and participation is provided at completion of a cleanup action, that notice may also include notice under this section, if applicable.

(3) Agency records concerning the delisting of a facility shall be made available to the public in accordance with ORS 192.410 to 192.505, subject to exemptions to public disclosure, if any, under ORS 192.501 and 192.502. The Department shall maintain and make available for public inspection and copying a record of pending and completed delisting actions to be located at the headquarters and regional offices of the Department.

(4) Unless a determination is made under OAR 340-122-330(2)(b) or (c), the persons(s) liable under the authority used by the Department shall pay the Department's cost of delisting the facility from the Inventory.

340-122-330 DETERMINATION BY DIRECTOR

(1) In making a delisting determination, the Director shall consider:

(a) any delisting petitions submitted under OAR 340-122-320;

(b) any public comments submitted under OAR 340-122-325; and

(c) any other available relevant information.

(2) The Director shall delist a facility if:

(a) the Director determines actions performed at the facility listed on the Inventory have attained a degree of cleanup of the hazardous substance and control of further release of the hazardous substance, or other actions, that assure protection of present and future public health, safety, welfare and the environment;

(b) the Director determines that no action is required at the facility listed on the Inventory to assure protection of present and future public health, safety, welfare and the environment; or

(c) the Director determines no release of hazardous substance has been confirmed at the facility.

(3) The Director shall not delist a facility listed on the Inventory if continuing environmental controls or

restrictions are necessary to assure protection of present and future public health, safety, welfare and the environment.

(4) The Director shall issue an administrative order stating the reasons for granting or denying the petition or proposal for delisting.

(5) Delistings and modifications to the Inventory shall be made immediately upon the Director's determination.

340-122-335 **APPEAL PROCESS**

(1) The owner may appeal any administrative order issued by the Director denying any delisting petition.

(2) The appeal shall be conducted in accordance with provisions of ORS 183.310 to 183.550 governing contested cases.

340-122-340 **MODIFICATION PROCESS**

(1) An owner of a facility listed on the Inventory, or other persons named pursuant to OAR 340-122-340 (3)(d), may request that the Director modify information regarding such facility. The person(s) making the request shall submit a written petition to the Director setting forth the grounds of the request.

(2) Any of the following items included in the Inventory pursuant to ORS 466.557 are subject to modification:

(a) A general description of the facility;

(b) Address or location;

(c) Time period during which a release occurred;

(d) Name of current owner(s) and operator(s) and names of any past owners and operators during the time period of a release of a hazardous substance;

(e) Type and quantity of a hazardous substance released at the facility;

(f) Manner of release of the hazardous substance;

(g) Levels of hazardous substance, if any, in ground water, surface water, air and soils at the facility;

(h) Status of removal or remedial actions at the facility; or

(i) Other items the Director has determined are necessary.

(3) Based on adequate documentation or investigation the Director may modify information regarding a facility listed on the Inventory. The Director's decision regarding a modification request is not agency order subject to judicial review or appeal to the Environmental Quality Commission.

Sara Laumann:sll
229-6704
October 19, 1988

Attachment II
Agenda Item E
November 4, 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.

(1) Legal Authority

ORS 466.553(1) authorizes the Environmental Quality Commission to adopt rules, in accordance with the applicable provisions of ORS 183.310 to 183.550, necessary to carry out the provisions of ORS 466.540 to 466.590. In addition, ORS 468.020 authorizes the Commission to adopt such rules and standards as it considers necessary and proper in performing the functions vested by law in the Commission.

(2) Need for the Rule

ORS 466.557 requires the Director to develop and maintain an Inventory of all facilities where a release is confirmed by the Department. Although the law provides for listing of a facility on the Inventory, it does not provide a process for delisting facilities from the Inventory or making modifications to the Inventory. Rules are needed to guide the decision making process for delisting facilities and making modifications to the Inventory information.

(3) Principal Documents Relied Upon in this Rulemaking

-- ORS 466.540 to 466.575

This document is available for review during normal business hours at the Department's office, 811 SW Sixth, Portland, Oregon, Ninth Floor.

LAND USE CONSISTENCY

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

The proposal is consistent with Goal 6. The rule complies with Goal 6 by providing current information regarding the environmental status of property. The rule does not appear to conflict with the other Goals.

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

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

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

FISCAL AND ECONOMIC IMPACT

These proposed rules will have an impact on property owners, including, but not limited to, state agencies, private property owners, local government, and small and large businesses.

Any governmental agency or business that currently owns property that is listed on the Inventory of confirmed releases may be subject to the provisions of these rules.

Indirect costs of delisting may include the cost of developing supporting documentation to demonstrate the criteria for delisting have been met. For example, a large, heavily contaminated facility may require an extensive endangerment assessment to demonstrate that cleanup of the facility is protective. However, the direct cost of developing a delisting petition and associated transactional costs is expected to be relatively small, usually less that $5,000.

Owners who successfully delist a facility benefit financially from the delisting. A contaminated facility may be viewed by the financial community as a liability while delisted property may be a financial asset.

Sara Laumannn:sll
(503) 229-6704
October 19, 1988

Attachment III
Agenda Item E
November 4, 1988
EQC Meeting

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON . . .

Public Hearing on Delisting from and Modifications to the Inventory of Facilities with Confirmed releases of Hazardous Substances

Hearing Date: 12/6/88
Comments Due: 12/6/88

WHAT IS PROPOSED:

The Department of Environmental Quality (DEQ) proposes that the Environmental Quality Commission (EQC) adopt rules regarding delisting from and modifications to the Environmental Cleanup Division's Inventory of facilities with confirmed releases of hazardous substances. The Inventory is developed and maintained by the Department pursuant to ORS 466.557. The proposed rules (OAR Chapter 340, Division 122) provide a formal procedure for both owners of facilities and the Department to delist facilities from the Inventory. Additionally, the proposed rules provide a formal procedure for owners and the Department to modify information included in the Inventory.

WHO IS AFFECTED:

The proposed rules will affect persons who currently own a facility that is listed on the Inventory, as specified in ORS 466.557. Also affected may be citizens who live near facilities contaminated with hazardous substances.

WHAT ARE THE HIGHLIGHTS:

The proposed rules address the problems in developing and maintaining the Inventory of facilities with confirmed releases.

The proposed rules establish procedures and criteria for delisting facilities from the Inventory and making modifications to the Inventory.

WHAT IS THE NEXT STEP:

After public hearing and the comment period, DEQ will evaluate and prepare a response to the comments. The DEQ will then recommend to the EQC that the Commission adopt the proposed rules at the January 20, 1989 EQC meeting. The EQC may adopt the rules as proposed, or adopt a modified version of the proposed rules.

HOW TO COMMENT:

A Public Hearing is scheduled for:

1 p.m., Tuesday, December 6, 1988
Fourth Floor Conference Room
DEQ's Portland Office
811 S.W. Sixth Avenue
Portland, OR 97204

Written comments should be received by December 6, 1988. Send to Sara Laumann, Environmental Cleanup Division, 811 S.W. Sixth Ave., Portland, OR 97204

For more information, or to receive a copy of the proposed rules, call Sara Laumann at (503) 229-6704, or toll-free in Oregon, 1-800-452-4011.

ZB7886

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.

REMEDIAL ACTION ADVISORY COMMITTEE MEMBERS

Attachment IV
Agenda Item E
November 4, 1988
EQC Meeting

Dick Bach
Stoel, Rives, et. al.
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294-9213

Jack Beatty
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222-5372

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John Charles
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627-8542

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Charles McCormick
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Jim Montieth
Oregon Natural Resources Council
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Eugene, OR 97401

REMOVAL OR REMEDIAL ACTION TO ABATE HEALTH HAZARDS

466.540 Definitions for ORS 466.540 to 466.590. As used in ORS 466.540 to 466.590 and 466.900:

(1) "Claim" means a demand in writing for a sum certain.

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

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

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

(5) "Environment" includes the waters of the state, any drinking water supply, any land surface and subsurface strata and ambient air.

(6) "Facility" means any building, structure, installation, equipment, pipe or pipeline including any pipe into a sewer or publicly owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, above ground tank, underground storage tank, motor vehicle, rolling stock, aircraft, or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located and where a release has occurred or where there is a threat of a release, but does not include any consumer product in consumer use or any vessel.

(7) "Fund" means the Hazardous Substance Remedial Action Fund established by ORS 466.590.

(8) "Guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under ORS 466.540 to 466.590 and 466.900.

(9) "Hazardous substance" means:

(a) Hazardous waste as defined in ORS 466.005.

(b) Any substance defined as a hazardous substance pursuant to section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act, P.L. 96-510, as amended, P.L. 96-510 and P.L. 99-499.

(c) Oil.

(d) Any substance designated by the commission under ORS 466.553.

(10) "Natural resources" includes but is not limited to land, fish, wildlife, biota, air, surface water, groundwater, drinking water supplies and any other resource owned, managed, held in trust or otherwise controlled by the State of Oregon or a political subdivision of the state.

(11) "Oil" includes gasoline, crude oil, fuel oil, diesel oil, lubricating oil, oil sludge or refuse and any other petroleum-related product, or waste or fraction thereof that is liquid at a temperature of 60 degrees Fahrenheit and pressure of 14.7 pounds per square inch absolute.

(12) "Owner or operator" means any person who owned, leased, operated, controlled or exercised significant control over the operation of a facility. "Owner or operator" does not include a person, who, without participating in the management of a facility, holds indicia of ownership primarily to protect a security interest in the facility.

(13) "Person" means an individual, trust, firm, joint stock company, joint venture, consortium, commercial entity, partnership, association, corporation, commission, state and any agency thereof, political subdivision of the state, interstate body or the Federal Government including any agency thereof.

(14) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment including the abandonment or discarding of barrels, containers and other closed receptacles containing any hazardous substance, or threat thereof, but excludes:

(a) Any release which results in exposure to a person solely within a workplace, with respect to a claim that the person may assert against the person's employer under ORS chapter 656;

(b) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel or pipeline pumping station engine;

(c) Any release of source, by-product or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, as amended, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of the Atomic Energy Act of 1954, as amended, or, for the purposes of ORS 466.570 or any other removal or remedial action, any release of source by-product or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978; and

(d) The normal application of fertilizer.

(15) "Remedial action" means those actions consistent with a permanent remedial action taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of a hazardous substance so that they do not migrate to cause substantial danger to present or future public health, safety, welfare or the environment. "Remedial action" includes, but is not limited to:

(a) Such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches or ditches, clay cover, neutralization, cleanup of released hazardous substances and associated contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, onsite treatment or incineration, provision of alternative drinking and household water supplies, and any monitoring reasonably required to assure that such actions protect the public health, safety, welfare and the environment.

(b) Offsite transport and offsite storage, treatment, destruction or secure disposition of hazardous substances and associated, contaminated materials.

(c) Such actions as may be necessary to monitor, assess, evaluate or investigate a release or threat of release.

(16) "Remedial action costs" means reasonable costs which are attributable to or associated with a removal or remedial action at a facility, including but not limited to the costs of administration, investigation, legal or enforcement activities, contracts and health studies.

(17) "Removal" means the cleanup or removal of a released hazardous substance from the environment, such actions as may be necessary taken in the event of the threat of release of a hazardous substance into the environment, such actions as may be necessary to monitor, assess and evaluate the release or threat of release of a hazardous substance, the disposal of removed

material, or the taking of such other actions as may be necessary to prevent, minimize or mitigate damage to the public health, safety, welfare or to the environment, which may otherwise result from a release or threat of release. "Removal" also includes but is not limited to security fencing or other measures to limit access, provision of alternative drinking and household water supplies, temporary evacuation and housing of threatened individuals and action taken under ORS 466.570.

(18) "Transport" means the movement of a hazardous substance by any mode, including pipeline and in the case of a hazardous substance which has been accepted for transportation by a common or contract carrier, the term "transport" shall include any stoppage in transit which is temporary, incidental to the transportation movement, and at the ordinary operating convenience of a common or contract carrier, and any such stoppage shall be considered as a continuity of movement and not as the storage of a hazardous substance.

(19) "Underground storage tank" has the meaning given that term in ORS 466.705.

(20) "Waters of the state" has the meaning given that term in ORS 468.700. [1987 c.539 §52; 1987 c.735 §1]

466.547 Legislative findings. (1) The Legislative Assembly finds that:

(a) The release of a hazardous substance into the environment may present an imminent and substantial threat to the public health, safety, welfare and the environment; and

(b) The threats posed by the release of a hazardous substance can be minimized by prompt identification of facilities and implementation of removal or remedial action.

(2) Therefore, the Legislative Assembly declares that:

(a) It is in the interest of the public health, safety, welfare and the environment to provide the means to minimize the hazards of and damages from facilities.

(b) It is the purpose of ORS 466.540 to 466.590 and 466.900 to:

(A) Protect the public health, safety, welfare and the environment; and

(B) Provide sufficient and reliable funding for the department to expediently and effectively authorize, require or undertake removal or remedial action to abate hazards to the public health, safety, welfare and the environment. [1987 c.735 §2]

466.550 Authority of department for removal or remedial action. (1) In addition to any other authority granted by law, the department may:

(a) Undertake independently, in cooperation with others or by contract, investigations, studies, sampling, monitoring, assessments, surveying, testing, analyzing, planning, inspecting, training, engineering, design, construction, operation, maintenance and any other activity necessary to conduct removal or remedial action and to carry out the provisions of ORS 466.540 to 466.590 and 466.900; and

(b) Recover the state's remedial action costs.

(2) The commission and the department may participate in or conduct activities pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act, as amended, P.L. 96-510 and P.L. 99-499, and the corrective action provisions of Subtitle I of the federal Solid Waste Disposal Act, as amended, P.L. 96-482 and P.L. 98-616. Such participation may include, but need not be limited to, entering into a cooperative agreement with the United States Environmental Protection Agency.

(3) Nothing in ORS 466.540 to 466.590 and 466.900 shall restrict the State of Oregon from participating in or conducting activities pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act, as amended, P.L. 96-510 and P.L. 99-499. [1987 c.735 §3]

466.553 Rules; designation of hazardous substance. (1) In accordance with the applicable provisions of ORS 183.310 to 183.550, the commission may adopt rules necessary to carry out the provisions of ORS 466.540 to 466.590 and 466.900.

(2)(a) Within one year after the effective date of this Act, the commission shall adopt rules establishing the levels, factors, criteria or other provisions for the degree of cleanup including the control of further releases of a hazardous substance, and the selection of remedial actions necessary to assure protection of the public health, safety, welfare and the environment.

(b) In developing rules pertaining to the degree of cleanup and the selection of remedial actions under paragraph (a) of this subsection, the commission may, as appropriate, take into account:

(A) The long-term uncertainties associated with land disposal;

(B) The goals, objectives and requirements of ORS 466.005 to 466.385;

(C) The persistence, toxicity, mobility and propensity to bioaccumulate of such hazardous substances and their constituents;

(D) The short-term and long-term potential for adverse health effects from human exposure to the hazardous substance;

(E) Long-term maintenance costs;

(F) The potential for future remedial action costs if the alternative remedial action in question were to fail;

(G) The potential threat to human health and the environment associated with excavation, transport and redisposal or containment; and

(H) The cost effectiveness.

(3)(a) By rule, the commission may designate as a hazardous substance any element, compound, mixture, solution or substance or any class of substances that, should a release occur, may present a substantial danger to the public health, safety, welfare or the environment.

(b) Before designating a substance or class of substances as a hazardous substance, the commission must find that the substance, because of its quantity, concentration, or physical, chemical or toxic characteristics, may pose a present or future hazard to human health, safety, welfare or the environment should a release occur. [1987 c.735 §4]

466.555 Remedial Action Advisory Committee. The director shall appoint a Remedial Action Advisory Committee in order to advise the department in the development of rules for the implementation of ORS 466.540 to 466.590 and 466.900. The committee shall be comprised of members representing at least the following interests:

(1) Citizens;

(2) Local governments;

(3) Environmental organizations; and

(4) Industry. [1987 c.735 §5]

466.557 Inventory of facilities where release confirmed. (1) For the purposes of providing public information, the director shall develop and maintain an inventory of all facilities where a release is confirmed by the department.

(2) The director shall make the inventory available for the public at the department's offices.

(3) The inventory shall include but need not be limited to the following items, if known:

(a) A general description of the facility;

(b) Address or location;

(c) Time period during which a release occurred;

(d) Name of the current owner and operator and names of any past owners and operators during the time period of a release of a hazardous substance;

(e) Type and quantity of a hazardous substance released at the facility;

(f) Manner of release of the hazardous substance;

(g) Levels of a hazardous substance, if any, in ground water, surface water, air and soils at the facility;

(h) Status of removal or remedial actions at the facility; and

(i) Other items the director determines necessary.

(4) Thirty days before a facility is added to the inventory the director shall notify by certified mail the owner of all or any part of the facility that is to be included in the inventory. The decision of the director to add a facility may be appealed in writing to the commission within 15 days after the owner receives notice. The appeal shall be conducted in accordance with provisions of ORS 183.310 to 183.550 governing contested cases.

(5) The department shall, on or before January 15, 1989, and annually thereafter, submit the inventory and a report to the Governor, the Legislative Assembly and the Environmental Quality Commission.

(6) Nothing in this section, including listing of a facility in the inventory or commission review of the listing shall be construed to be a prerequisite to or otherwise affect the authority of the director to undertake, order or authorize a removal or remedial action under ORS 466.540 to 466.590 and 466.900. [1987 c.735 §6]

466.560 Comprehensive state-wide identification program; notice. (1) The department shall develop and implement a comprehensive state-wide program to identify any release or threat of release from a facility that may require remedial action.

(2) The department shall notify all daily and weekly newspapers of general circulation in the state and all broadcast media of the program developed under subsection (1) of this section. The notice shall include information about how the public may provide information on a release or threat of release from a facility.

(3) In developing the program under subsection (1) of this section, the department shall

examine, at a minimum, any industrial or commercial activity that historically has been a major source in this state of releases of hazardous substances.

(4) The department shall include information about the implementation and progress of the program developed under subsection (1) of this section in the report required under ORS 466.557 (5). [1987 c.735 §7]

466.563 Preliminary assessment of potential facility. (1) If the department receives information about a release or a threat of release from a potential facility, the department shall conduct a preliminary assessment of the potential facility. The preliminary assessment shall be conducted as expeditiously as possible within the budgetary constraints of the department.

(2) A preliminary assessment conducted under subsection (1) of this section shall include a review of existing data, a good faith effort to discover additional data and a site inspection to determine whether there is a need for further investigation. [1987 c.735 §8]

466.565 Accessibility of information about hazardous substances. (1) Any person who has or may have information, documents or records relevant to the identification, nature and volume of a hazardous substance generated, treated, stored, transported to, disposed of or released at a facility and the dates thereof, or to the identity or financial resources of a potentially responsible person, shall, upon request by the department or its authorized representative, disclose or make available for inspection and copying such information, documents or records.

(2) Upon reasonable basis to believe that there may be a release of a hazardous substance at or upon any property or facility, the department or its authorized representative may enter any property or facility at any reasonable time to:

(a) Sample, inspect, examine and investigate;

(b) Examine and copy records and other information; or

(c) Carry out removal or remedial action or any other action authorized by ORS 466.540 to 466.590 and 466.900.

(3) If any person refuses to provide information, documents, records or to allow entry under subsections (1) and (2) of this section, the department may request the Attorney General to seek from a court of competent jurisdiction an order requiring the person to provide such information, documents, records or to allow entry.

(4)(a) Except as provided in paragraphs (b) and (c) of this subsection, the department or its authorized representative shall, upon request by the current owner or operator of the facility or property, provide a portion of any sample obtained from the property or facility to the owner or operator.

(b) The department may decline to give a portion of any sample to the owner or operator if, in the judgment of the department or its authorized representative, apportioning a sample:

(A) May alter the physical or chemical properties of the sample such that the portion of the sample retained by the department would not be representative of the material sampled; or

(B) Would not provide adequate volume to perform the laboratory analysis.

(c) Nothing in this subsection shall prevent or unreasonably hinder or delay the department or its authorized representative in obtaining a sample at any facility or property.

(5) Persons subject to the requirements of this section may make a claim of confidentiality regarding any information, documents or records, in accordance with ORS 466.090. [1987 c.735 §9]

466.567 Strict liability for remedial action costs for injury or destruction of natural resource; limited exclusions. (1) The following persons shall be strictly liable for those remedial action costs incurred by the state or any other person that are attributable to or associated with a facility and for damages for injury to or destruction of any natural resources caused by a release:

(a) Any owner or operator at or during the time of the acts or omissions that resulted in the release.

(b) Any owner or operator who became the owner or operator after the time of the acts or omissions that resulted in the release, and who knew or reasonably should have known of the release when the person first became the owner or operator.

(c) Any owner or operator who obtained actual knowledge of the release at the facility during the time the person was the owner or operator of the facility and then subsequently transferred ownership or operation of the facility to another person without disclosing such knowledge.

(d) Any person who, by any acts or omissions, caused, contributed to or exacerbated the release, unless the acts or omissions were in material compliance with applicable laws, standards, regulations, licenses or permits.

(e) Any person who unlawfully hinders or delays entry to, investigation of or removal or remedial action at a facility.

(2) Except as provided in paragraphs (b) to (e) of subsection (1) of this section and subsection (4) of this section, the following persons shall not be liable for remedial action costs incurred by the state or any other person that are attributable to or associated with a facility, or for damages for injury to or destruction of any natural resources caused by a release:

(a) Any owner or operator who became the owner or operator after the time of the acts or omissions that resulted in a release, and who did not know and reasonably should not have known of the release when the person first became the owner or operator.

(b) Any owner or operator if the facility was contaminated by the migration of a hazardous substance from real property not owned or operated by the person.

(c) Any owner or operator at or during the time of the acts or omissions that resulted in the release, if the release at the facility was caused solely by one or a combination of the following:

(A) An act of God. "Act of God" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(B) An act of war.

(C) Acts or omissions of a third party, other than an employe or agent of the person asserting this defense, or other than a person whose acts or omissions occur in connection with a contractual relationship, existing directly or indirectly, with the person asserting this defense. As used in this subparagraph, "contractual relationship" includes but is not limited to land contracts, deeds or other instruments transferring title or possession.

(3) Except as provided in paragraphs (c) to (e) of subsection (1) of this section or subsection (4) of this section, the following persons shall not be liable for remedial action costs incurred by the state or any other person that are attributable to or associated with a facility, or for damages for injury to or destruction of any natural resources caused by a release:

(a) A unit of state or local government that acquired ownership or control of a facility in the following ways:

(A) Involuntarily by virtue of its function as sovereign, including but not limited to escheat, bankruptcy, tax delinquency or abandonment; or

(B) Through the exercise of eminent domain authority by purchase or condemnation.

(b) A person who acquired a facility by inheritance or bequest.

(4) Notwithstanding the exclusions from liability provided for specified persons in subsections (2) and (3) of this section such persons shall be liable for remedial action costs incurred by the state or any other person that are attributable to or associated with a facility, and for damages for injury to or destruction of any natural resources caused by a release, to the extent that the person's acts or omissions contribute to such costs or damages, if the person:

(a) Obtained actual knowledge of the release and then failed to promptly notify the department and exercise due care with respect to the hazardous substance concerned, taking into consideration the characteristics of the hazardous substance in light of all relevant facts and circumstances; or

(b) Failed to take reasonable precautions against the reasonably foreseeable acts or omissions of a third party and the reasonably foreseeable consequences of such acts or omissions.

(5)(a) No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from any person who may be liable under this section, to any other person, the liability imposed under this section. Nothing in this section shall bar any agreement to insure, hold harmless or indemnify a party to such agreement for any liability under this section.

(b) A person who is liable under this section shall not be barred from seeking contribution from any other person for liability under ORS 466.540 to 466.590 and 466.900.

(c) Nothing in ORS 466.540 to 466.590 and 466.900 shall bar a cause of action that a person liable under this section or a guarantor has or would have by reason of subrogation or otherwise against any person.

(d) Nothing in this section shall restrict any right that the state or any person might have under federal statute, common law or other state statute to recover remedial action costs or to seek any other relief related to a release.

(6) To establish, for purposes of paragraph (b) of subsection (1) of this section or paragraph (a) of subsection (2) of this section, that the person did or did not have reason to know, the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability.

(7)(a) Except as provided in paragraph (b) of this subsection, no person shall be liable under ORS 466.540 to 466.590 and 466.900 for costs or damages as a result of actions taken or omitted in the course of rendering care, assistance or advice in accordance with rules adopted under ORS 466.553 or at the direction of the department or its authorized representative, with respect to an incident creating a danger to public health, safety, welfare or the environment as a result of any release of a hazardous substance. This paragraph shall not preclude liability for costs or damages as the result of negligence on the part of such person.

(b) No state or local government shall be liable under ORS 466.540 to 466.590 and 466.900 for costs or damages as a result of actions taken in response to an emergency created by the release of a hazardous substance generated by or from a facility owned by another person. This paragraph shall not preclude liability for costs or damages as a result of gross negligence or intentional misconduct by the state or local government. For the purpose of this paragraph, reckless, wilful or wanton misconduct shall constitute gross negligence.

(c) This subsection shall not alter the liability of any person covered by subsection (1) of this section. [1987 c.735 §10]

466.570 Removal or remedial action; reimbursement of costs. (1) The director may undertake any removal or remedial action necessary to protect the public health, safety, welfare and the environment.

(2) The director may authorize any person to carry out any removal or remedial action in accordance with any requirements of or directions from the director, if the director determines that the person will commence and complete removal or remedial action properly and in a timely manner.

(3) Nothing in ORS 466.540 to 466.590 and 466.900 shall prevent the director from taking any emergency removal or remedial action necessary to protect public health, safety, welfare or the environment.

(4) The director may require a person liable under ORS 466.567 to conduct any removal or remedial action or related actions necessary to protect the public health, safety, welfare and the environment. The director's action under this subsection may include but need not be limited to issuing an order specifying the removal or remedial action the person must take.

(5) The director may request the Attorney General to bring an action or proceeding for legal or equitable relief, in the circuit court of the county in which the facility is located or in Marion County, as may be necessary:

(a) To enforce an order issued under subsection (4) of this section; or

(b) To abate any imminent and substantial danger to the public health, safety, welfare or the environment related to a release.

(6) Notwithstanding any provision of ORS 183.310 to 183.550, and except as provided in subsection (7) of this section, any order issued by the director under subsection (4) of this section shall not be appealable to the commission or subject to judicial review.

(7)(a) Any person who receives and complies with the terms of an order issued under subsection (4) of this section may, within 60 days after completion of the required action, petition the director for reimbursement from the fund for the reasonable costs of such action.

(b) If the director refuses to grant all or part of the reimbursement, the petitioner may, within 30 days of receipt of the director's refusal, file an action against the director seeking reimbursement from the fund in the circuit court of the county in which the facility is located or in the Circuit Court of Marion County. To obtain reimbursement, the petitioner must establish by a preponderance of the evidence that the petitioner is not liable under ORS 466.567 and that costs for which the petitioner seeks reimbursement are reasonable in light of the action required by the relevant order. A petitioner who is liable under ORS 466.567 may also recover reasonable remedial action costs to the extent that the petitioner can demonstrate that the director's decision in selecting the removal or remedial action ordered was arbitrary and capricious or otherwise not in accordance with law.

(8) If any person who is liable under ORS 466.567 fails without sufficient cause to conduct a removal or remedial action as required by an order of the director, the person shall be liable to the department for the state's remedial action costs and for punitive damages not to exceed three times the amount of the state's remedial action costs.

(9) Nothing in this section is intended to interfere with, limit or abridge the authority of the State Fire Marshal or any other state agency or local unit of government relating to an emergency that presents a combustion or explosion hazard. [1987 c.735 §11]

466.573 Standards for degree of cleanup required; exemption. (1)(a) Any

removal or remedial action performed under the provisions of ORS 466.540 to 466.590 and 466.900 shall attain a degree of cleanup of the hazardous substance and control of further release of the hazardous substance that assure protection of present and future public health, safety, welfare and of the environment.

(b) To the maximum extent practicable, the director shall select a remedial action that is protective of human health and the environment, that is cost effective, and that uses permanent solutions and alternative treatment technologies or resource recovery technologies.

(2) Except as provided in subsection (3) of this section, the director may exempt the onsite portion of any removal or remedial action conducted under ORS 466.540 to 466.590 and 466.900 from any requirement of ORS 466.005 to 466.385 and ORS chapter 459 or 468.

(3) Notwithstanding any provision of subsection (2) of this section, any onsite treatment, storage or disposal of a hazardous substance shall comply with the standard established under subsection (1) of this section. [1987 c.735 §12]

466.575 Notice of cleanup action; receipt and consideration of comment; notice of approval. Except as provided in ORS 466.570 (3), before approval of any remedial action to be undertaken by the department or any other person, or adoption of a certification decision under ORS 466.577, the department shall:

(1) Publish a notice and brief description of the proposed action in a local paper of general circulation and in the Secretary of State's Bulletin, and make copies of the proposal available to the public.

(2) Provide at least 30 days for submission of written comments regarding the proposed action, and, upon written request by 10 or more persons or by a group having 10 or more members, conduct a public meeting at or near the facility for the purpose of receiving verbal comment regarding the proposed action.

(3) Consider any written or verbal comments before approving the removal or remedial action.

(4) Upon final approval of the remedial action, publish notice, as provided under subsection (1) of this section, and make copies of the approved action available to the public. [1987 c.735 §13]

466.577 Agreement to perform removal or remedial action; reimbursement; agreement as order and consent decree; effect on liability. (1) The director, in the director's discretion, may enter into an agreement with any person including the owner or operator of the facility from which a release emanates, or any other potentially responsible person to perform any removal or remedial action if the director determines that the actions will be properly done by the person. Whenever practicable and in the public interest, as determined by the director, the director, in order to expedite effective removal or remedial actions and minimize litigation, shall act to facilitate agreements under this section that are in the public interest and consistent with the rules adopted under ORS 466.553. If the director decides not to use the procedures in this section, the director shall notify in writing potentially responsible parties at the facility of such decision. Notwithstanding ORS 183.310 to 183.550, a decision of the director to use or not to use the procedures described in this section shall not be appealable to the commission or subject to judicial review.

(2)(a) An agreement under this section may provide that the director will reimburse the parties to the agreement from the fund, with interest, for certain costs of actions under the agreement that the parties have agreed to perform and the director has agreed to finance. In any case in which the director provides such reimbursement and, in the judgment of the director, cost recovery is in the public interest, the director shall make reasonable efforts to recover the amount of such reimbursement under ORS 466.540 to 466.590 and 466.900 or under other relevant authority.

(b) Notwithstanding ORS 183.310 to 183.550, the director's decision regarding fund financing under this subsection shall not be appealable to the commission or subject to judicial review.

(c) When a remedial action is completed under an agreement described in paragraph (a) of this subsection, the fund shall be subject to an obligation for any subsequent remedial action at the same facility but only to the extent that such subsequent remedial action is necessary by reason of the failure of the original remedial action. Such obligation shall be in a proportion equal to, but not exceeding, the proportion contributed by the fund for the original remedial action. The fund's obligation for such future remedial action may be met through fund expenditures or through payment, following settlement or enforcement action, by persons who were not signatories to the original agreement.

(3) If an agreement has been entered into under this section, the director may take any action under ORS 466.570 against any person who is not a party to the agreement, once the

period for submitting a proposal under paragraph (c) of subsection (5) of this section has expired. Nothing in this section shall be construed to affect either of the following:

(a) The liability of any person under ORS 466.567 or 466.570 with respect to any costs or damages which are not included in the agreement.

(b) The authority of the director to maintain an action under ORS 466.540 to 466.590 and 466.900 against any person who is not a party to the agreement.

(4)(a) Whenever the director enters into an agreement under this section with any potentially responsible person with respect to remedial action, following approval of the agreement by the Attorney General and except as otherwise provided in the case of certain administrative settlements referred to in subsection (8) of this section, the agreement shall be entered in the appropriate circuit court as a consent decree. The director need not make any finding regarding an imminent and substantial endangerment to the public health, safety, welfare or the environment in connection with any such agreement or consent decree.

(b) The entry of any consent decree under this subsection shall not be construed to be an acknowledgment by the parties that the release concerned constitutes an imminent and substantial endangerment to the public health, safety, welfare or the environment. Except as otherwise provided in the Oregon Evidence Code, the participation by any party in the process under this section shall not be considered an admission of liability for any purpose, and the fact of such participation shall not be admissible in any judicial or administrative proceeding, including a subsequent proceeding under this section.

(c) The director may fashion a consent decree so that the entering of the decree and compliance with the decree or with any determination or agreement made under this section shall not be considered an admission of liability for any purpose.

(d) The director shall provide notice and opportunity to the public and to persons not named as parties to the agreement to comment on the proposed agreement before its submittal to the court as a proposed consent decree, as provided under ORS 466.575. The director shall consider any written comments, views or allegations relating to the proposed agreement. The director or any party may withdraw, withhold or modify its consent to the proposed agreement if the comments, views and allegations concerning the agreement disclose facts or considerations which indicate that the proposed agreement is inappropriate, improper or inadequate.

(5)(a) If the director determines that a period of negotiation under this subsection would facilitate an agreement with potentially responsible persons for taking removal or remedial action and would expedite removal or remedial action, the director shall so notify all such parties and shall provide them with the following information to the extent the information is available:

(A) The names and addresses of potentially responsible persons including owners and operators and other persons referred to in ORS 466.567.

(B) The volume and nature of substances contributed by each potentially responsible person identified at the facility.

(C) A ranking by volume of the substances at the facility.

(b) The director shall make the information referred to in paragraph (a) of this subsection available in advance of notice under this subsection upon the request of a potentially responsible person in accordance with procedures provided by the director. The provisions of ORS 466.565 (5) regarding confidential information apply to information provided under paragraph (a) of this subsection.

(c) Any person receiving notice under paragraph (a) of this subsection shall have 60 days from the date of receipt of the notice to submit to the director a proposal for undertaking or financing the action under ORS 466.570. The director may grant extensions for up to an additional 60 days.

(6)(a) Any person may seek contribution from any other person who is liable or potentially liable under ORS 466.567. In resolving contribution claims, the court may allocate remedial action costs among liable parties using such equitable factors as the court determines are appropriate.

(b) A person who has resolved its liability to the state in an administrative or judicially approved settlement shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially responsible persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

(c)(A) If the state has obtained less than complete relief from a person who has resolved its liability to the state in an administrative or

judicially approved settlement, the director may bring an action against any person who has not so resolved its liability.

(B) A person who has resolved its liability to the state for some or all of a removal or remedial action or for some or all of the costs of such action in an administrative or judicially approved settlement may seek contribution from any person who is not party to a settlement referred to in paragraph (b) of this subsection.

(C) In any action under this paragraph, the rights of any person who has resolved its liability to the state shall be subordinate to the rights of the state.

(7)(a) In entering an agreement under this section, the director may provide any person subject to the agreement with a covenant not to sue concerning any liability to the State of Oregon under ORS 466.540 to 466.590 and 466.900, including future liability, resulting from a release of a hazardous substance addressed by the agreement if each of the following conditions is met:

(A) The covenant not to sue is in the public interest.

(B) The covenant not to sue would expedite removal or remedial action consistent with rules adopted by the commission under ORS 466.553 (2).

(C) The person is in full compliance with a consent decree under paragraph (a) of subsection (4) of this section for response to the release concerned.

(D) The removal or remedial action has been approved by the director.

(b) The director shall provide a person with a covenant not to sue with respect to future liability to the State of Oregon under ORS 466.540 to 466.590 and 466.900 for a future release of a hazardous substance from a facility, and a person provided such covenant not to sue shall not be liable to the State of Oregon under ORS 466.567 with respect to such release at a future time, for the portion of the remedial action:

(A) That involves the transport and secure disposition offsite of a hazardous substance in a treatment, storage or disposal facility meeting the requirements of section 3004(c) to (g), (m), (o), (p), (u) and (v) and 3005(c) of the federal Solid Waste Disposal Act, as amended, P.L. 96-482 and P.L. 98-616, if the director has rejected a proposed remedial action that is consistent with rules adopted by the commission under ORS 466.553 that does not include such offsite disposition and has thereafter required offsite disposition; or

(B) That involves the treatment of a hazardous substance so as to destroy, eliminate or permanently immobilize the hazardous constituents of the substance, so that, in the judgment of the director, the substance no longer presents any current or currently foreseeable future significant risk to public health, safety, welfare or the environment, no by-product of the treatment or destruction process presents any significant hazard to public health, safety, welfare or the environment, and all by-products are themselves treated, destroyed or contained in a manner that assures that the by-products do not present any current or currently foreseeable future significant risk to public health, safety, welfare or the environment.

(c) A covenant not to sue concerning future liability to the State of Oregon shall not take effect until the director certifies that the removal or remedial action has been completed in accordance with the requirements of subsection (10) of this section at the facility that is the subject of the covenant.

(d) In assessing the appropriateness of a covenant not to sue under paragraph (a) of this subsection and any condition to be included in a covenant not to sue under paragraph (a) or (b) of this subsection, the director shall consider whether the covenant or conditions are in the public interest on the basis of factors such as the following:

(A) The effectiveness and reliability of the remedial action, in light of the other alternative remedial actions considered for the facility concerned.

(B) The nature of the risks remaining at the facility.

(C) The extent to which performance standards are included in the order or decree.

(D) The extent to which the removal or remedial action provides a complete remedy for the facility, including a reduction in the hazardous nature of the substances at the facility.

(E) The extent to which the technology used in the removal or remedial action is demonstrated to be effective.

(F) Whether the fund or other sources of funding would be available for any additional removal or remedial action that might eventually be necessary at the facility.

(G) Whether the removal or remedial action will be carried out, in whole or in significant part, by the responsible parties themselves.

(e) Any covenant not to sue under this subsection shall be subject to the satisfactory per-

formance by such party of its obligations under the agreement concerned.

(f)(A) Except for the portion of the removal or remedial action that is subject to a covenant not to sue under paragraph (b) of this subsection or de minimis settlement under subsection (8) of this section, a covenant not to sue a person concerning future liability to the State of Oregon:

(i) Shall include an exception to the covenant that allows the director to sue the person concerning future liability resulting from the release or threatened release that is the subject of the covenant if the liability arises out of conditions unknown at the time the director certifies under subsection (10) of this section that the removal or remedial action has been completed at the facility concerned; and

(ii) May include an exception to the covenant that allows the director to sue the person concerning future liability resulting from failure of the remedial action.

(B) In extraordinary circumstances, the director may determine, after assessment of relevant factors such as those referred to in paragraph (d) of this subsection and volume, toxicity, mobility, strength of evidence, ability to pay, litigative risks, public interest considerations, precedential value and the inequities and aggravating factors, not to include the exception referred to in subparagraph (A) of paragraph (f) of this subsection if other terms, conditions or requirements of the agreement containing the covenant not to sue are sufficient to provide all reasonable assurances that public health, safety, welfare and the environment will be protected from any future release at or from the facility.

(C) The director may include any provisions allowing future enforcement action under ORS 466.570 that in the discretion of the director are necessary and appropriate to assure protection of public health, safety, welfare and the environment.

(8)(a) Whenever practicable and in the public interest, as determined by the director, the director shall as promptly as possible reach a final settlement with a potentially responsible person in an administrative or civil action under ORS 466.567 if such settlement involves only a minor portion of the remedial action costs at the facility concerned and, in the judgment of the director, both of the following are minimal in comparison to any other hazardous substance at the facility:

(A) The amount of the hazardous substance contributed by that person to the facility; and

(B) The toxic or other hazardous effects of the substance contributed by that person to the facility.

(b) The director may provide a covenant not to sue with respect to the facility concerned to any party who has entered into a settlement under this subsection unless such a covenant would be inconsistent with the public interest as determined under subsection (7) of this section.

(c) The director shall reach any such settlement or grant a covenant not to sue as soon as possible after the director has available the information necessary to reach a settlement or grant a covenant not to sue.

(d) A settlement under this subsection shall be entered as a consent decree or embodied in an administrative order setting forth the terms of the settlement. The circuit court for the county in which the release or threatened release occurs or the Circuit Court of Marion County may enforce any such administrative order.

(e) A party who has resolved its liability to the state under this subsection shall not be liable for claims for contribution regarding matters addressed in the settlement. The settlement does not discharge any of the other potentially responsible persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

(f) Nothing in this subsection shall be construed to affect the authority of the director to reach settlements with other potentially responsible persons under ORS 466.540 to 466.590 and 466.900.

(9)(a) Notwithstanding ORS 183.310 to 183.550, except for those covenants required under subparagraphs (A) and (B) of paragraph (b) of subsection (7) of this section, a decision by the director to agree or not to agree to inclusion of any covenant not to sue in an agreement under this section shall not be appealable to the commission or subject to judicial review.

(b) Nothing in this section shall limit or otherwise affect the authority of any court to review, in the consent decree process under subsection (4) of this section, any covenant not to sue contained in an agreement under this section.

(10)(a) Upon completion of any removal or remedial action under an agreement under this section, or pursuant to an order under ORS 466.570, the party undertaking the removal or remedial action shall notify the department and request certification of completion. Within 90 days after receiving notice, the director shall determine by certification whether the removal or remedial action is completed in accordance with the applicable agreement or order.

(b) Before submitting a final certification decision to the court that approved the consent

decree, or before entering a final administrative order, the director shall provide to the public and to persons not named as parties to the agreement or order notice and opportunity to comment on the director's proposed certification decision, as provided under ORS 466.575.

(c) Any person aggrieved by the director's certification decision may seek judicial review of the certification decision by the court that approved the relevant consent decree or, in the case of an administrative order, in the circuit court for the county in which the facility is located or in Marion County. The decision of the director shall be upheld unless the person challenging the certification decision demonstrates that the decision was arbitrary and capricious, contrary to the provisions of ORS 466.540 to 466.590 and 466.900 or not supported by substantial evidence. The court shall apply a presumption in favor of the director's decision. The court may award attorney fees and costs to the prevailing party if the court finds the challenge or defense of the director's decision to have been frivolous. The court may assess against a party and award to the state, in addition to attorney fees and costs, an amount equal to the economic gain realized by the party if the court finds the only purpose of the party's challenge to the director's decision was delay for economic gain. [1987 c.735 §14]

466.580 State costs; payment; effect of failure to pay. (1) The department shall keep a record of the state's remedial action costs.

(2) Based on the record compiled by the department under subsection (1) of this section, the department shall require any person liable under ORS 466.567 or 466.570 to pay the amount of the state's remedial action costs and, if applicable, punitive damages.

(3) If the state's remedial action costs and punitive damages are not paid by the liable person to the department within 45 days after receipt of notice that such costs and damages are due and owing, the Attorney General, at the request of the director, shall bring an action in the name of the State of Oregon in a court of competent jurisdiction to recover the amount owed, plus reasonable legal expenses.

(4) All moneys received by the department under this section shall be deposited in the Hazardous Substance Remedial Action Fund established under ORS 466.590 if the moneys received pertain to a removal or remedial action taken at any facility. [1987 c.735 §15]

466.583 Costs as lien; enforcement of lien. (1) All of the state's remedial action costs, penalties and punitive damages for which a person is liable to the state under ORS 466.567, 466.570 or 466.900 shall constitute a lien upon any real and personal property owned by the person.

(2) At the department's discretion, the department may file a claim of lien on real property or a claim of lien on personal property. The department shall file a claim of lien on real property to be charged with a lien under this section with the recording officer of each county in which the real property is located and shall file a claim of lien on personal property to be charged with a lien under this section with the Secretary of State. The lien shall attach and become enforceable on the day of such filing. The lien claim shall contain:

(a) A statement of the demand;

(b) The name of the person against whose property the lien attaches;

(c) A description of the property charged with the lien sufficient for identification; and

(d) A statement of the failure of the person to conduct removal or remedial action and pay penalties and damages as required.

(3) The lien created by this section may be foreclosed by a suit on real and personal property in the circuit court in the manner provided by law for the foreclosure of other liens.

(4) Nothing in this section shall affect the right of the state to bring an action against any person to recover all costs and damages for which the person is liable under ORS 466.567, 466.570 or 466.900. [1987 c.735 §16]

466.585 Contractor liability. (1)(a) A person who is a contractor with respect to any release of a hazardous substance from a facility shall not be liable under ORS 466.540 to 466.590 and 466.900 or under any other state law to any person for injuries, costs, damages, expenses or other liability including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness or loss of or damage to property or economic loss that result from such release.

(b) Paragraph (a) of this subsection shall not apply if the release is caused by conduct of the contractor that is negligent, reckless, wilful or wanton misconduct or that constitutes intentional misconduct.

(c) Nothing in this subsection shall affect the liability of any other person under any warranty under federal, state or common law. Nothing in this subsection shall affect the liability of an

employer who is a contractor to any employe of such employer under any provision of law, including any provision of any law relating to workers' compensation.

(d) A state employe or an employe of a political subdivision who provides services relating to a removal or remedial action while acting within the scope of the person's authority as a governmental employe shall have the same exemption from liability subject to the other provisions of this section, as is provided to the contractor under this section.

(2)(a) The exclusion provided by ORS 466.567 (2)(c)(C) shall not be available to any potentially responsible party with respect to any costs or damages caused by any act or omission of a contractor.

(b) Except as provided in paragraph (d) of subsection (1) of this section and paragraph (a) of this subsection, nothing in this section shall affect the liability under ORS 466.540 to 466.590 and 466.900 or under any other federal or state law of any person, other than a contractor.

(c) Nothing in this section shall affect the plaintiff's burden of establishing liability under ORS 466.540 to 466.590 and 466.900.

(3)(a) The director may agree to hold harmless and indemnify any contractor meeting the requirements of this subsection against any liability, including the expenses of litigation or settlement, for negligence arising out of the contractor's performance in carrying out removal or remedial action activities under ORS 466.540 to 466.590 and 466.900, unless such liability was caused by conduct of the contractor which was grossly negligent, reckless, wilful or wanton misconduct, or which constituted intentional misconduct.

(b) This subsection shall apply only to a removal or remedial action carried out under written agreement with:

(A) The director;

(B) Any state agency; or

(C) Any potentially responsible party carrying out any agreement under ORS 466.570 or 466.577.

(c) For purposes of ORS 466.540 to 466.590 and 466.900, amounts expended from the fund for indemnification of any contractor shall be considered remedial action costs.

(d) An indemnification agreement may be provided under this subsection only if the director determines that each of the following requirements are met:

(A) The liability covered by the indemnification agreement exceeds or is not covered by insurance available, at a fair and reasonable price, to the contractor at the time the contractor enters into the contract to provide removal or remedial action, and adequate insurance to cover such liability is not generally available at the time the contract is entered into.

(B) The contractor has made diligent efforts to obtain insurance coverage.

(C) In the case of a contract covering more than one facility, the contractor agrees to continue to make diligent efforts to obtain insurance coverage each time the contractor begins work under the contract at a new facility.

(4)(a) Indemnification under this subsection shall apply only to a contractor liability which results from a release of any hazardous substance if the release arises out of removal or remedial action activities.

(b) An indemnification agreement under this subsection shall include deductibles and shall place limits on the amount of indemnification to be made available.

(c)(A) In deciding whether to enter into an indemnification agreement with a contractor carrying out a written contract or agreement with any potentially responsible party, the director shall determine an amount which the potentially responsible party is able to indemnify the contractor. The director may enter into an indemnification agreement only if the director determines that the amount of indemnification available from the potentially responsible party is inadequate to cover any reasonable potential liability of the contractor arising out of the contractor's negligence in performing the contract or agreement with the party. In making the determinations required under this subparagraph related to the amount and the adequacy of the amount, the director shall take into account the total net assets and resources of the potentially responsible party with respect to the facility at the time the director makes the determinations.

(B) The director may pay a claim under an indemnification agreement referred to in subparagraph (A) of this paragraph for the amount determined under subparagraph (A) of this paragraph only if the contractor has exhausted all administrative, judicial and common law claims for indemnification against all potentially responsible parties participating in the cleanup of the facility with respect to the liability of the contractor arising out of the contractor's negligence in performing the contract or agreement with the parties. The indemnification agreement

shall require the contractor to pay any deductible established under paragraph (b) of this subsection before the contractor may recover any amount from the potentially responsible party or under the indemnification agreement.

(d) No owner or operator of a facility regulated under the federal Solid Waste Disposal Act, as amended, P.L. 96-482 and P.L. 98-616, may be indemnified under this subsection with respect to such facility.

(e) For the purposes of ORS 466.567, any amounts expended under this section for indemnification of any person who is a contractor with respect to any release shall be considered a remedial action cost incurred by the state with respect to the release.

(5) The exemption provided under subsection (1) of this section and the authority of the director to offer indemnification under subsection (3) of this section shall not apply to any person liable under ORS 466.567 with respect to the release or threatened release concerned if the person would be covered by the provisions even if the person had not carried out any actions referred to in subsection (6) of this section.

(6) As used in this section:

(a) "Contract" means any written contract or agreement to provide any removal or remedial action under ORS 466.540 to 466.590 and 466.900 at a facility, or any removal under ORS 466.540 to 466.590 and 466.900, with respect to any release of a hazardous substance from the facility or to provide any evaluation, planning, engineering, surveying and mapping, design, construction, equipment or any ancillary services thereto for such facility, that is entered into by a contractor as defined in subparagraph (A) of paragraph (b) of this subsection with:

(A) The director;

(B) Any state agency; or

(C) Any potentially responsible party carrying out an agreement under ORS 466.570 or 466.577.

(b) "Contractor" means:

(A) Any person who enters into a removal or remedial action contract with respect to any release of a hazardous substance from a facility and is carrying out such contract; and

(B) Any person who is retained or hired by a person described in subparagraph (A) of this paragraph to provide any services relating to a removal or remedial action.

(c) "Insurance" means liability insurance that is fair and reasonably priced, as determined by the director, and that is made available at the time the contractor enters into the removal or remedial action contract to provide removal or remedial action. [1987 c.735 §17]

466.587 Monthly fee of operators. Beginning on July 1, 1987, every person who operates a facility for the purpose of disposing of hazardous waste or PCB that is subject to interim status or a license issued under ORS 466.005 to 466.385 and 466.890 shall pay a monthly hazardous waste management fee by the 45th day after the last day of each month in the amount of $20 per ton of hazardous waste or PCB brought into the facility for treatment by incinerator or for disposal by landfill at the facility. [1987 c.735 §18]

466.590 Hazardous Substance Remedial Action Fund; sources; uses. (1) The Hazardous Substance Remedial Action Fund is established separate and distinct from the General Fund in the State Treasury.

(2) The following shall be deposited into the State Treasury and credited to the Hazardous Substance Remedial Action Fund:

(a) Fees received by the department under ORS 466.587.

(b) Moneys recovered or otherwise received from responsible parties for remedial action costs.

(c) Any penalty, fine or punitive damages recovered under ORS 466.567, 466.570, 466.583 or 466.900.

(3) The State Treasurer may invest and reinvest moneys in the Hazardous Substance Remedial Action Fund in the manner provided by law.

(4) The moneys in the Hazardous Substance Remedial Action Fund are appropriated continuously to the department to be used as provided in subsection (5) of this section.

(5) Moneys in the Hazardous Substance Remedial Action Fund may be used for the following purposes:

(a) Payment of the state's remedial action costs;

(b) Funding any action or activity authorized by ORS 466.540 to 466.590 and 466.900; and

(c) Providing the state cost share for a removal or remedial action, as required by section 104(c)(3) of the federal Comprehensive Environmental Response, Compensation and Liability Act, P.L. 96-510 and as amended by P.L. 99-499. [1987 c.735 §19]

(b) "State agency" means any officer, board, commission, department, division or institution in the executive or administrative branch of state government. [Formerly 182.065]

183.030 [Repealed by 1971 c.734 §21]

183.040 [Repealed by 1971 c.734 §21]

183.050 [Repealed by 1971 c.734 §21]

183.060 [1957 c.147 §1; repealed by 1969 c.292 §3]

GENERAL PROVISIONS

183.310 Definitions for ORS 183.310 to 183.550. As used in ORS 183.310 to 183.550:

(1) "Agency" means any state board, commission, department, or division thereof, or officer authorized by law to make rules or to issue orders, except those in the legislative and judicial branches.

(2)(a) "Contested case" means a proceeding before an agency:

(A) In which the individual legal rights, duties or privileges of specific parties are required by statute or Constitution to be determined only after an agency hearing at which such specific parties are entitled to appear and be heard;

(B) Where the agency has discretion to suspend or revoke a right or privilege of a person;

(C) For the suspension, revocation or refusal to renew or issue a license where the licensee or applicant for a license demands such hearing; or

(D) Where the agency by rule or order provides for hearings substantially of the character required by ORS 183.415, 183.425, 183.450, 183.460 and 183.470.

(b) "Contested case" does not include proceedings in which an agency decision rests solely on the result of a test.

(3) "Economic effect" means the economic impact on affected businesses by and the costs of compliance, if any, with a rule for businesses, including but not limited to the costs of equipment, supplies, labor and administration.

(4) "License" includes the whole or part of any agency permit, certificate, approval, registration or similar form of permission required by law to pursue any commercial activity, trade, occupation or profession.

(5)(a) "Order" means any agency action expressed orally or in writing directed to a named person or named persons, other than employes, officers or members of an agency. "Order" includes any agency determination or decision issued in connection with a contested case proceeding. "Order" includes:

(A) Agency action under ORS chapter 657 making determination for purposes of unemployment compensation of employes of the state; and

(B) Agency action under ORS chapter 240 which grants, denies, modifies, suspends or revokes any right or privilege of an employe of the state.

(b) "Final order" means final agency action expressed in writing. "Final order" does not include any tentative or preliminary agency declaration or statement that:

(A) Precedes final agency action; or

(B) Does not preclude further agency consideration of the subject matter of the statement or declaration.

(6) "Party" means:

(a) Each person or agency entitled as of right to a hearing before the agency;

(b) Each person or agency named by the agency to be a party; or

(c) Any person requesting to participate before the agency as a party or in a limited party status which the agency determines either has an interest in the outcome of the agency's proceeding or represents a public interest in such result. The agency's determination is subject to judicial review in the manner provided by ORS 183.482 after the agency has issued its final order in the proceedings.

(7) "Person" means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character other than an agency.

(8) "Rule" means any agency directive, standard, regulation or statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of any agency. The term includes the amendment or repeal of a prior rule, but does not include:

(a) Unless a hearing is required by statute, internal management directives, regulations or statements which do not substantially affect the interests of the public:

(A) Between agencies, or their officers or their employes; or

(B) Within an agency, between its officers or between employes.

(b) Action by agencies directed to other agencies or other units of government which do not substantially affect the interests of the public.

(c) Declaratory rulings issued pursuant to ORS 183.410 or 305.105.

(d) Intra-agency memoranda.

(e) Executive orders of the Governor.

(f) Rules of conduct for persons committed to the physical and legal custody of the Department of Corrections, the violation of which will not result in:

(A) Placement in segregation or isolation status in excess of seven days.

(B) Institutional transfer or other transfer to secure confinement status for disciplinary reasons.

(C) Disciplinary procedures adopted pursuant to ORS 421.180.

(9) "Small business" means a corporation, partnership, sole proprietorship or other legal entity formed for the purpose of making a profit, which is independently owned and operated from all other businesses and which has 50 or fewer employes. [1957 c.717 §1; 1965 c.285 §78a; 1967 c.419 §32; 1969 c.80 §37a; 1971 c.734 §1; 1973 c.386 §4; 1973 c.621 §1a; 1977 c.374 §1; 1977 c.798 §1; 1979 c.593 §6; 1981 c.755 §1; 1987 c.320 §141; 1987 c.861 §1]

183.315 Application of ORS 183.310 to 183.550 to certain agencies. (1) The provisions of ORS 183.410, 183.415, 183.425, 183.440, 183.450, 183.460, 183.470 and 183.480 do not apply to local government boundary commissions created pursuant to ORS 199.425 or 199.430, the Department of Revenue, State Accident Insurance Fund Corporation, Public Utility Commission, Department of Insurance and Finance with respect to its functions under ORS chapters 654 and 656, Psychiatric Security Review Board or State Board of Parole.

(2) ORS 183.310 to 183.550 do not apply with respect to actions of the Governor authorized under ORS chapter 240.

(3) The provisions of ORS 183.410, 183.415, 183.425, 183.440, 183.450 and 183.460 do not apply to the Employment Appeals Board or the Employment Division.

(4) The Employment Division shall be exempt from the provisions of ORS 183.310 to 183.550 to the extent that a formal finding of the United States Secretary of Labor is made that such provision conflicts with the terms of the federal law, acceptance of which by the state is a condition precedent to continued certification by the United States Secretary of Labor of the state's law.

(5) The provisions of ORS 183.415 to 183.430, 183.440 to 183.460, 183.470 to 183.485 and 183.490 to 183.500 do not apply to orders issued to persons who have been committed pursuant to ORS 137.124 to the custody of the Department of Corrections. [1971 c.734 §19; 1973 c.[illegible] §3; 1973 c.621 §2; 1973 c.694 §1; 1975 c.759 §1; 1977 c.804 §4; 1979 c.593 §7; 1981 c.711 §16; 1987 c.320 §142; 1987 c.373 §2]

183.317 [1971 c.734 §187; repealed by 1979 c.593 §34]

183.320 [1957 c.717 §15; repealed by 1971 c.734 §21]

ADOPTION OF RULES

183.325 Delegation of rulemaking authority to officer or employe. Unless otherwise provided by law, an agency may delegate its rulemaking authority to an officer or employe within the agency. A delegation of authority under this section must be made in writing. Any officer or employe to whom rulemaking authority is delegated under this section is an "agency" for the purposes of the rulemaking requirements of ORS 183.310 to 183.550. [1979 c.593 §10]

183.330 Description of organization; service of order; effect of not putting order in writing. (1) In addition to other rulemaking requirements imposed by law, each agency shall publish a description of its organization and the methods whereby the public may obtain information or make submissions or requests.

(2) An order shall not be effective as to any person or party unless it is served upon the person or party either personally or by mail. This subsection is not applicable in favor of any person or party who has actual knowledge of the order.

(3) An order is not final until it is reduced to writing. [1957 c.717 §2; 1971 c.734 §4; 1975 c.759 §3; 1979 c.593 §8]

183.335 Notice; content; temporary rule adoption, amendment or suspension; substantial compliance required. (1) Prior to the adoption, amendment or repeal of any rule, the agency shall give notice of its intended action:

(a) In the manner established by rule adopted by the agency under ORS 183.341 (4), which provides a reasonable opportunity for interested persons to be notified of the agency's proposed action;

(b) In the bulletin referred to in ORS 183.360 at least 15 days prior to the effective date; and

(c) To persons who have requested notice pursuant to subsection (7) of this section.

(2)(a) The notice required by subsection (1) of this section shall state the subject matter and purpose of the intended action in sufficient detail to inform a person that the person's interests may be affected, and the time, place and manner in which interested persons may present their views on the intended action.

(b) The agency shall include with the notice of intended action given under subsection (1) of this section:

(A) A citation of the statutory or other legal authority relied upon and bearing upon the promulgation of the rule;

(B) A statement of the need for the rule and a statement of how the rule is intended to meet the need;

(C) A list of the principal documents, reports or studies, if any, prepared by or relied upon by the agency in considering the need for and in preparing the rule, and a statement of the location at which those documents are available for public inspection. The list may be abbreviated if necessary, and if so abbreviated there shall be identified the location of a complete list; and

(D) A statement of fiscal impact identifying state agencies, units of local government and the public which may be economically affected by the adoption, amendment or repeal of the rule and an estimate of that economic impact on state agencies, units of local government and the public. In considering the economic effect of the proposed action on the public, the agency shall utilize available information to project any significant economic effect of that action on businesses which shall include a cost of compliance effect on small businesses affected.

(c) The Secretary of State may omit the information submitted under paragraph (b) of this subsection from publication in the bulletin referred to in ORS 183.360.

(3) When an agency proposes to adopt, amend or repeal a rule, it shall give interested persons reasonable opportunity to submit data or views. Opportunity for oral hearing shall be granted upon request received from 10 persons or from an association having not less than 10 members within 15 days after agency notice. An agency holding a hearing upon a request made under this subsection is not required to give additional notice of the hearing in the bulletin referred to in ORS 183.360 if the agency gives notice in compliance with its rules of practice and procedure other than a requirement that notice be given in the bulletin. The agency shall consider fully any written or oral submission.

(4) Upon request of an interested person received within 15 days after agency notice pursuant to subsection (1) of this section, the agency shall postpone the date of its intended action no less than 10 nor more than 90 days in order to allow the requesting person an opportunity to submit data, views or arguments concerning the proposed action. Nothing in this subsection shall preclude an agency from adopting a temporary rule pursuant to subsection (5) of this section.

(5) Notwithstanding subsections (1) to (4) of this section, an agency may adopt, amend or suspend a rule without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, if the agency prepares:

(a) A statement of its findings that its failure to act promptly will result in serious prejudice to the public interest or the interest of the parties concerned and the specific reasons for its findings of prejudice;

(b) A citation of the statutory or other legal authority relied upon and bearing upon the promulgation of the rule;

(c) A statement of the need for the rule and a statement of how the rule is intended to meet the need; and

(d) A list of the principal documents, reports or studies, if any, prepared by or relied upon by the agency in considering the need for and in preparing the rule, and a statement of the location at which those documents are available for public inspection.

(6)(a) A rule adopted, amended or suspended under subsection (5) of this section is temporary and may be effective for a period of not longer than 180 days. The adoption of a rule under this subsection does not preclude the subsequent adoption of an identical rule under subsections (1) to (4) of this section.

(b) A rule temporarily suspended shall regain effectiveness upon expiration of the temporary period of suspension unless the rule is repealed under subsections (1) to (4) of this section.

(7) Any person may request in writing that an agency mail to the person copies of its notices of intended action given pursuant to subsection (1) of this section. Upon receipt of any request the agency shall acknowledge the request, establish a mailing list and maintain a record of all mailings made pursuant to the request. Agencies may establish procedures for establishing and maintaining the mailing lists current and, by rule, establish fees necessary to defray the costs of mailings and maintenance of the lists.

(8) This section does not apply to rules establishing an effective date for a previously effective rule or establishing a period during which a provision of a previously effective rule will apply.

(9) This section does not apply to ORS 279.025 to 279.031 and 279.310 to 279.990 relating to public contracts and purchasing.

(10)(a) No rule is valid unless adopted in substantial compliance with the provisions of this section in effect on the date the rule is adopted.

(b) In addition to all other requirements with which rule adoptions must comply, no rule adopted after October 3, 1979, is valid unless submitted to the Legislative Counsel under ORS 183.715.

(11) Notwithstanding the provisions of subsection (10) of this section, an agency may correct its failure to substantially comply with the requirements of subsections (2) and (5) of this section in adoption of a rule by an amended filing, so long as the noncompliance did not substantially prejudice the interests of persons to be affected by the rule. However, this subsection does not authorize correction of a failure to comply with subparagraph (D) of paragraph (b) of subsection (2) of this section requiring inclusion of a fiscal impact statement with the notice required by subsection (1) of this section.

(12) Unless otherwise provided by statute, the adoption, amendment or repeal of a rule by an agency need not be based upon or supported by an evidentiary record. [1971 c.734 §3; 1973 c.612 §1; 1975 c.136 §11; 1975 c.759 §4; 1977 c.161 §1; 1977 c.344 §6; 1977 c.394 §1a; 1977 c.798 §2; 1979 c.593 §11; 1981 c.755 §2; 1987 c.861 §2]

183.337 Procedure for agency adoption of federal rules. (1) Notwithstanding ORS 183.335, when an agency is required to adopt rules or regulations promulgated by an agency of the Federal Government and the agency has no authority to alter or amend the content or language of those rules or regulations prior to their adoption, the agency may adopt those rules or regulations under the procedure prescribed in this section.

(2) Prior to the adoption of a federal rule or regulation under subsection (1) of this section, the agency shall give notice of the adoption of the rule or regulation, the effective date of the rule or regulation in this state and the subject matter of the rule or regulation in the manner established in ORS 183.335 (1).

(3) After giving notice the agency may adopt the rule or regulation by filing a copy with the Secretary of State in compliance with ORS 183.355. The agency is not required to conduct a public hearing concerning the adoption of the rule or regulation.

(4) Nothing in this section authorizes an agency to amend federal rules or regulations or adopt rules in accordance with federal requirements without giving an opportunity for hearing as required by ORS 183.335. [1979 c.593 §15]

183.340 [1957 c.717 §3 (3); 1971 c.734 §6; repealed by 1975 c.759 §5 (183.341 enacted in lieu of 183.340)]

183.341 Model rules of procedure; establishment; compilation; publication; agencies required to adopt procedural rules. (1) The Attorney General shall prepare model rules of procedure appropriate for use by as many agencies as possible. Any agency may adopt all or part of the model rules by reference without complying with the rulemaking procedures under ORS 183.335. Notice of such adoption shall be filed with the Secretary of State in the manner provided by ORS 183.355 for the filing of rules. The model rules may be amended from time to time by an adopting agency or the Attorney General after notice and opportunity for hearing as required by rulemaking procedures under ORS 183.310 to 183.550.

(2) All agencies shall adopt rules of procedure to be utilized in the adoption of rules and conduct of proceedings in contested cases or, if exempt from the contested case provisions of ORS 183.310 to 183.550, for the conduct of proceedings.

(3) The Secretary of State shall publish in the Oregon Administrative Rules:

(a) The Attorney General's model rules adopted under subsection (1) of this section;

(b) The procedural rules of all agencies that have not adopted the Attorney General's model rules; and

(c) The notice procedures required by ORS 183.335 (1).

(4) Agencies shall adopt rules of procedure which will provide a reasonable opportunity for interested persons to be notified of the agency's intention to adopt, amend or repeal a rule. Rules adopted or amended under this subsection shall be approved by the Attorney General.

(5) No rule adopted after September 13, 1975, is valid unless adopted in substantial compliance with the rules adopted pursuant to subsection (4) of this section. [1975 c.759 §6 (enacted in lieu of 183.340); 1979 c.593 §12]

183.350 [1957 c.717 §3 (1), (2); repealed by 1971 c.734 §21]

183.355 Filing and taking effect of rules; filing of executive orders; copies. (1)(a) Each agency shall file in the office of the Secretary of State a certified copy of each rule adopted by it.

(b) Notwithstanding the provisions of paragraph (a) of this subsection, an agency adopting a

rule incorporating published standards by reference is not required to file a copy of those standards with the Secretary of State if:

(A) The standards adopted are unusually voluminous and costly to reproduce; and

(B) The rule filed with the Secretary of State identifies the location of the standards so incorporated and the conditions of their availability to the public.

(2) Each rule is effective upon filing as required by subsection (1) of this section, except that:

(a) If a later effective date is required by statute or specified in the rule, the later date is the effective date.

(b) A temporary rule becomes effective upon filing with the Secretary of State, or at a designated later date, only if the statement required by ORS 183.335 (5) is filed with the rule. The agency shall take appropriate measures to make temporary rules known to the persons who may be affected by them.

(3) When a rule is amended or repealed by an agency, the agency shall file a certified copy of the amendment or notice of repeal with the Secretary of State who shall appropriately amend the compilation required by ORS 183.360 (1).

(4) A certified copy of each executive order issued, prescribed or promulgated by the Governor shall be filed in the office of the Secretary of State.

(5) No rule of which a certified copy is required to be filed shall be valid or effective against any person or party until a certified copy is filed in accordance with this section. However, if an agency, in disposing of a contested case, announces in its decision the adoption of a general policy applicable to such case and subsequent cases of like nature the agency may rely upon such decision in disposition of later cases.

(6) The Secretary of State shall, upon request, supply copies of rules, or orders or designated parts of rules or orders, making and collecting therefor fees prescribed by ORS 177.130. All receipts from the sale of copies shall be deposited in the State Treasury to the credit of the General Fund. [1971 c.734 §5; 1973 c.612 §2; 1975 c.759 §7; 1977 c.798 §2b; 1979 c.593 §13]

183.360 Publication of rules and orders; exceptions; requirements; bulletin; judicial notice; citation. (1) The Secretary of State shall compile, index and publish all rules adopted by each agency. The compilation shall be supplemented or revised as often as necessary and at least once every six months. Such compilation supersedes any other rules. The Secretary of State may make such compilations of other material published in the bulletin as is desirable.

(2)(a) The Secretary of State has discretion to omit from the compilation rules the publication of which would be unduly cumbersome or expensive if the rule in printed or processed form is made available on application to the adopting agency, and if the compilation contains a notice summarizing the omitted rule and stating how a copy thereof may be obtained. In preparing the compilation the Secretary of State shall not alter the sense, meaning, effect or substance of any rule, but may renumber sections and parts of sections of the rules, change the wording of headnotes, rearrange sections, change reference numbers to agree with renumbered chapters, sections or other parts, substitute the proper subsection, section or chapter or other division numbers, change capitalization for the purpose of uniformity, and correct manifest clerical or typographical errors.

(b) The Secretary of State may by rule prescribe requirements, not inconsistent with law, for the manner and form for filing of rules adopted or amended by agencies. The Secretary of State may refuse to accept for filing any rules which do not comply with those requirements.

(3) The Secretary of State shall publish at least at monthly intervals a bulletin which:

(a) Briefly indicates the agencies that are proposing to adopt, amend or repeal a rule, the subject matter of the rule and the name, address and telephone number of an agency officer or employe from whom information and a copy of any proposed rule may be obtained;

(b) Contains the text or a brief description of all rules filed under ORS 183.355 since the last bulletin indicating the effective date of the rule; and

(c) Contains executive orders of the Governor.

(4) Courts shall take judicial notice of rules and executive orders filed with the Secretary of State.

(5) The compilation required by subsection (1) of this section shall be titled Oregon Administrative Rules and may be cited as "O.A.R." with appropriate numerical indications. [1957 c.717 §4 (1), (2), (3); 1961 c.464 §1; 1971 c.734 §7; 1973 c.612 §4; 1975 c.759 §7a; 1977 c.394 §2; 1979 c.593 §16]

183.370 Distribution of published rules. The bulletins and compilations may be distributed by the Secretary of State free of

charge as provided for the distribution of legislative materials referred to in ORS 171.236. Other copies of the bulletins and compilations shall be distributed by the Secretary of State at a cost determined by the Secretary of State. Any agency may compile and publish its rules or all or part of its rules for purpose of distribution outside of the agency only after it proves to the satisfaction of the Secretary of State that agency publication is necessary. [1957 c.717 §4 (4); 1959 c.260 §1; 1969 c.174 §4; 1975 c.759 §8; 1977 c.394 §3]

183.380 [1957 c.717 §4 (5); repealed by 1971 c.734 §21]

183.390 Petitions requesting adoption of rules. An interested person may petition an agency requesting the promulgation, amendment or repeal of a rule. The Attorney General shall prescribe by rule the form for such petitions and the procedure for their submission, consideration and disposition. Not later than 30 days after the date of submission of a petition, the agency either shall deny the petition in writing or shall initiate rulemaking proceedings in accordance with ORS 183.335. [1957 c.717 §5; 1971 c.734 §8]

183.400 Judicial determination of validity of rule. (1) The validity of any rule may be determined upon a petition by any person to the Court of Appeals in the manner provided for review of orders in contested cases. The court shall have jurisdiction to review the validity of the rule whether or not the petitioner has first requested the agency to pass upon the validity of the rule in question, but not when the petitioner is a party to an order or a contested case in which the validity of the rule may be determined by a court.

(2) The validity of any applicable rule may also be determined by a court, upon review of an order in any manner provided by law or pursuant to ORS 183.480 or upon enforcement of such rule or order in the manner provided by law.

(3) Judicial review of a rule shall be limited to an examination of:

(a) The rule under review;

(b) The statutory provisions authorizing the rule; and

(c) Copies of all documents necessary to demonstrate compliance with applicable rulemaking procedures.

(4) The court shall declare the rule invalid only if it finds that the rule:

(a) Violates constitutional provisions;

(b) Exceeds the statutory authority of the agency; or

(c) Was adopted without compliance with applicable rulemaking procedures.

(5) In the case of disputed allegations of irregularities in procedure which, if proved, would warrant reversal or remand, the Court of Appeals may refer the allegations to a Master appointed by the court to take evidence and make findings of fact. The court's review of the Master's findings of fact shall be de novo on the evidence.

(6) The court shall not declare a rule invalid solely because it was adopted without compliance with applicable rulemaking procedures after a period of two years after the date the rule was filed in the office of the Secretary of State, if the agency attempted to comply with those procedures and its failure to do so did not substantially prejudice the interests of the parties. [1957 c.717 §6; 1971 c.734 §9; 1975 c.759 §9; 1979 c.593 §17; 1987 c.861 §3]

183.410 Agency determination of applicability of rule or statute to petitioner; effect; judicial review. On petition of any interested person, any agency may in its discretion issue a declaratory ruling with respect to the applicability to any person, property, or state of facts of any rule or statute enforceable by it. A declaratory ruling is binding between the agency and the petitioner on the state of facts alleged, unless it is altered or set aside by a court. However, the agency may, where the ruling is adverse to the petitioner, review the ruling and alter it if requested by the petitioner. Binding rulings provided by this section are subject to review in the Court of Appeals in the manner provided in ORS 183.480 for the review of orders in contested cases. The Attorney General shall prescribe by rule the form for such petitions and the procedure for their submission, consideration and disposition. The petitioner shall have the right to submit briefs and present oral argument at any declaratory ruling proceeding held pursuant to this section. [1957 c.717 §7; 1971 c.734 §10; 1973 c.612 §5]

CONTESTED CASES

183.413 Notice to party before hearing of rights and procedure; failure to provide notice. (1) The Legislative Assembly finds that the citizens of this state have a right to be informed as to the procedures by which contested cases are heard by state agencies, their rights in hearings before state agencies, the import and effect of hearings before state agencies and their rights and remedies with respect to actions taken by state agencies. Accordingly, it is the purpose of subsections (2) to (4) of this section to set forth certain requirements of state agencies so that

citizens shall be fully informed as to these matters when exercising their rights before state agencies.

(2) Prior to the commencement of a contested case hearing before any agency including those agencies identified in ORS 183.315, the agency shall inform each party to the hearing of the following matters:

(a) If a party is not represented by an attorney, a general description of the hearing procedure including the order of presentation of evidence, what kinds of evidence are admissible, whether objections may be made to the introduction of evidence and what kind of objections may be made and an explanation of the burdens of proof or burdens of going forward with the evidence.

(b) Whether a record will be made of the proceedings and the manner of making the record and its availability to the parties.

(c) The function of the record-making with respect to the perpetuation of the testimony and evidence and with respect to any appeal from the determination or order of the agency.

(d) Whether an attorney will represent the agency in the matters to be heard and whether the parties ordinarily and customarily are represented by an attorney.

(e) The title and function of the person presiding at the hearing with respect to the decision process, including, but not limited to, the manner in which the testimony and evidence taken by the person presiding at the hearing are reviewed, the effect of that person's determination, who makes the final determination on behalf of the agency, whether the person presiding at the hearing is or is not an employe, officer or other representative of the agency and whether that person has the authority to make a final independent determination.

(f) In the event a party is not represented by an attorney, whether the party may during the course of proceedings request a recess if at that point the party determines that representation by an attorney is necessary to the protection of the party's rights.

(g) Whether there exists an opportunity for an adjournment at the end of the hearing if the party then determines that additional evidence should be brought to the attention of the agency and the hearing reopened.

(h) Whether there exists an opportunity after the hearing and prior to the final determination or order of the agency to review and object to any proposed findings of fact, conclusions of law, summary of evidence or recommendations of the officer presiding at the hearing.

(i) A description of the appeal process from the determination or order of the agency.

(3) The information required to be given to a party to a hearing under subsections (2) and (3) of this section may be given in writing or orally before commencement of the hearing.

(4) The failure of an agency to give notice of any item specified in subsections (2) and (3) of this section, shall not invalidate any determination or order of the agency unless upon an appeal from or review of the determination or order a court finds that the failure affects the substantial rights of the complaining party. In the event of such a finding, the court shall remand the matter to the agency for a reopening of the hearing and shall direct the agency as to what steps it shall take to remedy the prejudice to the rights of the complaining party. [1979 c.593 §§37, 38, 39]

183.415 Notice, hearing and record in contested case; informal disposition; hearings officer; ex parte communications. (1) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice, served personally or by registered or certified mail.

(2) The notice shall include:

(a) A statement of the party's right to hearing, or a statement of the time and place of the hearing;

(b) A statement of the authority and jurisdiction under which the hearing is to be held;

(c) A reference to the particular sections of the statutes and rules involved; and

(d) A short and plain statement of the matters asserted or charged.

(3) Parties may elect to be represented by counsel and to respond and present evidence and argument on all issues involved.

(4) Agencies may adopt rules of procedure governing participation in contested cases by persons appearing as limited parties.

(5) 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.

(6) An order adverse to a party may be issued upon default only upon prima facie case made on the record of the agency. When an order is effective only if a request for hearing is not made by the party, the record may be made at the time of

issuance of the order, and if the order is based only on material included in the application or other submissions of the party, the agency may so certify and so notify the party, and such material shall constitute the evidentiary record of the proceeding if hearing is not requested.

(7) At the commencement of the hearing, the officer presiding shall explain the issues involved in the hearing and the matters that the parties must either prove or disprove.

(8) Testimony shall be taken upon oath or affirmation of the witness from whom received. The officer presiding at the hearing shall administer oaths or affirmations to witnesses.

(9) The officer presiding at the hearing shall place on the record a statement of the substance of any written or oral ex parte communications on a fact in issue made to the officer during the pendency of the proceeding and notify the parties of the communication and of their right to rebut such communications.

(10) The officer presiding at the hearing shall insure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the presiding officer in the case.

(11) The record in a contested case shall include:

(a) All pleadings, motions and intermediate rulings.

(b) Evidence received or considered.

(c) Stipulations.

(d) A statement of matters officially noticed.

(e) Questions and offers of proof, objections and rulings thereon.

(f) A statement of any ex parte communications on a fact in issue made to the officer presiding at the hearing.

(g) Proposed findings and exceptions.

(h) Any proposed, intermediate or final order prepared by the agency or a hearings officer.

(12) A verbatim oral, written or mechanical record shall be made of all motions, rulings and testimony. The record need not be transcribed unless requested for purposes of rehearing or court review. The agency may charge the party requesting transcription the cost of a copy of transcription, unless the party files an appropriate affidavit of indigency. However, upon petition, a court having jurisdiction to review under ORS 183.480 may reduce or eliminate the charge upon finding that it is equitable to do so, or that matters of general interest would be determined by review of the order of the agency. [1971 c.734 §13; 1979 c.593 §18; 1985 c.757 §1]

183.418 Interpreter for handicapped person in contested case. (1) When a handicapped person is a party to a contested case, the handicapped person is entitled to a qualified interpreter to interpret the proceedings to the handicapped person and to interpret the testimony of the handicapped person to the agency.

(2)(a) Except as provided in paragraph (b) of this subsection, the agency shall appoint the qualified interpreter for the handicapped person; and the agency shall fix and pay the fees and expenses of the qualified interpreter if:

(A) The handicapped person makes a verified statement and provides other information in writing under oath showing the inability of the handicapped person to obtain a qualified interpreter, and provides any other information required by the agency concerning the inability of the handicapped person to obtain such an interpreter; and

(B) It appears to the agency that the handicapped person is without means and is unable to obtain a qualified interpreter.

(b) If the handicapped person knowingly and voluntarily files with the agency a written statement that the handicapped person does not desire a qualified interpreter to be appointed for the handicapped person, the agency shall not appoint such an interpreter for the handicapped person.

(3) As used in this section:

(a) "Handicapped person" means a person who cannot readily understand or communicate the English language, or cannot understand the proceedings or a charge made against the handicapped person, or is incapable of presenting or assisting in the presentation of the defense of the handicapped person, because the handicapped person is deaf, or because the handicapped person has a physical hearing impairment or physical speaking impairment.

(b) "Qualified interpreter" means a person who is readily able to communicate with the handicapped person, translate the proceedings for the handicapped person, and accurately repeat and translate the statements of the handicapped person to the agency. [1973 c.386 §6]

183.420 [1957 c.717 §8 (1); repealed by 1971 c.734 §21]

183.425 Depositions or subpena of material witness; discovery. (1) On petition of any party to a contested case, the agency may order that the testimony of any material witness may be taken by deposition in the manner pre-

scribed by law for depositions in civil actions. Depositions may also be taken by the use of audio or audio-visual recordings. The petition shall set forth the name and address of the witness whose testimony is desired, a showing of the materiality of the testimony of the witness, and a request for an order that the testimony of such witness be taken before an officer named in the petition for that purpose. If the witness resides in this state and is unwilling to appear, the agency may issue a subpena as provided in ORS 183.440, requiring the appearance of the witness before such officer.

(2) An agency may, by rule, prescribe other methods of discovery which may be used in proceedings before the agency. [1971 c.734 §14; 1975 c.759 §11; 1979 c.593 §19]

183.430 Hearing on refusal to renew license; exceptions. (1) In the case of any license which must be periodically renewed, where the licensee has made timely application for renewal in accordance with the rules of the agency, such license shall not be deemed to expire, despite any stated expiration date thereon, until the agency concerned has issued a formal order of grant or denial of such renewal. In case an agency proposes to refuse to renew such license, upon demand of the licensee, the agency must grant hearing as provided by ORS 183.310 to 183.550 before issuance of order of refusal to renew. This subsection does not apply to any emergency or temporary permit or license.

(2) In any case where the agency finds a serious danger to the public health or safety and sets forth specific reasons for such findings, the agency may suspend or refuse to renew a license without hearing, but if the licensee demands a hearing within 90 days after the date of notice to the licensee of such suspension or refusal to renew, then a hearing must be granted to the licensee as soon as practicable after such demand, and the agency shall issue an order pursuant to such hearing as required by ORS 183.310 to 183.550 confirming, altering or revoking its earlier order. Such a hearing need not be held where the order of suspension or refusal to renew is accompanied by or is pursuant to, a citation for violation which is subject to judicial determination in any court of this state, and the order by its terms will terminate in case of final judgment in favor of the licensee. [1957 c.717 §8 (3), (4); 1965 c.212 §1; 1971 c.734 §11]

183.435 Period allowed to request hearing for license refusal on grounds other than test or inspection results. When an agency refuses to issue a license required to pursue any commercial activity, trade, occupation or profession if the refusal is based on grounds other than the results of a test or inspection that agency shall grant the person requesting the license 60 days from notification of the refusal to request a hearing. [Formerly 670.285]

183.440 Subpenas in contested cases. (1) The agency shall issue subpenas to any party to a contested case upon request upon a showing of general relevance and reasonable scope of the evidence sought. A party, other than the agency, entitled to have witnesses on behalf of the party may have subpenas issued by an attorney of record of the party, subscribed by the signature of the attorney. Witnesses appearing pursuant to subpena, other than the parties or officers or employes of the agency, shall receive fees and mileage as prescribed by law for witnesses in civil actions.

(2) If any person fails to comply with any subpena so issued or any party or witness refuses to testify on any matters on which the party or witness may be lawfully interrogated, the judge of the circuit court of any county, on the application of the agency or of a designated representative of the agency or of the party requesting the issuance of or issuing the subpena, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpena issued from such court or a refusal to testify therein. [1957 c.717 §8 (2); 1971 c.734 §12; 1979 c.593 §20; 1981 c.174 §4]

183.445 Subpena by attorney of record of party when agency not subject to ORS 183.440. In any proceeding before an agency not subject to ORS 183.440 in which a party, other than the agency, is entitled to have subpenas issued by the agency for the appearance of witnesses on behalf of the party, a subpena may be issued by an attorney of record of the party, subscribed by the signature of the attorney. A subpena issued by an attorney of record may be enforced in the same manner as a subpena issued by the agency. [1981 c.174 §6]

183.450 Evidence; representation of state agency; representation when public assistance involved. In contested cases:

(1) Irrelevant, immaterial or unduly repetitious evidence shall be excluded but erroneous rulings on evidence shall not preclude agency action on the record unless shown to have substantially prejudiced the rights of a party. All other evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs shall be admissible. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made

and shall be noted in the record. Any part of the evidence may be received in written form.

(2) All evidence shall be offered and made a part of the record in the case, and except for matters stipulated to and except as provided in subsection (4) of this section no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position.

(3) Every party shall have the right of cross examination of witnesses who testify and shall have the right to submit rebuttal evidence. Persons appearing in a limited party status shall participate in the manner and to the extent prescribed by rule of the agency.

(4) Agencies may take notice of judicially cognizable facts, and they may take official notice of general, technical or scientific facts within their specialized knowledge. Parties shall be notified at any time during the proceeding but in any event prior to the final decision of material officially noticed and they shall be afforded an opportunity to contest the facts so noticed. Agencies may utilize their experience, technical competence and specialized knowledge in the evaluation of the evidence presented to them.

(5) No sanction shall be imposed or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party, and as supported by, and in accordance with, reliable, probative and substantial evidence.

(6) Agencies may, at their discretion, be represented at hearings by the Attorney General.

(7) Notwithstanding ORS 9.160, 9.320 and ORS chapter 180, and unless otherwise authorized by another law, an agency may be represented at contested case hearings by an officer or employe of the agency if:

(a) The Attorney General has consented to the representation of the agency by an officer or employe in the particular hearing or in the class of hearings that includes the particular hearing; and

(b) The agency, by rule, has authorized an officer or employe to appear on its behalf in the particular type of hearing being conducted.

(8) The agency representative shall not present legal argument in contested case hearings or give legal advice to an agency.

(9) Upon judicial review, no limitation imposed pursuant to subsection (7) of this section on the participation of an officer or employe representing an agency shall be the basis for reversal or remand of agency action unless the limitation resulted in substantial prejudice to a person entitled to judicial review of the agency action.

(10) Notwithstanding any other provision of law, in any contested case hearing before a state agency involving public assistance as defined in ORS 411.010 an applicant or recipient may be represented by an authorized representative who is an employe of a nonprofit legal services program which receives fees pursuant to ORS 21.480 to 21.490 and who is supervised by an attorney also employed by a legal services program. Such representation may include presenting evidence, cross-examining witnesses and presenting factual and legal argument. [1957 c.717 §9; 1971 c.734 §15; 1975 c.759 §12; 1977 c.798 §3; 1979 c.593 §21; 1987 c.833 §1]

183.455 Appearance of person or authorized representative. (1)(a) Notwithstanding ORS 8.690, 9.160, 9.320 and 183.450, and unless otherwise authorized by law, a person participating in a contested case hearing may appear in person, by an attorney, or by an authorized representative subject to the provisions of subsections (2) to (4) of this section.

(b) For the purposes of this section, "authorized representative" means a member of a participating partnership, an authorized officer or employe of a participating corporation, association or organized group, or an authorized officer or employe of a participating governmental authority other than a state agency.

(2) A person participating in a contested case hearing may appear by an authorized representative if:

(a) The State Fire Marshal has determined that appearance of such a person by an authorized representative will not hinder the orderly and timely development of the record in the type of contested case hearing being conducted;

(b) The State Fire Marshal allows, by rule, authorized representatives to appear on behalf of such participants in the type of contested case hearing conducted; and

(c) The officer presiding at the contested case hearing may exercise discretion to 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 arguments.

(3) No provision of this section is intended to require the agency to allow appearance of a per-

son by an authorized representative in a contested case proceeding.

(4) Upon judicial review, no agency denial of permission to appear by an authorized representative, nor any limitation imposed by an agency presiding officer on the participation of an authorized representative, shall be the basis for reversal or remand of agency action unless the denial or limitation clearly resulted in substantial prejudice to development of a complete record at an agency hearing. [1987 c.259 §3]

Note: 183.455 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 183 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Note: Sections 3 and 5, chapter 833, Oregon Laws 1987, provide:

Sec. 3. (1) Notwithstanding ORS 8.690, 9.160 and 9.320, and unless otherwise authorized by another law, a person participating in a contested case hearing conducted by an agency described in this subsection may be represented by an attorney or by an authorized representative subject to the provisions of subsection (2) of this section. The Attorney General shall prepare model rules for proceedings with lay representation that do not have the effect of precluding lay representation. No rule adopted by a state agency shall have the effect of precluding lay representation. The agencies before which an authorized representative may appear are:

(a) The Department of Commerce in the administration of the Landscape Contractors Law.

(b) The Department of Energy and the Energy Facility Siting Council.

(c) The Environmental Quality Commission and the Department of Environmental Quality.

(d) The Department of Insurance and Finance for proceedings in which an insured appears pursuant to ORS 737.505.

(e) The Fire Marshal Division of the Department of Commerce.

(f) The Division of State Lands for proceedings regarding the issuance or denial of fill or removal permits under ORS 541.605 to 541.685.

(g) The Public Utility Commission.

(h) The Water Resources Commission and the Water Resources Department.

(2) A person participating in a contested case hearing as provided in subsection (1) of this section may appear by an authorized representative if:

(a) The agency conducting the contested case hearing has determined that appearance of such a person by an authorized representative will not hinder the orderly and timely development of the record in the type of contested case hearing being conducted;

(b) The agency conducting the contested case hearing allows, by rule, authorized representatives to appear on behalf of such participants in the type of contested case hearing being conducted; and

(c) The officer presiding at the contested case hearing may exercise discretion to 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 arguments.

(3) Upon judicial review, no limitation imposed by an agency presiding officer on the participation of an authorized representative shall be the basis for reversal or remand of agency action unless the limitation resulted in substantial prejudice to a person entitled to judicial review of the agency action.

(4) For the purposes of this section, "authorized representative" means a member of a participating partnership, an authorized officer or regular employe of a participating corporation, association or organized group, or an authorized officer or employe of a participating governmental authority other than a state agency. [1987 c.833 §3]

Sec. 5. Section 3 of this Act is repealed October 1, 1989. [1987 c.833 §5]

183.460 Examination of evidence by agency. Whenever in a contested case a majority of the officials of the agency who are to render the final order have not heard the case or considered the record, the order, if adverse to a party other than the agency itself, shall not be made until a proposed order, including findings of fact and conclusions of law, has been served upon the parties and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the officials who are to render the decision. [1957 c.717 §10; 1971 c.734 §16; 1975 c.759 §13]

183.462 Agency statement of ex parte communications; notice. The agency shall place on the record a statement of the substance of any written or oral ex parte communications on a fact in issue made to the agency during its review of a contested case. The agency shall notify all parties of such communications and of their right to rebut the substance of the ex parte communications on the record. [1979 c.593 §36c]

183.464 Proposed order by hearings officer; amendment by agency; exemptions. (1) Except as otherwise provided in subsections (1) to (4) of this section, unless a hearings officer is authorized or required by law or agency rule to issue a final order, the hearings officer shall prepare and serve on the agency and all parties to a contested case hearing a proposed order, including recommended findings of fact and conclusions of law. The proposed order shall become final after the 30th day following the date of service of the proposed order, unless the agency within that period issues an amended order.

(2) An agency may by rule specify a period of time after which a proposed order will become

final that is different from that specified in subsection (1) of this section.

(3) If an agency determines that additional time will be necessary to allow the agency adequately to review a proposed order in a contested case, the agency may extend the time after which the proposed order will become final by a specified period of time. The agency shall notify the parties to the hearing of the period of extension.

(4) Subsections (1) to (4) of this section do not apply to the Public Utility Commission or the Energy Facility Siting Council.

(5) The Governor may exempt any agency or any class of contested case hearings before an agency from the requirements in whole or part of subsections (1) to (4) of this section by executive order. The executive order shall contain a statement of the reasons for the exemption.

(6) The Governor shall report to the Sixty-first Legislative Assembly identifying those agencies and classes of contested cases that have received exemptions under subsections (5) and (6) of this section and stating the reasons for granting those exemptions. [1979 c.593 §§36, 36b]

183.470 Orders in contested cases. In a contested case:

(1) Every order adverse to a party to the proceeding shall be in writing or stated in the record and may be accompanied by an opinion.

(2) A final order shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the underlying facts supporting the findings as to each contested issue of fact and as to each ultimate fact required to support the agency's order.

(3) The agency shall notify the parties to a proceeding of a final order by delivering or mailing a copy of the order and any accompanying findings and conclusions to each party or, if applicable, the party's attorney of record.

(4) Every final order shall include a citation of the statutes under which the order may be appealed. [1957 c.717 §11; 1971 c.734 §17; 1979 c.593 §22]

JUDICIAL REVIEW

183.480 Judicial review of agency orders. (1) Any person adversely affected or aggrieved by an order or any party to an agency proceeding is entitled to judicial review of a final order, whether such order is affirmative or negative in form. A petition for rehearing or reconsideration need not be filed as a condition of judicial review unless specifically otherwise provided by statute or agency rule.

(2) Judicial review of final orders of agencies shall be solely as provided by ORS 183.482, 183.484, 183.490 and 183.500.

(3) No action or suit shall be maintained as to the validity of any agency order except a final order as provided in this section and ORS 183.482, 183.484, 183.490 and 183.500 or except upon showing that the agency is proceeding without probable cause, or that the party will suffer substantial and irreparable harm if interlocutory relief is not granted.

(4) Judicial review of orders issued pursuant to ORS 813.410 shall be as provided by ORS 813.410. [1957 c.717 §12; 1963 c.449 §1; 1971 c.734 §18; 1975 c.759 §14; 1979 c.593 §23; 1983 c.338 §901; 1985 c.757 §4]

183.482 Jurisdiction for review of contested cases; procedure; scope of court authority. (1) Jurisdiction for judicial review of contested cases is conferred upon the Court of Appeals. Proceedings for review shall be instituted by filing a petition in the Court of Appeals. The petition shall be filed within 60 days only following the date the order upon which the petition is based is served unless otherwise provided by statute. If a petition for rehearing has been filed, then the petition for review shall be filed within 60 days only following the date the order denying the petition for rehearing is served. If the agency does not otherwise act, a petition for rehearing or reconsideration shall be deemed denied the 60th day following the date the petition was filed, and in such cases, petition for judicial review shall be filed within 60 days only following such date. Date of service shall be the date on which the agency delivered or mailed its order in accordance with ORS 183.470.

(2) The petition shall state the nature of the order the petitioner desires reviewed, and shall state whether the petitioner was a party to the administrative proceeding, was denied status as a party or is seeking judicial review as a person adversely affected or aggrieved by the agency order. In the latter case, the petitioner shall, by supporting affidavit, state the facts showing how the petitioner is adversely affected or aggrieved by the agency order. Before deciding the issues raised by the petition for review, the Court of Appeals shall decide, from facts set forth in the affidavit, whether or not the petitioner is entitled to petition as an adversely affected or an aggrieved person. Copies of the petition shall be served by registered or certified mail upon the agency, and all other parties of record in the agency proceeding.

(3)(a) The filing of the petition shall not stay enforcement of the agency order, but the agency may do so upon a showing of:

(A) Irreparable injury to the petitioner; and

(B) A colorable claim of error in the order.

(b) When a petitioner makes the showing required by paragraph (a) of this subsection, the agency shall grant the stay unless the agency determines that substantial public harm will result if the order is stayed. If the agency denies the stay, the denial shall be in writing and shall specifically state the substantial public harm that would result from the granting of the stay.

(c) When the agency grants a stay it may impose such reasonable conditions as the giving of 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 specified reasonable periods of time.

(d) Agency denial of a motion for stay is subject to review by the Court of Appeals under such rules as the court may establish.

(4) Within 30 days after service of the petition, or within such further time as the court may allow, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review, but, by stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record when deemed desirable. Except as specifically provided in this subsection, the cost of the record shall not be taxed to the petitioner or any intervening party. However, the court may tax such costs and the cost of agency transcription of record to a party filing a frivolous petition for review.

(5) If, on review of a contested case, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good and substantial reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon such conditions as the court deems proper. The agency may modify its findings and order by reason of the additional evidence and shall, within a time to be fixed by the court, file with the reviewing court, to become a part of the record, the additional evidence, together with any modifications or new findings or orders, or its certificate that it elects to stand on its original findings and order, as the case may be.

(6) At any time subsequent to the filing of the petition for review and prior to the date set for hearing the agency may withdraw its order for purposes of reconsideration. If an agency withdraws an order for purposes of reconsideration, it shall, within such time as the court may allow, affirm, modify or reverse its order. If the petitioner is dissatisfied with the agency action after withdrawal for purposes of reconsideration, the petitioner may file an amended petition for review and the review shall proceed upon the revised order. If an agency withdraws an order for purposes of reconsideration and modifies or reverses the order in favor of the petitioner, the court shall allow the petitioner costs, but not attorney fees, to be paid from funds available to the agency.

(7) Review of a contested case shall be confined to the record, the court shall not substitute its judgment for that of the agency as to any issue of fact or agency discretion. In the case of disputed allegations of irregularities in procedure before the agency not shown in the record which, if proved, would warrant reversal or remand, the Court of Appeals may refer the allegations to a Master appointed by the court to take evidence and make findings of fact upon them. The court shall remand the order for further agency action if it finds that either the fairness of the proceedings or the correctness of the action may have been impaired by a material error in procedure or a failure to follow prescribed procedure.

(8)(a) The court may affirm, reverse or remand the order. If the court finds that the agency has erroneously interpreted a provision of law and that a correct interpretation compels a particular action, it shall:

(A) Set aside or modify the order; or

(B) Remand the case to the agency for further action under a correct interpretation of the provision of law.

(b) The court shall remand the order to the agency if it finds the agency's exercise of discretion to be:

(A) Outside the range of discretion delegated to the agency by law;

(B) Inconsistent with an agency rule, an officially stated agency position, or a prior agency practice, if the inconsistency is not explained by the agency; or

(C) Otherwise in violation of a constitutional or statutory provision.

(c) The court shall set aside or remand the order if it finds that the order is not supported by substantial evidence in the record. Substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a

reasonable person to make that finding. [1975 c.759 §15; 1977 c.798 §4; 1979 c.593 §24; 1985 c.757 §2]

183.484 Jurisdiction for review of orders other than contested cases; procedure; scope of court authority. (1) Jurisdiction for judicial review of orders other than contested cases is conferred upon the Circuit Court for Marion County and upon the circuit court for the county in which the petitioner resides or has a principal business office. Proceedings for review under this section shall be instituted by filing a petition in the Circuit Court for Marion County or the circuit court for the county in which the petitioner resides or has a principal business office.

(2) Petitions for review shall be filed within 60 days only following the date the order is served, or if a petition for reconsideration or rehearing has been filed, then within 60 days only following the date the order denying such petition is served. If the agency does not otherwise act, a petition for rehearing or reconsideration shall be deemed denied the 60th day following the date the petition was filed, and in such case petition for judicial review shall be filed within 60 days only following such date. Date of service shall be the date on which the agency delivered or mailed its order in accordance with ORS 183.470.

(3) The petition shall state the nature of the petitioner's interest, the facts showing how the petitioner is adversely affected or aggrieved by the agency order and the ground or grounds upon which the petitioner contends the order should be reversed or remanded. The review shall proceed and be conducted by the court without a jury.

(4)(a) The court may affirm, reverse or remand the order. If the court finds that the agency has erroneously interpreted a provision of law and that a correct interpretation compels a particular action, it shall:

(A) Set aside or modify the order; or

(B) Remand the case to the agency for further action under a correct interpretation of the provision of law.

(b) The court shall remand the order to the agency if it finds the agency's exercise of discretion to be:

(A) Outside the range of discretion delegated to the agency by law;

(B) Inconsistent with an agency rule, an officially stated agency position, or a prior agency practice, if the inconsistency is not explained by the agency; or

(C) Otherwise in violation of a constitutional or statutory provision.

(c) The court shall set aside or remand the order if it finds that the order is not supported by substantial evidence in the record. Substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding.

(5) In the case of reversal the court shall make special findings of fact based upon the evidence in the record and conclusions of law indicating clearly all aspects in which the agency's order is erroneous. [1975 c.759 §16; 1979 c.284 §121; 1979 c.593 §25a; 1985 c.757 §3]

183.485 Decision of court on review of contested case. (1) The court having jurisdiction for judicial review of contested cases shall direct its decision, including its judgment, to the agency issuing the order being reviewed and may direct that its judgment be delivered to the circuit court for any county designated by the prevailing party for entry in the circuit court's judgment docket.

(2) Upon receipt of the court's decision, including the judgment, the clerk of the circuit court shall enter a judgment or decree in the register and docket it pursuant to the direction of the court to which the appeal is made. [1973 c.612 §7;1981 c.178 §11; 1985 c.540 §39]

183.486 Form and scope of reviewing court's decision. (1) The reviewing court's decision under ORS 183.482 or 183.484 may be mandatory, prohibitory, or declaratory in form, and it shall provide whatever relief is appropriate irrespective of the original form of the petition. The court may:

(a) Order agency action required by law, order agency exercise of discretion when required by law, set aside agency action, remand the case for further agency proceedings or decide the rights, privileges, obligations, requirements or procedures at issue between the parties; and

(b) Order such ancillary relief as the court finds necessary to redress the effects of official action wrongfully taken or withheld.

(2) If the court sets aside agency action or remands the case to the agency for further proceedings, it may make such interlocutory order as the court finds necessary to preserve the interests of any party and the public pending further proceedings or agency action.

(3) Unless the court finds a ground for setting aside, modifying, remanding, or ordering agency action or ancillary relief under a specified provision of this section, it shall affirm the agency action. [1979 c.593 §27]

183.490 Agency may be compelled to act. The court may, upon petition as described in

ORS 183.484, compel an agency to act where it has unlawfully refused to act or make a decision or unreasonably delayed taking action or making a decision. [1957 c.717 §13; 1979 c.593 §28]

183.495 [1975 c.759 §16a; repealed by 1985 c.757 §7]

183.497 Awarding costs and attorney fees when finding for petitioner. (1) In a judicial proceeding designated under subsection (2) of this section the court:

(a) May, in its discretion, allow a petitioner reasonable attorney fees and costs if the court finds in favor of the petitioner.

(b) Shall allow a petitioner reasonable attorney fees and costs if the court finds in favor of the petitioner and determines that the state agency acted without a reasonable basis in fact or in law; but the court may withhold all or part of the attorney fees from any allowance to a petitioner if the court finds that the state agency has proved that its action was substantially justified or that special circumstances exist that make the allowance of all or part of the attorney fees unjust.

(2) The provisions of subsection (1) of this section apply to an administrative or judicial proceeding brought by a petitioner against a state agency, as defined in ORS 291.002, for:

(a) Judicial review of a final order as provided in ORS 183.480 to 183.484;

(b) Judicial review of a declaratory ruling provided in ORS 183.410; or

(c) A judicial determination of the validity of a rule as provided in ORS 183.400.

(3) Amounts allowed under this section for reasonable attorney fees and costs shall be paid from funds available to the state agency whose final order, declaratory ruling or rule was reviewed by the court. [1981 c.871 §1; 1985 c.757 §5]

Note: 183.497 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 183 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

APPEALS FROM CIRCUIT COURTS

183.500 Appeals. Any party to the proceedings before the circuit court may appeal from the decree of that court to the Court of Appeals. Such appeal shall be taken in the manner provided by law for appeals from the circuit court in suits in equity. [1957 c.717 §14; 1969 c.198 §76]

183.510 [1957 c.717 §16; repealed by 1971 c.734 §21]

RULES EFFECTS ON BUSINESS

183.540 Reduction of economic impact on small businesses. When the economic effect analysis shows that the rule has a significant adverse effect upon small business and, to the extent consistent with the public health and safety purpose of the rule, the agency shall reduce the economic impact of the rule on small business by:

(1) Establishing differing compliance or reporting requirements or time tables for small business;

(2) Clarifying, consolidating or simplifying the compliance and reporting requirements under the rule for small business;

(3) Utilizing objective criteria for standards; or

(4) Exempting small businesses from any or all requirements of the rule. [1981 c.755 §4]

183.545 Review of rules to minimize economic effect on businesses. Each agency periodically, but not less than every three years, shall review all rules that have been issued by the agency. The review shall include an analysis to determine whether such rules should be continued without change or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize the economic effect on businesses and the effect due to size and type of business. [1981 c.755 §5]

183.550 Public comment; factors to be considered in review. (1) As part of the review required by ORS 183.545, the agency shall invite public comment upon the rules.

(2) In reviewing the rules described in subsection (1) of this section, the agency shall consider:

(a) The continued need for the rule;

(b) The nature of complaints or comments received concerning the rule from the public;

(c) The complexity of the rule;

(d) The extent to which the rule overlaps, duplicates or conflicts with other state rules or federal regulations and, to the extent feasible, with local governmental regulations;

(e) The degree to which technology, economic conditions or other factors have changed in the subject area affected by the rule; and

(f) The statutory citation or legal basis for each rule. [1981 c.755 §6]

REVIEW OF STATE AGENCY RULES

183.710 Definitions for ORS 183.710 to 183.725. As used in ORS 183.710 to 183.725, unless the context requires otherwise:

(1) "Committee" means the Legislative Counsel Committee.

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item F, November 4, 1988, EQC Meeting

Request for Authorization to Conduct a Public Hearing on Revisions of Oregon Administrative Rules Chapter 340, Division 12, Civil Penalties, and Revisions to the Clean Air Act State Implementation Plan (SIP).

ERRATA

Attachment D, Proposed Division 12

Page D-17, numbering error. "(b) Class Two" should be "(2) Class Two".
Page D-43, statutory authority. Reference to ORS Chapter 459 is shown as a deletion. This reference was actually deleted in September when the last group of amendments of Division 12 was approved.

Attachment F, Public Notice

Date of public hearing. The notice shows December 15, 1988, as the date of the public hearing. No room was available for the hearing on this date. The hearing has now been scheduled for December 16, 1988, at 2 pm in the DEQ offices.
Close of comment period. The notice shows January 15, 1989, as the comment period closing date. This date should be changed to January 17, 1989, as the fifteenth is a Saturday.

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR COMMISSION ACTION

Agenda Item F, November 4, 1988, EQC Meeting

Request for Authorization to Conduct a Public Hearing on Revisions of Oregon Administrative Rules Chapter 340, Division 12, Civil Penalties, and Revisions to the Clean Air Act State Implementation Plan (SIP).

SUMMATION

The Commission has directed the Department to incorporate its enforcement policy into its rules. The rules should include a classification of violations and a civil penalty assessment procedure. It is the Commission's desire to create a rule which affords penalty predictability to the regulated community yet retains a level of flexibility in the Department's enforcement discretion.

The proposed rule attempts to implement the Commission's directive. In developing the rule, the critical issue revolved around the development of a civil penalty assessment procedure. The Department considered formula base systems similar to those used by the Oregon Department of Forestry and the Oregon Division of State Lands, and a box matrix system to similar to that contained in the Department's Hazardous Waste Program Enforcement Procedures and Guidelines (November, 1985). The proposed rule is an attempt to combine the strengths of both systems.

DIRECTOR'S RECOMMENDATION

Based upon the summation, it is recommended the Commission authorize a public hearing to take testimony on the proposed revisions to the civil penalty rules, OAR Chapter 340, Division 12, and proposed revisions to the SIP.

Yone C. McNally
229-5152
October 12, 1988
E:\WORDP\RFCA

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, November 4, 1988, EQC Meeting

Request for Authorization to Conduct a Public Hearing on Revisions of Oregon Administrative Rules Chapter 340, Division 12, Civil Penalties, and Revisions to the Clean Air Act State Implementation Plan (SIP).

BACKGROUND

On August 23, 1988, the Environmental Quality Commission held a retreat with Department staff and outside participants. One of the principle topics of discussion was a review of the Department's past enforcement practices, policies, as well as current issues related to this subject. Attachment E is a copy of the issue paper used for the enforcement discussion at the retreat.

As a result of these discussions, the Commission instructed the Department to initiate the following actions related to enforcement:

1. Include civil penalty settlements as a regular Commission agenda item. This activity was initiated at the last Commission meeting.

2. Incorporate the enforcement policy into the Department's rules. The rules would include a classification of violations and a civil penalty assessment matrix. The Commission emphasized its desire to create a rule which establishes penalty predictability for the regulated community yet retains a level of flexibility in enforcement discretion.

The Department has proceeded to evaluate various enforcement policy options and developed a proposed rule (Attachment D) which is described below and for which the Department requests Commission approval for authorization of a public hearing.

1. Description of Proposed State Rule

There are several major changes proposed: the classification of violations from the most to the least serious; a description of enforcement actions used by the Department; and a civil penalty determination system based on a combination of a box matrix and a factor related formula.

The classification of violation system would categorize violations based on seriousness. Three classes are proposed with Class One being the most serious and Class Three being the least. The classes are based on the actual or potential harm the violation poses under normal circumstances. The Department recognizes that some violations create tangible, identifiable harm, but there are cases where the actual harm is not immediately identifiable and may be irreparable once identified. Therefore, the Department has determined that the potential for harm created by certain violations is so grave that they need to be addressed before harm is tangible and in a similar manner to violations that create actual and immediate harm. Examples of such violations are those related to mismanagement of asbestos containing waste and hazardous waste.

The Department also proposes incorporating descriptions of the Department's common responses to violations and the types of violations for which such responses are generally used. The rule would set out under what circumstances the actions are generally used and who is authorized to issue them.

Related to the violation classification system is the development of a new civil penalty assessment process (Attachment D, pages 7 - 15). The combined system would include a box matrix (Attachment D, pages 8 & 10) and a formula (Attachment D, pages 11 - 13). This system would determine penalties based on the factors the Commission is required to consider pursuant to Oregon Revised Statute (ORS) 468.130(2).

The new process consists of several steps. The first step is to determine where a violation should fall within the box matrix. The purpose of a box matrix is to establish base penalties which may be applied to a particular class of violation identified within the rules and as they relate to the magnitude of the violation, that is, how much the violation has deviated from the regulatory standard established by the Department's statutes, rules, permits and orders. The base penalty is the starting point of the penalty determination process taking into account the gravity, or harm, of the violation, that is, the class of the violation, and its magnitude or deviation from the standard. It is also the penalty amount the Department would assess if a violation had no aggravating or mitigating circumstance.

There are two box matrices contained in the rule. One box matrix is for violations which carry a ten thousand dollar maximum civil penalty. The other is for violations which carry a five hundred dollar maximum civil penalty. The rule would establish a third matrix, although not actually shown as a box, for oil spills which are caused by a negligent or

intentional act. Such violations carry a twenty thousand dollar maximum civil penalty. The Department proposes the matrix in this case to be double the monetary values related to the ten thousand dollar matrix (Attachment D, page 8).

Once the base penalty is determined within the box matrix, the formula system would be applied. The formula takes into account the remaining factors of ORS 468.130(2). It assigns a value to each and indicates when a factor is considered mitigating, neutral or aggravating. The sum of the values is multiplied by an amount equal to one tenth of the appropriate base penalty. The product of the multiplication is then added to base penalty amount. The sum is the final penalty amount.

Not all factors in the formula are equal. Some are weighted more heavily on the aggravating side because of the seriousness of the factor. Mitigating factors are all valued equally. Some factors have no mitigating value, only neutral, because the Department believes that a violator should not be rewarded in certain cases. For example, the fact that a person has no prior violations of the Commission's rules should not be rewarded by considering it a mitigating factor because the person has the obligation to be in compliance. In this example, the lack of prior violations would result in a zero or neutral value.

As stated, the formula system relates to the remaining factors of ORS 468.130(2). Several numerical values are attached to each factor. When determining the amount of penalty for each violation, the rule would require the Director to make a particular finding before a value can be assigned to a factor. For example, one factor considered in the penalty determination is a person's cooperativeness in resolving the violation. If the person cooperated with the Department in resolving the violation, the Director would assign a value of (-2) to the factor, while a value of (+2) would be assigned if it were found a violator was uncooperative. Anytime there is insufficient information to support a finding for any given factor, a value of (0) should be assigned, thus making the factor neutral and removing it from consideration in the penalty amount.

An example of how the penalty process would work in application is included as Attachment C.

The proposed enforcement procedures would help assure fair and consistent statewide enforcement. The proposed penalty determination system would help the Director better articulate his decision, allows a reviewing body clear standards by which to increase or reduce a penalty subsequent to assessment, and affords notice to the regulated community as to how the Department determines penalties.

2. Proposed Clean Air Act State Implementation Plan Revision

Certain proposed changes in the state civil penalty rules must be incorporated into the SIP in order to meet federal requirements. As new authority concerning air quality has been added to Division 12, this is an appropriate time to bring the SIP rules relating to civil penalties up to date. The Department, therefore, is proposing the following SIP actions:

- Add the following proposed rules:
  OAR 340-12-026 (Policy), 340-12-041 (Formal Enforcement Actions), 340-12-042 (Civil Penalty Matrices).
- Retain the following existing rules with proposed modifications: OAR 340-12-030 (Definitions) 340-12-040 (Notice of Violation), 340-12-045 (Civil Penalty Determination Process, formally Mitigating and Aggravating Factors), and 340-12-050 (Air Quality Classification of Violations and Minimum Penalties, formally Schedule of Civil Penalties).
- Retain the following existing rules:
  OAR 340-12-035 (Consolidation of Proceedings), 340-12-046 (Written Notice of Assessment of Civil Penalty), and 340-12-047 (Compromise or Settlement of Penalty).

ALTERNATIVES AND EVALUATION

1. Do not revise Division 12.

If Division 12 is not revised, the Department would not be able to implement the Commission's policy direction. It would also leave the Department with a highly discretionary enforcement process and a subjective civil penalty determination process.

2. Revise Division 12 pursuant to the Commission's direction and establish a box matrix civil penalty determination process.

The box matrix system would establish a limited range of penalties that could be assessed for violations based on their classification and magnitude. While this system provides notice to the regulated community that a penalty should fall within a certain range, it provides no procedure to adjust the penalty within the range. Thus the system is still subjective within the range.

3. Revise Division 12 pursuant to the Commission's direction and establish a formula based civil penalty determination process.

The formula system would assign values to the factors of ORS 468.130(2) with specific findings attached to each value. This system would require the establishment of base penalties from which the formula product would be added or subtracted. It would also require the establishment of civil penalties below which a penalty would not be mitigated. Although an objective process, it creates the potential for extremely high or low penalties in certain cases which would only be limited by a maximum and minimum penalty.

4. Revise Division 12 as proposed.

The proposed revision would implement the Commission's policy direction, classify violations, describe the Department's common enforcement procedures, establish a civil penalty determination process which combines alternatives 2 and 3. This combination would achieve the objectives of establishing reasonable ranges of penalties based on a violation's seriousness and limit the subjectivity inherent in the present system and alternative three.

5. Do not revise the Oregon SIP.

The Department must have current and appropriate civil penalty rules in the SIP in order to meet federal requirements. Failure to incorporate proposed changes to the state civil penalty rules in the SIP or bring the existing rules in the SIP up to date with current state rules would put the state in technical violation of the Clean Air Act requirements and ultimately force EPA to take remedial or sanction action.

6. Revise the Oregon SIP as proposed.

This alternative would make the federally enforceable SIP rules consistent with current state rules.

DIRECTOR'S RECOMMENDATION

Based upon the summation, it is recommended the Commission pursue the changes outlined in alternatives 4 and 6, and authorize a public hearing to take testimony on the proposed revisions to the civil penalty rules, OAR Chapter 340, Division 12, and the revisions to the SIP.

Fred Hansen

Attachments
- Attachment A: Statement of Need for Rulemaking
- Attachment B: Land Use Compatibility Statement
- Attachment C: Example of Civil Penalty Matrix
- Attachment D: Proposed Division 12
- Attachment E: Enforcement Policy Paper
- Attachment F: Public Notice

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ATTACHMENT A

Agenda Item F, November 4, 1988, EQC Meeting

STATEMENT OF NEED FOR RULEMAKING

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

(1) Legal Authority:

ORS 468.090 to 468.140 establishes the process the Department must follow when enforcing its statutes, rules, permits and order against violators.

ORS 468.090 states that the Department is to endeavour to achieve compliance through "conference, conciliation and cooperation" before instituting enforcement procedures subject to contested case hearings.

ORS 468.125 establishes the procedure the Department must follow before assessing civil penalties against violators and lists specific exceptions to this procedure.

ORS 468.130 requires the Commission to adopt civil penalty schedules in order to effectuate its civil penalty authority. It also requires the Commission to consider a specific list of factors when imposing a penalty.

(2) Need for Rule:

The Commission expressed its desire to develop an enforcement procedure that assured consistent and efficient statewide enforcement, that provided an adequate level of notice to the regulated community and offered a higher degree of predictability for all involved.

The Commission has therefore directed the Department to codify its enforcement policy in its rules. The Commission has also directed the Department to classify violations in terms of environmental harm and to develop a more objective scheme for determining civil penalty amounts.

The proposed revisions implement these directives.

Revisions are needed in the Clean Air Act SIP to make these federally enforceable rules consistent with existing and proposed state rules.

(3) Principal Documents Relied Upon:

ORS Chapters 454, 459, 466, and 468; Enforcement Guidelines and Procedures, Hazardous Waste Program, Department of Environmental Quality, November, 1985; and Enforcement briefing paper, Department of Environmental Quality, prepared for the Environmental Quality Commission, August, 1988. These documents are available for review at the Department of Environmental Quality, Regional Operations, 10th floor, 811 SW Sixth Avenue, Portland, OR 97204.

(4) Fiscal and Economic Impact:

The newly proposed schedules would only have a fiscal and economic impact on individuals, public entities, and small and large businesses if a penalty were imposed for a violation of Oregon's environmental statutes, the Commission's rules or orders, or orders or permits issued by the Department.

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ATTACHMENT B

Agenda Item F, November 4, 1988

LAND USE CONSISTENCY STATEMENT

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

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October 12, 1988

ATTACHMENT C

PROPOSED CIVIL PENALTY DETERMINATION PROCESS EXAMPLE

A Class One violation relating to the Department's air quality rules occurs. The magnitude of the violation is determined to be moderate. In this case, the box matrix with a $10,000 maximum applies. Therefore, this particular violation falls in the box that establishes a base penalty of $2,500. For purposes of the example, there are no prior violations, the economic condition of the violator is known to be sound, the violation occurred on a single day, was caused by the violator's gross negligence and the violator cooperated with the Department in correcting the violation.

Starting with the base penalty of $2,500, the formula, BP + [(.1 x BP)(P + H + E + O + R + C)], is applied.

In this example, the formula would be applied as follows:

"P" is prior violations of the violator. Since there are no prior violations in this instance, "P" is assigned a value of "0".

"H" is the violator's past history of correcting violations. As there is no past history in this instance, "H" is also assigned a value of "0".

"E" is the violator's economic condition. A value of "1" is assigned to this factor because the violator's condition is sound and there is no showing that the violator received any significant economic benefit through noncompliance.

"O" is whether the violation is a single occurrence or repeated or continuous. A value of "0" is assigned in this instance because the violation was a single occurrence.

"R" is whether the violation was the result of an unavoidable accident or a negligent or intentional act of the violator. A value of "3" is assigned in this case because the violator was grossly negligent.

"C" is whether the violator cooperated with the Department in correcting the violation. A value of "-2" is assigned in this case because the violator was cooperative.

With the above values plugged into the formula, the factor consideration would look like this: $2,500 + [($2,500 x .1)(0 + 0 + 1 + 0 + 3 + (-2))] = $2,500 + ($250 x 2) = $2,500 + $500 = $3,000. Thus, in this case, the penalty is increased by $500 due to the aggravating circumstances of the violation. The penalty for this violation would then be $3,000.

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229-5152
October 12, 1988

ATTACHMENT D

CHAPTER 340, DIVISION 12

Enforcement Procedure and Civil Penalties

Policy

340-12-026

(1) The goal of enforcement is to:

(a) Obtain and maintain compliance with the Department's statutes, rules, permits and orders;

(b) To protect the public health and the environment;

(c) To deter future violators and violations; and

(d) To ensure an appropriate and consistent statewide enforcement program.

(2) Except as provided by 340-12-040(3), the Department will endeavor by conference, conciliation and persuasion to solicit compliance prior to initiating and following issuance of any enforcement action.

(3) Subject to section (2) of this rule, the Department shall address all documented violations in order of seriousness at the most appropriate level of enforcement necessary to achieve compliance under the particular circumstances of each violation.

(4) Violators who do not comply with initial enforcement action shall be subject to increasing levels of enforcement until compliance is achieved.

Definitions

340-12-030

Unless otherwise required by context, as used in this Division:

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

(2) "Compliance" means meeting the requirements of the Commission's and Department's statutes, rules, permits or orders.

[(2)](3) "Director" means the Director of the Department or the Director's authorized deputies or officers.

[(3)](4) "Department" means the Department of Environmental Quality.

(5) "Enforcement" means any documented action taken to address a violation.

(6) "Magnitude of the Violation" means the extent of a violator's deviation from a standard established in the Commission's and Department's statutes, rules, permits or orders, taking into account such factors as, but not limited to, concentration, volume, duration, toxicity, or proximity to human or environmental receptors. Deviations shall be categorized as follows:

(a) "Major" means a substantial deviation from the standard;

(b) "Moderate" means an significant deviation from the standard;

(c) "Minor" means a slight deviation from the standard.

[(4)](7) "Order" means:

(a) Any action satisfying the definition given in ORS Chapter 183; or

(b) Any other action so designated in ORS Chapter 454, 459, 466, 467, or 468.

[(5)](8) "Person" includes individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, the state and any agencies thereof, and the Federal Government and any agencies thereof.

(9) "Prior Violation" means any violation for which a person was afforded the opportunity to contest pursuant to ORS 183.310 through 183.550.

[(6)](10) "Respondent" means the person against whom a civil penalty is assessed, or a Notice of Violation or an Order is issued.

(11) "Risk of Harm" means the level of risk created by the likelihood of exposure or the actual damage caused by a violation to public health or the environment. Risk of harm shall be separated into three levels:

(a) "Major" means a violation which poses a major risk of adverse affect on or substantial likelihood of exposure to public health or the environment;

(b) "Moderate" means a violation which poses a moderate risk of adverse affect on or significant likelihood of exposure to public health or the environment;

(c) "Minor" means a violation which poses a minor risk of adverse affect on or slight likelihood of exposure to public health or the environment.

[(7)](12) "Violation" means a transgression of any statute, rule, [standard,] order, license, permit, [compliance schedule,] or any part thereof and includes both acts and omissions. Violations shall be categorized as follows:

(a) "Class One or I" means any violation which poses a major risk of harm to public health or the environment;

(b) "Class Two or II" means any violation which poses a moderate risk of harm to public health or the environment;

(c) "Class Three or III" means any violation which poses a minor risk of harm to public health or the environment.

(Statutory Authority: ORS CH 468)

Note:
Underlined Material is New
[Bracketed Material is Deleted].

Consolidation of Proceedings

340-12-035

Notwithstanding that each and every violation is a separate and distinct offense, and in cases of continuing violation, each day's continuance is a separate and distinct violation, proceedings for the assessment of multiple civil penalties for multiple violations may be consolidated into a single proceeding.

(Statutory Authority: ORS CH 468)

Notice of Violation

340-12-040

(1) Except a provided in section (3) of this rule, prior to the assessment of any civil penalty the Department shall serve a Notice of Violation upon the respondent. Service shall be in accordance with rule 340-11-097.

(2) A Notice of Violation shall be in writing, specify the violation and state that the Department will assess a civil penalty if the violation continues or occurs after five days following receipt of the notice.

(3) (a) A Notice of Violation shall not be required where the respondent has otherwise received actual notice of the violation not less than five days prior to the violation for which a penalty is assessed.

(b) No advanced notice, written or actual, shall be required under sections (1) and (2) of this rule if:

(A) The act or omission constituting the violation is intentional;

(B) The violation consists of disposing of solid waste or sewage at an unauthorized disposal site;

(C) The violation consists of constructing a sewage disposal system without the Department's permit;

(D) The water pollution, air pollution, or air contamination source would normally not be in existence for five days;

(E) The water pollution, air pollution, or air contamination source might leave or be removed from the jurisdiction of the Department;

(F) The penalty to be imposed is for a violation of ORS 466.005 to 466.385 relating to the management and disposal of hazardous waste or polychlorinated biphenols, or rules adopted or orders or permits issued pursuant thereto.; or

(G) The penalty to be imposed is for a violation of ORS 468.893(8) relating to the control of asbestos fiber releases into the environment, or rules adopted thereunder.

(Statutory Authority: ORS CH 459, 466 & 468)

Enforcement Actions

340-12-041

(1) Notice of Noncompliance. An enforcement action which:

(a) Informs a person of the existence of a violation, the actions required to resolve the violations and the consequences of non compliance. The notice may specify a time by which compliance is to be achieved;

(b) Shall be issued under the direction of the appropriate Regional Manager, or Section Manager or authorized representative;

(c) May be issued for, but is not limited to, the first occurrence of a Class Two violation or Class Three violation;

(d) Satisfies the requirements of OAR 340-12-026(2).

(2) Notice of Violation and Intent to Assess a Civil Penalty. A formal enforcement action which:

(a) Is issued pursuant to OAR 340-12-040;

(b) Shall be issued by the Regional Operations Administrator;

(c) May be issued for, but is not limited to, the first occurrence of a Class One violation which is not excepted under OAR 340-12-040(3)(b), or the repeated or continuing occurrence of Class Two or Three violations where a Notice of Noncompliance has failed;

(d) Satisfies the requirements of OAR 340-12-026(2).

(3) Notice of Violation and Compliance Order. A formal enforcement action which:

(a) Is issued pursuant to ORS 466.190 for violations related to the management and disposal of hazardous waste;

(b) Includes a time schedule by which compliance is to be achieved;

(c) Shall be issued by the Director;

(d) May be issued for, but is not limited to, all classes of violations related to hazardous waste which require more than sixty (60) days after the notice to correct.

(4) Notice of Civil Penalty Assessment. A formal enforcement action which:

(a) Is issued pursuant to ORS 468.135, and OAR 340-12-042 and 340-12-045;

(b) Shall be issued by the Director;

(c) May be issued for, but is not limited to, the first occurrence of a Class One violation excepted by OAR 340-12-040(3), for

repeated or continuing Class Two or Three violations or where a person has failed to comply with a Notice of Violation.

(5) Order. A formal enforcement action which:

(a) Is issued pursuant ORS Chapters 183, 454, 459, 466 and 468;

(b) May be in the form of a Commission or Department Order, or a Stipulated Final Order;

(c) Commission Orders shall be issued by the Commission, or the Director on behalf of the Commission;

(d) Department Orders shall be issued by the Director;

(e) Stipulated Final Orders:

(A) May be negotiated between the Department and the subject party;

(B) Shall be signed by the Director on behalf of the Department and the authorized representative of the subject party; and

(C) Shall be approved by the Commission or by the Director on behalf of the Commission.

(f) May be issued for, but is not limited to, Class One or Two violations.

(6) The formal enforcement actions described in section (1) through (5) or this rule in no way limits the Department or Commission from seeking legal or equitable remedies in the proper court as provided by ORS Chapters 454, 459, 466 and 468.

Civil Penalty Schedule Matrices

340-12-042

In addition to any liability, duty, or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to the

Commission's or Department's statutes, regulations, permits or orders by service of a written notice of assessment of civil penalty upon the respondent. The amount of any civil penalty shall be determined through the use of the following matrices in conjunction with the formula contained in OAR 340-12-045:

(1)

$10,000 Matrix

← Magnitude of Violation

↑ Class of Violation

	Major	Moderate	Minor
Class I	$5,000	$2,500	$1,000
Class II	$2,000	$1,000	$500
Class III	$500	$250	$100

No civil penalty issued by the Director pursuant to this matrix shall be less than fifty dollars ($50) nor more than ten thousand dollars ($10,000) for each day of each violation. This matrix shall apply to the following types of violations:

(a) Any violation related to air quality statutes, rules, permits or orders, except for residential open burning and field burning;

(b) Any violation related to of ORS 468.875 to 468.899 relating to asbestos abatement projects;

(c) water quality statutes, rules, permits or orders, except for violations of ORS 164.785(1) relating to the placement of offensive substances into waters of the state;

(d) Any violation related to underground storage tanks statutes, rules, permits or orders, except for failure to pay a fee due and owing under ORS 466.785 and 466.795;

(e) Any violation related to hazardous waste management statutes, rules, permits or orders, except for violations of ORS 466.890 related to damage to wildlife;

(f) Any violation related to oil and hazardous material spill and release statutes, rules and orders, except for negligent or intentional oil spills;

(g) Any violation related to polychlorinated biphenols management and disposal statutes; and

(h) Any violation ORS 466.540 to 466.590 related to remedial action statutes, rules, agreements or orders.

(2) Persons causing oil spills through an intentional or negligent act shall incur a civil penalty of not less then one hundred dollars ($100) nor more than twenty thousand dollars ($20,000). The amount of the penalty shall be determined by doubling the values contained in the matrix in subsection (a) of this rule in conjunction with the formula contained in 340-12-045.

(3)

$500 Matrix

← Magnitude of Violation

^ Class of Violation

	Major	Moderate	Minor
Class I	$400	$300	$200
Class II	$300	$200	$100
Class III	$200	$100	$50

No civil penalty issued by the Director pursuant to this matrix shall be less than fifty dollars ($50) nor more than five hundred dollars ($500) for each day of each violation. This matrix shall apply to the following types of violations:

(a) Any violation related to residential open burning;

(b) Any violation related to noise control statutes, rules, permits and orders;

(c) Any violation related to on-site sewage disposal statutes, rules, permits, licenses and orders;

(d) Any violation related to solid waste statutes, rules, permits and orders; and

(e) Any violation related to waste tire statutes, rules, permits and orders;

Note:
Underlined Material is New
[Bracketed Material is Deleted].

(f) Any violation of ORS 164.785 relating to the placement of offensive substances into the waters of the state or on to land.

(Statutory Authority: ORS Ch. 454, 459, 466, 467 & 468)

Civil Penalty Determination Procedure [Aggravating and Mitigating Factors]

340-12-045

(1) When determining the amount of civil penalty to be assessed for any violation, the Director shall apply the following procedures:

(a) Determine the class of violation and the magnitude of each violation;

(b) Choose the appropriate base penalty established by the matrices of 340-12-042 based upon the above finding;

(c) Starting with the base penalty (BP), determine the amount of penalty through application of the formula BP + [(.1 x BP)(P + H + E + O + R + C)] where:

(A) "P" is whether the respondent has any prior violations of statutes, rules, orders and permits pertaining to environmental quality or pollution control. The values for "P" and the finding which support each are as follows:

(i) 0 if no prior violations or insufficient information on which to base a finding;

(ii) 1 if the prior violation is a Class Three;

(iii) 2 if the prior violation(s) is a Class Two or two Class Threes;

(iv) 3 if the prior violation(s) is a Class One or three Class Threes;

(v) 4 if the prior violations are two Class Twos or four Class Threes;

(vi) 5 if the prior violations are five Class Threes;

(vii) 6 if the prior violations are two or more Class Ones, three or more Class Twos or six or more Class Threes.

(B) H is past history of the respondent taking all feasible steps or procedures necessary or appropriate to correct any prior violations. The values for "H" and the finding which support each are as follows:

(i) -2 if violator took all feasible steps to correct any violation;

(ii) 0 if there is no prior history or insufficient information on which to base a finding;

(iii) 1 if violator took some, but not all, feasible steps to correct a Class Two or Three violation;

(iv) 2 if violator took some, but not all, feasible steps to correct a Class One violation;

(v) 3 no action to correct prior violations.

(C) E is the economic condition of the respondent:

(i) -2 if economic condition is poor or the respondent gained no economic benefit through noncompliance;

(ii) 0 if there is insufficient information on which to base a finding;

(iii) 2 if economic condition is good or the respondent gained a minor to moderate economic benefit through non-compliance;

(iv) 4 if the respondent gained a significant economic benefit through noncompliance.

(D) O is whether the violation was a single occurrence or was repeated or continuous:

(i) 0 if single occurrence;

(ii) 2 if repeated or continuous.

(E) R is whether the violation resulted from an unavoidable accident, or a negligent or intentional act of the respondent:

(i) -2 if unavoidable accident;

(ii) 0 if insufficient information to make any other finding;

(iii) 1 if negligent;

(iv) 3 if grossly negligent;

(v) 4 if intentional;

(vi) 6 if flagrant.

(F) C is the violator's cooperativeness in correcting the violation:

(i) -2 if violator is cooperative;

(ii) 0 if violator is neither cooperative nor uncooperative or there is insufficient information on which to base a finding;

(iii) 2 if violator is uncooperative.

Note:
Underlined Material is New
[Bracketed Material is Deleted].

[(1) In establishing the amount of a civil penalty to be assessed, the Director may consider the following factor:

(a) Whether the respondent has committed any prior violation, of statutes, rules, orders or permits pertaining to environmental quality or pollution control regardless of whether or not any administrative, civil, or criminal proceeding was commenced therefore;

(b) The past history of the respondent in taking all feasible steps or procedures necessary or appropriate to correct any violation;

(c) The economic and financial conditions of the respondent;

(d) The gravity and magnitude of the violation;

(e) Whether the violation was repeated or continuous;

(f) Whether a cause of the violation was an unavoidable accident, or negligence, or an intentional act of the respondent;

(g) The respondent's cooperativeness and efforts to correct the violation for which the penalty is to be assessed; or

(h) Any relevant rule of the commission.]

(2) In imposing a penalty subsequent to a hearing, the Commission shall consider the factors contained in section (1) of this rule and any other relevant rule of the Commission [(a) through (h)].

(3) Unless the issue is raised in respondent's answer to the written notice of assessment of civil penalty, the Commission may presume that the economic and financial conditions of respondent would allow imposition of the penalty assessed by the Director. At the hearing, the burden of proof and the burden of coming forward with evidence regarding the respondent's economic and financial condition shall be upon the respondent.

(Statutory Authority: ORS CH 468)

Note:
Underlined Material is New
[Bracketed Material is Deleted].

Written Notice of Assessment of Civil Penalty; When Penalty Payable

340-12-046

(1) A civil penalty shall be due and payable when the respondent is served a written notice of assessment of civil penalty signed by the Director. Service shall be in accordance with rule 340-11-097.

(2) The written notice of assessment of civil penalty shall be in the form prescribed by rule 340-11-098 for a notice of opportunity for a hearing in a contested case, and shall state the amount of the penalty or penalties assessed.

(3) The rules prescribing procedure in contested case proceedings contained in Division 11 shall apply thereafter.

(Statutory Authority: ORS CH 468)

Compromise of Settlement of Civil Penalty by Director

340-12-047

Any time subsequent to service of the written notice of assessment of civil penalty, the Director is authorized to seek to compromise or settle any unpaid civil penalty which the Director deems appropriate. Any compromise or settlement executed by the Director shall not be final until approved by the Commission.

(Statutory Authority: ORS CH 468)

Stipulated Penalties

340-12-048

Nothing in OAR Chapter 340 Division 12 shall affect the ability of the Director to include stipulated penalties in a Stipulated Final Order or any agreement issued under ORS 466.570 or 466.577, of up to $10,000 per day for each violation of such orders or agreements issued pursuant to ORS Chapters

466 or 468, or of up to $500 per day for each violation of such orders or agreements issued pursuant to ORS Chapters 454, 459 or 467.

(Statutory Authority: ORS CH 454, 459, 466, 467 & 468)

Air Quality Classification of Violations [Air Quality Schedule of Civil Penalties]

340-12-050

Violations pertaining to air quality shall be classified as follows:

(1) Class One:

(a) Exceeding an allowable emission level such that an ambient air quality standard is potentially exceeded.

(b) Exceeding an allowable emission level such that emissions of potentially dangerous amounts of a toxic or otherwise hazardous substance are emitted.

(c) Causing emissions that are potentially a hazard to public safety;

(d) Failure to comply with Emergency Action Plans or allowing excessive emissions during emergency episodes;

(e) Constructing or operating a source without an Air Contaminant Discharge Permit;

(f) Exceeding the final compliance date of a compliance schedule in a permit;

(g) Violation of a work practice requirement which results in or creates the likelihood for public exposure to asbestos or release of asbestos into the environment;

(h) Storage of friable asbestos material or asbestos-containing waste material from an asbestos abatement project which results in or

creates the likelihood for public exposure to asbestos or release of asbestos into the environment;

(i) Visible emissions of asbestos during an asbestos abatement project or during collection, processing, packaging, transportation, or disposal of asbestos-containing waste material;

(j) Violation of a disposal requirement for asbestos-containing waste material which results in or creates the likelihood of exposure to asbestos or release of asbestos into the environment;

(k) Advertising to sell, offering to sell or selling an uncertified wood stove;

(l) Illegal open burning of materials prohibited by OAR 340-23-042(2);

(m) Violation of a Commission or Department Order;

(n) Any other violation which poses a substantial risk to public health or the environment.

(b) Class Two:

(a) Allowing discharges of a magnitude that, though not actually likely to cause an ambient air violation, may have endangered citizens;

(b) Exceeding emission limitations in permits or air quality rules;

(c) Exceeding opacity limitations in permits or air quality rules;

(d) Violating standards for fugitive dust, particulate deposition, or odors in permits or air quality rules;

(e) Illegal open burning, other than field burning, not otherwise classified;

(f) Illegal residential open burning;

(g) Failure to report upset or breakdown of air pollution control equipment;

(h) Violation of a work practice requirement for asbestos abatement projects which are not likely to result in public exposure to asbestos or release of asbestos into the environment;

(i) Improper storage of friable asbestos material or asbestos-containing waste material from an asbestos abatement project which is not likely to result in public exposure to asbestos or release of asbestos into the environment;

(j) Violation of a disposal requirement for asbestos-containing waste material which is not likely to result in public exposure to asbestos or release of asbestos to the environment;

(k) Conduct of an asbestos abatement project by a contractor not licensed as an asbestos abatement contractor;

(l) Failure to provide notification of an asbestos abatement project;

(m) Failure to display permanent labels on a certified woodstove;

(n) Any alternation of a certified woodstove permanent label;

(o) Any other violation which poses a moderate risk of harm to public health or the environment.

(3) Class Three:

(a) Failure to file a Notice of Construction or permit application;

(b) Failure to report as a condition of a compliance order or permit;

(c) Any violation of a hardship permit for open burning of yard debris;

(d) Improper notification of an asbestos abatement project;

(e) Failure to comply with asbestos abatement certification, licensing, certification, or accreditation requirements not elsewhere classified;

(f) Failure to display a temporary label on a certified wood stove;

(g) Failure to notify Department of an emission limit violation on a timely basis;

(h) Failure to submit annual or monthly reports required by rule or permit;

(i) Any other violation which poses a minor risk of harm to public health and the environment.

[In addition to any liability, duty, or other penalty provided by law, the Director, or the director of a regional air quality control authority, may assess a civil penalty for any violation pertaining to air quality by service of a written notice of assessment of civil penalty upon the respondent. The amount of such civil penalty shall be determined consistent with the following schedule:

(1) Not less than one hundred dollars ($100) nor more than ten thousand dollars ($10,000) for violation of an order of the Commission, Department, or regional air quality control authority.

(2) Not less than fifty dollars ($50) nor more than ten thousand dollars ($10,000) for:

(a) Violating any condition of any Air Contaminant Discharge Permit, Hardship Permit, Letter Permit, Indirect Source Permit, or variance;

(b) Any violation which causes, contributes to, or threatens the emission of any air contaminant into the outdoor atmosphere;

(c) Operating any air contaminant source without first obtaining an Air Contaminant Discharge Permit; or

(d) Any unauthorized open burning; or

(e) Any violation of the asbestos abatement project statutes ORS 468.875 to 468.899 or rules adopted or orders issued pursuant thereto pertaining to asbestos abatement.

(3) Not less than twenty-five dollars ($25) nor more than ten thousand dollars ($10,000) for any other violation.]

(Statutory Authority: ORS CH 468)

Noise Control Classification of Violations [Noise Control Schedule of Civil Penalties]

340-12-052

Violations pertaining to noise control shall be classified as follows:

(1) Class One:

(a) Ongoing, daily violations that exceed daytime or night time ambient standards by ten (10) decibels or more;

(b) Frequent, but not ongoing, violations of nighttime or daytime ambient standards by ten (10) decibels or more;

(c) Exceeding the ambient degradation rule by five (5) decibels or more;

(d) Significant noise emission standards violations of either duration or magnitude due to sources or activities not likely to remain at the site of the violation;

(e) Any violations of a Commission or Department order or variances;

(f) Any other violation which poses a substantial risk of creating a serious violation of the Department's noise standards.

(2) Class Two:

(a) Violations of ambient standards that are not subject to the Class One category and generally exceeding the standards by three (3) decibels or more;

(b) Violations of emission standards and other regulatory requirements;

(c) Any other violation which poses a rise of creating a moderate violation of the Department's noise standards.

(3) Class Three:

(a) Activities that threaten or potentially threaten to violate rules and standards;

(b) Failure to meet administrative requirements that have no direct impact on the public health, welfare, or environment;

(c) Single violations of noise standards that are not likely to be repeated;

(d) Any other violation of the ambient noise standards not within the Class One or Two categories.

[In addition to any liability, duty, or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to noise

control by service of a written notice of assessment of civil penalty upon the respondent. The amount of such civil penalty shall be determined consistent with the following schedule:

(1) Not less than one hundred dollars ($100) nor more than five hundred dollar ($500) for violation of an order of the Commission or Department.

(2) Not less than fifty dollar ($50) nor more than five hundred dollars ($500) for any violation which causes, substantially contributes to, or will probably cause:

(a) The emission of noise in excess of levels established by the Commission for any category of noise emission source; or

(b) Ambient noise at any type of noise sensitive real property to exceed the levels established therefor by the Commission.

(3) Not less than twenty-five dollars ($25) nor more than five hundred dollars ($500) for any other violation.]

(Statutory Authority: ORS CH 467 & 468)

Water Quality Classification of Violations [Water Pollution Schedule of Civil Penalties]

340-12-055

Violations pertaining to water quality shall be classified as follows:

(1) Class One:

(a) Any violation of a Commission or Department Order;

(b) Any intentional or negligent oil spill;

(c) Any negligent spill which poses a major risk or harm to public health or the environment;

(d) Any waste discharge permit limitation violation which poses a major risk of harm to public health or the environment;

(e) Any unpermitted discharge of waste to surface waters without first obtaining a National Pollutant Discharge Elimination System Permit;

(f) Any other violation which poses a major risk of harm to public health or the environment.

(2) Class Two:

(a) Any waste discharge permit limitation violation which poses a moderate risk of harm to public health or the environment;

(b) Any failure to immediately notify of spill or upset condition which results in an unpermitted discharge to public waters;

(c) Any failure to achieve a compliance schedule in a permit;

(d) Any operation of a disposal system without first obtaining a Water Pollution Control Facility Permit;

(e) Any failure to submit a report or plan as required by permit or license;

(f) Any other violation which poses a moderate risk of harm to public health or the environment.

(c) Class Three:

(a) Any failure to submit a discharge monitoring report (DMR) on time;

(b) Any failure to submit a completed DMR;

(c) Any violation of a waste discharge permit limitation which poses a minor risk of harm to public health or the environment;

(d) Any other violation which poses a minor risk of harm to public health or the environment.

[In addition to any liability, duty, or other penalty provided by law, the Director may assess a civil penalty for any violation relating to water pollution by service of written notice of assessment of civil penalty upon the respondent. The amount of such civil penalty shall be determined consistent with the following schedule:

(1) Not less than one hundred dollars ($100) nor more than ten thousand dollars ($10,000) for any violation of an order of the Commission or Department.

(2) Not less than fifty dollars ($50) nor more than ten thousand dollars ($10,000) for:

(a) Violating any condition of any National Pollutant Discharge Elimination System (NPDES) Permit or Water Pollution Control Facilities (WPCF) Permit;

(b) Any violation which causes, contributes to, or threatens the discharge of a waste into any waters of the state or causes pollution of any waters of the state; or

(c) Any discharge of waste water or operation of a disposal system without first obtaining a National Pollutant Discharge Elimination System (NPDES) Permit or Water Pollution Control Facilities (WPCF) Permit.

(3) Not less than five hundred dollars ($500) nor more than ten thousand dollars ($10,000) for failing to immediately clean up an oil spill.

(4) Not less than twenty-five dollars ($25) nor more than ten thousand dollars ($10,000) for any other violation.

(5) (a) In addition to any penalty which may be assessed pursuant to sections (1) through (4) of this rule, any person who intentionally causes or permits the discharge of oil into the waters of the state shall incur a civil penalty of not less than one thousand dollars ($1,000) nor more than twenty thousand dollars ($20,000) for each violation.

(b) In addition to any penalty which may be assessed pursuant to sections (1) through (4) of this rule, any person who negligently causes or permits the discharge of oil into the waters of the state shall incur a civil penalty of not less than five hundred dollars ($500) nor more than twenty thousand dollars ($20,000) for each violation.]

(Statutory Authority: ORS CH 468)

On-Site Sewage Disposal Classification of Violations [On-Site Sewage Disposal Systems Schedule of Civil Penalties]

340-12-060

Violations pertaining to On-Site Sewage Disposal shall be classified as follows:

(1) Class One:

(a) Performing, advertising or representing one's self as being in the business of performing sewage disposal services without first obtaining and maintaining a current sewage disposal service license from the Department, except as provided by statute or rule;

(b) Installing or causing to be installed an on-site sewage disposal system or any part thereof, without first obtaining a permit from the Agent;

Note:
Underlined Material is New
[Bracketed Material is Deleted].

(c) Disposing of septic tank, holding tank, chemical toilet, privy or other treatment facility contents in a manner or location not authorized by the Department;

(d) Installing or causing to be installed a nonwater-carried waste disposal facility without first obtaining written approval from the Agent therefor;

(e) Operating or using an on-site sewage disposal system which is failing by discharging sewage or effluent onto the ground surface or into surface public waters;

(f) Failing to connect all plumbing fixtures from which sewage is or may be discharged to a Department approved system;

(g) Any violation of a Commission or Department order;

(h) Any other violation related to on-site sewage disposal which poses a major risk of harm to public health, welfare, safety or the environment.

(2) Class Two:

(a) Installing or causing to be installed an on-site sewage disposal system, or any part thereof, which fails to meet the requirements for satisfactory completion within thirty (30) days after written notification or posting of a Correction Notice at the site;

(b) Operating or using a nonwater-carried waste disposal facility without first obtaining a letter of authorization from the Agent therefore;

(c) Operating or using a newly constructed, altered or repaired on-site sewage disposal system, or part thereof, without first

obtaining a Certificate of Satisfactory Completion from the Agent, except as provided by statute or rule;

(d) As a licensed sewage disposal service worker, provides any sewage disposal service in violation of the rules of the Commission;

(e) Failing to obtain an authorization notice from the agent prior to affecting change to a dwelling or commercial facility that results in the potential increase in the projected peak sewage flow from the dwelling or commercial facility in excess of the sewage disposal systems peak design flow.

(f) Any other violation related to on-site sewage disposal which poses a moderate risk of harm to public health, welfare, safety or the environment.

(c) Class Three:

(a) In situations where the sewage disposal system design flow is not exceeded, placing an existing system into service, or changing the dwelling or type of commercial facility, without first obtaining an authorization notice from the agent, except as otherwise provided by rule or statute;

(b) Any other violation related to on-site sewage disposal which poses a minor risk of harm to public health, welfare, safety or the environment.

[In addition to any liability, duty, or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to on-site sewage disposal activities by service of a written notice of assessment of civil penalty upon the respondent. The amount of such civil penalty shall be determined consistent with the following schedule:

(1) Not less than one hundred dollars ($100) nor more than five hundred dollars ($500) upon any person who:

(a) Violates an order of the Commission;

(b) Performs, or advertises or represents one's self as being in the business of performing, sewage disposal services, without obtaining and maintaining a current license form the Department, except as provided by statute or rule;

(c) Installs or causes to be installed an on-site sewage disposal system or any part thereof, without first obtaining a permit from the Agent;

(d) Fails to obtain a permit from the Agent within three days after beginning emergency repairs on an on-site sewage disposal system.

(e) Disposes of septic tank, holding tank, chemical toilet, privy or other treatment facility sludges in a manner or location not authorized by the Department;

(f) Connects or reconnects the sewage plumbing form any dwelling or commercial facility to an existing system without first obtaining an Authorization Notice from the Agent;

(g) Installs or causes to be installed a nonwater-carried waste disposal facility without first obtaining written approval from the Agent therefor;

(h) Operates or uses an on-site sewage disposal system which is failing by discharging sewage or septic tank effluent onto the ground surface or into surface public waters; or

(i) As a licensed sewage disposal service worker, performs any sewage disposal service work in violation of the rules of the Department.

(2) Not less than twenty-five dollars ($25) nor more than five hundred dollars ($500) upon any person who:

(a) Installs or causes to be installed an on-site sewage disposal system, or any part thereof, which fails to meet the requirements for satisfactory completion within thirty (30) days after written notification or posting of a Correction Notice at the site;

(b) Operates or uses a nonwater-carried waste disposal facility without first obtaining a letter of authorization from the Agent therefore;

(c) Operates or uses a newly constructed, altered or repaired on-site sewage disposal system, or part thereof, without first obtaining a Certificate of Satisfactory Completion from the Agent, except as provided by statute or rule;

(d) Fails to connect all plumbing fixtures from which sewage is or may be discharged to a Department approved system; or

(e) Commits any other violation pertaining to on-site sewage disposal systems.]

(Statutory Authority: ORS CH 468)

Solid Waste Management Classification of Violations [Solid Waste Management Schedule of Civil Penalties]

340-12-065

Violations pertaining to the management and disposal of solid waste shall be classified as follows:

(1) Class One:

(a) Establishing, expanding, maintaining or operating a disposal site without first obtaining a permit;

(b) Any violation of the freeboard limit or actual overflow of a sewage sludge or leachate lagoon;

(c) Any violation of the landfill methane gas concentration standards;

(d) Any impairment of the beneficial use(s) of an aquifer beyond the solid waste boundary or an alternative boundary specified by the Department;

(e) Any deviation from the approved facility plans which results in a potential or actual safety hazard, public health hazard or damage to the environment;

(f) Any failure to properly maintain gas or leachate control facilities;

(g) Any failure to comply with the requirements for immediate and final cover;

(h) Violation of a Commission or Department Order;

(i) Any other violation related to the management and disposal of solid waste which poses a major risk to public health and the environment.

(2) Class Two:

(a) Any failure to comply with the required cover schedule;

(b) Any failure to comply with working face size limits;

(c) Any failure to adequately control access;

(d) Any failure to adequately control surface water drainage;

(e) Any failure to adequately protect and maintain monitoring wells;

(f) Any failure to properly collect and analyze required water or gas samples;

(g) Any failure to comply with a compliance schedule contained in a solid waste disposal closure permit;

(h) Any other violation which poses a moderate risk of harm to public health or the environment.

(3) Class Three:

(a) Any failure to submit self-monitoring reports in a timely manner;

(b) Any failure to submit a permit renewal application in a timely manner;

(c) Any failure to submit required permit fees in a timely manner;

(d) Any failure to post required signs or failure to post adequate signs;

(e) Any failure to adequately control litter;

(f) Any failure to comply with recycling requirements;

(g) Any other violation which poses a minor risk of harm to public health or the environment.

[In addition to any liability, duty or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to solid waste management by service of a written notice of assessment of civil penalty upon the respondent. The amount of such civil penalty shall be determined consistent with the following schedule:

(1) Not less than one hundred dollars ($100) nor more than five hundred dollars ($500) for violation of an order of the Commission or Department.

(2) Not less than fifty dollars ($50) nor more than five hundred dollars ($500) for:

(a) Disposing of solid waste at an unauthorized site;

(b) Establishing, operating or maintaining a solid waste disposal site without first obtaining a Solid Waste Disposal Permit;

(c) Violating any condition of any Solid Waste Disposal Permit or variance;

(d) Disposing of waste tires at an unauthorized site; or

(e) Establishing, operating or maintaining a waste tire storage site without first obtaining a Waste Tire Storage Permit.

(3) Not less than twenty-five ($25) nor more than five hundred dollars ($500) for any other violation.]

(Statutory Authority: ORS CH 459)

Waste Tire Management Classification of Violations

340-12-066

Violations pertaining to the storage, transportation and management of waste tires shall be classified as follows:

(1) Class One:

(a) Establishing, expanding or operating a waste tire storage site without first obtaining a permit;

(b) Disposing of waste tires at an unauthorized site;

(c) Any violation of the compliance schedule or fire safety requirements of a waste tire storage site permit;

(d) Performing, or advertising or representing one's self as being in the business of performing services as a waste tire carrier without obtaining and maintaining a current permit form the Department, except as provided by statute or rule;

(e) Hiring or otherwise using an unpermitted waste tire carrier to transport waste tires, except as provided by statute or rule;

(f) Any violation of a Commission or Department order;

(g) Any other violation related to the storage, transportation or management of waste tires which poses a major risk of harm to public health or the environment.

(2) Class Two:

(a) Any violation of a waste tire storage site or waste tire carrier permit other than a specified Class One or Class Three violation;

(b) Any other violation related to the storage, transportation or management of waste tires which poses a moderate risk of harm to public health or the environment.

(3) Class Three:

(a) Any failure to submit required annual reports in a timely manner;

(b) Any failure to keep required records on use of vehicles;

(c) Any failure to post required signs;

(d) Any failure to submit a permit renewal application in a timely manner;

(e) Any failure to submit permit fees in a timely manner;

(f) Any other violation related to the storage, transportation or management of waste tires which poses a minor risk of harm to public health or the environment.

Underground Storage Tank Classification of Violations [Underground Storage Tank Schedule of Civil Penalties]

340-12-067

Violations pertaining to Underground Storage Tanks shall be classified as follows:

(1) Class One:

(a) Any failure to promptly report a release from an underground storage tank;

(b) Any failure to initiate the cleanup of a release from an underground storage tank;

(c) Placement of a regulated material into an unpermitted underground storage tank;

(d) Installation of an underground storage tank in violation of the standards or procedures adopted by the Department;

(e) Violation of a Commission or Department Order;

(f) Providing installation, retrofitting, decommissioning or testing services on an underground storage tank without first registering or obtaining an underground storage tank service providers license;

(g) Providing supervision of the installation, retrofitting, decommissioning or testing of an underground storage tank without first obtaining an underground storage tank supervisors license;

(h) Any other violation pertaining to underground storage tanks which poses a major risk of harm to public health and the environment.

(2) Class Two:

(a) Failure to prevent a release;

(b) Failure to conduct required underground storage tank monitoring and testing activities;

(c) Failure to conform to operational standards for underground storage tanks and leak detection systems;

(d) Any failure to obtain a permit prior to the installation or operation of an underground storage tank;

(e) Failure to properly decommission an underground storage tank;

(f) Providing installation, retrofitting, decommissioning or testing services on an regulated underground storage tank that does not have a permit;

(g) Failure by a seller or distributor to obtain the tank permit number prior to depositing product into the underground storage tank or failure to maintain a record of the permit numbers;

(h) Allowing the installation, retrofitting, decommissioning or testing by any person not licensed by the department;

(i) Any other violation pertaining to underground storage tanks with poses a moderate risk of harm to public health or the environment.

(3) Class Three:

(a) Failure to submit an application for a new permit when an underground storage tank is acquired by a new owner;

(b) Failure of a tank seller or product distributor to notify a tank owner or operator of the Department's permit requirements;

(c) Decommissioning an underground storage tank without first providing written notification to the Department;

(d) Failure to provide information to the Department regarding the contents of an underground storage tank;

(e) Failure to maintain adequate decommissioning records;

(f) Failure by the tank owner to provide the permit number to persons depositing product into the underground storage tank;

(g) Any other violation pertaining to underground storage tanks which poses a minor risk of harm to public health and the environment.

(4) Whenever an underground storage tank fee is due and owing under ORS 466.785 or 466.795, the Director may issue a civil penalty not less twenty-five dollars ($25) nor more than one hundred dollars ($100) for each day the fee is due and owing.

[In addition to any liability, duty, or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to management of or releases from underground storage tanks by service of a written Notice of Assessment of Civil Penalty upon the respondent. The amount of such civil penalty shall be determined consistent with the following schedule:

(1) Not less than two thousand five hundred dollars ($2,500) nor more than ten thousand dollars ($10,000) for each day of the violation upon any person owning or having control over a regulated substance who fails to immediately cleanup releases as required by ORS 466.705 through ORS 466.995 and OAR 340 - Division 150.

(2) Not less than one thousand dollars ($1,000) nor more than ten thousand dollars ($10,000) for each day of the violation upon any person

owning or having control over a regulated substance who fails to immediately report all releases of a regulated substance as required by ORS 466.705 through ORS 466.995 and OAR 340 - Division 150.

(3) Not less than one hundred dollars ($100) nor more than ten thousand dollars (10,000) per day of the violation upon any person who:

(a) Violates an order of the Commission or the Department; or ,

(b) Violates any underground storage tank rule or ORS 466.705 through ORS 466.995.]

(Statutory Authority: ORS Chapter 466)

Hazardous Waste Management and Disposal Classification of Violations

[Hazardous Waste Management Schedule of Civil Penalties]

340-12-068

Violations pertaining to the management and disposal of hazardous waste shall be classified as follows:

(1) Class One:

(a) Failure to carry out waste analysis for a waste stream or to properly apply "knowledge or process;

(b) Operating a storage, treatment or disposal facility without a permit or without meeting the requirements of OAR 340-105-010(2)(a);

(c) Failure to comply with the ninety (90) day storage limit by a fully regulated generator where there is a gross deviation from the requirement;

(d) Systematic failure of a generator to comply with the manifest system or substantial deviation from the manifest requirements;

(e) Failure to satisfy manifest discrepancy reporting requirements;

(f) Failure to prevent the unknown entry or prevent the possibility of the unauthorized entry of persons or livestock into the waste management area of the facility;

(g) Failure to properly handle ignitable, reactive, or incompatible wastes as required under 40 CFR Part 264 and 265.17(b)(1), (2), (3), (4) and (5);

(h) Disposal of hazardous waste in a regulated quantity at a non-regulated transportation, storage or disposal facility;

(i) Improper disposal of waste in violation of the land disposal restrictions;

(j) Mixing, solidifying, or otherwise diluting waste to circumvent land disposal restrictions;

(k) Incorrectly certifying a waste for disposal/treatment in violation of the land disposal restrictions;

(l) Failure to submit notifications/certifications as required by land disposal restrictions;

(m) Failure to comply with the tank certification requirements;

(n) Failure of an owner/operator of a treatment, storage or disposal facility to have closure and/or post closure plan and cost estimates;

(o) Failure of an owner/operator to retain a professional engineer to oversee closure activities and certify conformance with an approved closure plan;

(p) Failure to establish or maintain financial assurance for closure and/or post closure care;

(q) Failure to conduct inspections as required by 40 CFR 265.15 or to correct hazardous conditions discovered during those inspections;

(r) Failure to follow emergency procedures contained in response plan when failure could result in serious harm;

(s) General use of containers or tanks which are in poor condition for storage of waste;

(t) General failure to follow container labeling requirements or lack of knowledge of container contents;

(u) Failure to label hazardous waste containers where such failure could cause an inappropriate response to a spill or leak and substantial harm to public health or the environment;

(v) Failure to date containers/tanks with accumulation sate;

(w) Systematic failure to comply with the export requirements;

(x) Violation of a Department or Commission order;

(y) Violation of a Final Status Hazardous Waste Management Permit;

(z) Systematic failure to comply with OAR 340-102-041, generator quarterly reporting requirements;

(aa) Systematic failure to comply with OAR 340-104-075, Treatment, Storage, Disposal and Recycling facility periodic reporting requirements;

(bb) Construct or operate a new treatment, storage or disposal facility without first obtaining a permit;

(cc) Installation of inadequate groundwater monitoring wells such that you cannot immediately detect hazardous waste or hazardous constituents that migrate from the waste management area;

(dd) Failure to install any groundwater monitoring wells;

(ee) Failure to develop and follow a groundwater sampling and analysis plan using proper techniques and procedures;

(ff) Any other violation pertaining to the generation, management and disposal of hazardous waste which poses a major risk of harm to public health or the environment.

(2) Any other violation pertaining to the generation, management and disposal of hazardous waste which is either not specifically listed as, or otherwise meets the criteria for, a Class One violation is considered a Class Two violation.

[In addition to any liability, duty, or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to hazardous waste management by service of a written Notice of Assessment of Civil Penalty upon the respondent. The amount of such civil penalty shall be determined consistent with the following schedule:

(1) Not less than two thousand five hundred dollars ($2,500) nor more than ten thousand dollars ($10,000) for each day of the violation upon any person who:

(a) Establishes, constructs or operates a geographical site in which or upon which hazardous wastes are disposed without first obtaining a license from the Commission;

(b) Disposes of a hazardous waste at any location other than at a licensed hazardous waste disposal site;

(c) Fails to immediately collect, remove or treat a hazardous waste or substance as required by ORS 466.205 and OAR Chapter 340 division 108;

(d) Is an owner or operator of a hazardous waste surface impoundment, landfill, land treatment or waste pile facility and fails to comply with the following:

(A) The groundwater monitoring and protection requirements of Subpart F of 40 CFR Part 264 or Part 265;

(B) The closure plan requirements of Subpart G of 40 CFR Part 264 or Part 265;

(C) The post-closure plan requirements of Subpart G of 40 CFR Part 264 or Part 265;

(D) The closure cost estimate requirements of Subpart H of 40 CFR Part 264 or Part 265;

(E) The post-closure cost estimate requirements of Subpart H of 40 CFR Part 264 or Part 265;

(F) The financial assurance for closure requirements of Subpart H of 40 CFR Part 264 or Part 265;

(G) The financial assurance for post-closure care requirements of Subpart H or 40 CFR Part 264 or Part 265; or

(H) The financial liability requirements or Subpart H or 40 CFR Part 264 or Part 265.

(2) Not less than one thousand dollars ($1,000) nor more than ten thousand dollars ($10,000) for each day of the violation upon any person who:

(a) Establishes, constructs or operates a geographical site or facility upon which, or in which, hazardous wastes are stored or treated without first obtaining a license from the Department;

(b) Violates a Special Condition or Environmental Monitoring Condition of a hazardous waste management facility license;

(c) Dilutes a hazardous waste for the purpose of declassifying it;

(d) Ships hazardous waste with a transporter that is not in compliance with OAR Chapter 860, Division 36 and Division 46 or OAR Chapter 340, Division 103 or to a hazardous waste management facility that is not in compliance with OAR Chapter 340, Divisions 100 thru 106;

(e) Ships hazardous waste without a manifest;

(f) Ships hazardous waste without containerizing and marking or labeling such waste in compliance with OAR Chapter 340, Division 102;

(g) Is an owner or operator of a hazardous waste storage or treatment facility and fails to comply with any of the following:

(A) The closure plan requirements of **Subpart G of 40 CFR Part 264 or Part 265;**

(B) The closure cost estimate requirements of **Subpart H of 40 CFR Part 264 or Part 265;**

(C) The financial assurance for closure requirements of **Subpart H of 40 CFR Part 264 or Part 265;** or

(D) The financial liability requirements of **Subpart H of 40 CFR Part 264 or Part 265;**

(3) Not less than one hundred dollars ($100) nor more than ten thousand dollars ($10,000) for each day of the violation upon any person who:

(a) Violates an order of the Commission or Department; or

(b) Violates any other condition of a license or written authorization or violates any other rule or statute.]

(3) [(4)] Any person who has care, custody or control of a hazardous waste or a substance which would be a hazardous waste except for the fact that it is not discarded, useless or unwanted shall incur a civil penalty according to the schedule set forth in this section for the destruction, due to contamination of food or water supply by such waste or substance, of any of the wildlife referred to in this section that are property of the state.

(a) Each game mammal other than mountain sheep, mountain goat, elk or silver gray squirrel, $400.

(b) Each mountain sheep or mountain goat, $3,500.

(c) Each elk, $750.

(d) Each silver gray squirrel, $10.

(e) Each game bird other than wild turkey, $10.

(f) Each wild turkey, $50.

(g) Each game fish other than salmon or steelhead trout, $5.

(h) Each salmon or steelhead trout, $125.

(i) Each fur-bearing mammal other than bobcat or fisher, $50.

(j) Each bobcat or fisher, $350.

(k) Each specimen of any wildlife species whose survival is specified by the wildlife laws or the laws of the United States as threatened or endangered, $500.

(l) Each specimen of any wildlife species otherwise protected by the wildlife laws or the laws of the United, but not otherwise referred to in this section, $25.

(Statutory Authority: ORS CH [459 &] 466)

Oil and Hazardous Material Spill and Release Classification of Violations

[Oil and Hazardous Material Spill and Release Schedule of Civil Penalties]

340-12-069

(1) Violations pertaining to spills or releases of oil or hazardous materials shall be classified as follows:

(a) Class One:

(A) Failure by any person having ownership or control over oil or hazardous materials to immediately cleanup spills or releases or threatened spills or releases as required by ORS 466.205, 466.645, 468.795 and OAR Chapter 340, Divisions 47 and 108;

(B) Any violation of a Commission or Department Order;

(C) Any other violation pertaining to the spill or release of oil or hazardous materials which poses a major risk of harm to public health or the environment.

(b) Class Two:

(A) Failure by any person having ownership or control over oil or hazardous materials to immediately report all spills or releases or threatened spills or releases in amounts greater than the reportable quantity listed in OAR 340-108-010 to the Oregon Emergency Management Division;

(B) Any other violation pertaining to the spill or release of oil or hazardous materials which poses a moderate risk of harm to public health or the environment.

(c) Class Three:

Note:
Underlined Material is New
[Bracketed Material is Deleted].

(A) Any other violation pertaining to the spill or release of oil or hazardous materials which poses a minor risk of harm to public health or the environment.

[In addition to any liability, duty, or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to oil or hazardous materials spills or releases or threatened spills or releases by service of a written Notice of Assessment of Civil Penalty upon the respondent. The amount of such civil penalty shall be determined consistent with the following schedule:

(1) Not less than two thousand five hundred dollars ($2,500) nor more than ten thousand dollars ($10,000) for each day of the violation upon any person owning or having control over oil or hazardous material who fails to immediately cleanup spills or releases or threatened spills or releases as required by ORS 466.205, 466.645, 468.795 and OAR 340- Divisions 47 and 108.

(2) Not less than one thousand dollars ($1,000) nor more than ten thousand dollars ($10,000) for each day of the violation upon any person owning or having control over oil or hazardous material who fails to immediately report all spills or releases or threatened spills or releases in amounts greater than the reportable quantity listed in rule 340-108-010 to the Oregon Emergency Management Division.

(3) Not less than one hundred dollars ($100) nor more than ten

thousand dollars ($10,000) for each day of the violation upon any person who:

(a) Violates an order of the Commission or Department; or

(b) Violates any other rule or statute.]

(Statutory Authority: ORS CH 466)

PCB Classification of Violations

[PCB Schedule of Civil Penalty]

340-12-071

(1) Violations pertaining to the management and disposal of polychlorinated biphenols (PCB) shall be classified as follows:

(a) Class One:

(A) Treating or disposing of PCBs anywhere other than at a permitted PCB disposal facility:

(B) Establishing, constructing or operating a PCB disposal facility without first obtaining a permit;

(C) Any violation of an order issued by the Commission or the Department;

(D) Any other violation related to the management and disposal of PCBs which poses a major risk of harm to public health and the environment.

(b) Class Two:

(A) Violating any condition of a PCB disposal facility permit;

(B) Any other violation related to the management and

disposal of PCBs which poses a moderate risk of harm to public health and the environment.

(c) Class Three:

(A) Any other violation related to the management and disposal of PCBs which poses a minor risk of harm to public health and the environment.

[In addition to any liability, duty, or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to management of or disposal of PCBs by service of a written Notice of Assessment of Civil Penalty upon the respondent. The amount of such civil penalty shall be determined consistent with the following schedule:

(1) Not less than two thousand five hundred dollars ($2,500) nor more than ten thousand dollars ($10,000) for:

(a) Treating or disposing of PCBs anywhere other than at a permitted PCB disposal facility; or

(b) Establishing, constructing or operating a PCB disposal facility without first obtaining a permit;

(2) Not less than one hundred dollars ($100) nor more than ten thousand dollars ($10,000) for:

(a) Any violation of an order issued by the Commission or the Department;

(b) Violating any condition of PCB disposal facility permit; or

(c) Any other violation.]

(Statutory Authority: ORS Chapter 466)

Environmental Cleanup Classification of Violations

ATTACHMENT D

[Remedial Action Schedule of Civil Penalty]

340-12-073

Violations of ORS 466.540 through 466.590 and related rules or orders pertaining to environmental cleanup shall be classified as follow:

(1) Class One:

(a) Failure to allow entry under ORS 466.565(2);

(b) Violation of an order requiring remedial action;

(c) Violation of an order requiring removal action;

(d) Any other violation pertaining to environmental cleanup which poses a major risk of harm to public health or the environment.

(2) Class Two:

(a) Failure to provide information under ORS 466.565(1);

(b) Violation of an order requiring a Remedial Investigation/ Feasibility Study;

(c) Any other violation pertaining to environmental cleanup which poses a moderate risk of harm to public health or the environment.

(3) Class Three:

(a) Violation of an order requiring a preliminary assessment;

(b) Any other violation pertaining to environmental cleanup which poses a minor risk of harm to public health or the environment.

[In addition to any liability, duty, or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to remedial action required by the Department by service of a written Notice of Assessment of Civil Penalty upon the respondent. The amount of such civil

penalty shall be not less than one hundred dollars ($100) nor more than ten thousand dollars ($10,000) for violation of any order issued by the Commission or the Department requiring remedial action.]

(Statutory Authority: ORS Chapter 466)

ATTACHMENT E

ENFORCEMENT

August 22-23, 1988
EQC Retreat

HISTORICAL BACKGROUND

The Department of Environmental Quality has a reputation of achieving environmental results and a high degree of compliance with the environmental laws and rules through a strong emphasis on technical assistance, backed by a willingness to take enforcement action when necessary. Industries and municipalities regulated by DEQ believe they have been treated fairly and that they agree the environmental regulations proposed are reasonable. They know that extraordinary non-compliance due to circumstances where a good faith but unsuccessful effort has been make to comply are taken into consideration.

However, with the advent of new programs and staff, a more consistent, timely and thereby effective approach is imperative. Because the regulatory function is critical to the mission of the Department, this report has been developed as one of the principal topics for the Commission's consideration and in-put.

Statutes

DEQ enforcement authority is contained in Oregon Revised Statutes (ORS) Chapters 454, 459, 466 and 468. These statutes, particularly Chapter 468, have influenced DEQ's enforcement strategy.

ORS 468.090 sets the tone for DEQ enforcement policy. Whenever a written substantiated complaint is received or the Department believes that

a violation causing or permitting air or water contamination or pollution, the Department "shall by conference, conciliation and persuasion endeavor to eliminate" the source of the violation[1]. Not until DEQ has attempted to achieve voluntary compliance is it authorized to seek more formal enforcement against violators[2]. Although some would apply this charge to all of DEQ's enforcement authority, the language indicates that the statute is mainly concerned with air and water pollution.

ORS 468.125 establishes the procedure any enforcement must follow. Other than specific statutory exceptions, the Department may not assess a civil penalty against any violator without first giving a minimum of five days prior notice. The Department is authorized to seek civil penalties immediately if the violation: 1) is intentional; 2) consists of disposing of solid waste or sewage at an unauthorized disposal site; 3) involves the construction of a sewage disposal system without a permit; 4) is a water or air pollution contamination source not normally in existence for or might leave the jurisdiction within five days; 5) relates to the generation, treatment, storage, transportation, or disposal of hazardous waste or; 6) relates to asbestos work practices designed to control asbestos fiber releases into the environment[3].

ORS 468.130 gives DEQ and the EQC the authority to assess civil penalties for violations of laws under its jurisdiction. The EQC is

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1 ORS 468.090(1)

2 ORS 468.090(2)

3 ORS 468.125(2)

required to adopt civil penalty schedules before that authority may be exercised[4]. ORS 468.130(2) lists specific factors the EQC must consider when imposing a penalty and subsection 3 allows the EQC to remit or mitigate penalties.

ORS 468.140 establishes the maximum penalties for most violations. Subsection 1 incorporates violations of ORS Chapters 454 [5] and 467 [6], and "offensive littering" [7] into ORS Chapter 468's enforcement and penalty scheme. Since the creation of civil penalty authority, the statutory maximum for most violations has risen from $500 to $10,000 [8]. Violations related to noise standards and littering remain at the $500 maximum[9], while oil spills carry a $20,000 maximum[10]. Field burning violations receive a per acre burned penalty[11].

ORS Chapters 459 and 466 have separate penalty provisions which are subject to the enforcement requirements of Chapter 468. Chapter 459 relates to solid waste and is limited to a $500 maximum penalty. Chapter 466

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4 ORS 468.130(1). Attorney General's Opinion, January, 1988.

5 On-site sewage program.

6 Noise program.

7 ORS 164.785

8 ORS 468.140(3)(b).

9 ORS 468.140(1).

10 ORS 468.140(3)(a)

11 ORS 468.140(5). The penalty range is from a minimum of $20 to $40 per acre. Field burning violations are also subject to other penalties under the air quality schedule.

relates to hazardous materials and waste and polychlorinated biphenols (PCBs). Violations of Chapter 466 carry with them $10,000 civil penalty.

DEQ also has order authority in the areas of hazardous[12] and solid waste[13], sewage treatment and disposal[14] and noise[15]. DEQ may also pursue injunctive relief in cases of emergency[16]. DEQ also has criminal authority in the areas of hazardous[17] and solid waste[18], noise[19], and air and water [20]. All violations are classified as misdemeanors.

Rules

The statutory requirements for enforcement are also encompassed in Oregon Administrative Rules Chapter 340, Division 12, subtitled Civil Penalties. The division contains the civil penalty schedules required by ORS 468.130. It outlines the procedures the Department follows when issuing a formal notice of violation or civil penalty. The division also authorizes the Director to consider the same factors when assessing a civil

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12 ORS 466.090 and 466.225.

13 ORS 459.376 and 459.780.

14 ORS 454.635.

15 ORS 467.040.

16 ORS 466.200 and 468.115.

17 ORS 466.880.

18 ORS 459.992.

19 ORS 467.990.

20 ORS 468.990 - 468.995.

penalty as the EQC is required to consider when imposing a civil penalty. Lastly, it sets out the procedure for settlement of penalties.

Enforcement Philosophy

The historical approach of DEQ relies heavily on staff's ability to communicate and facilitate compliance. This requires DEQ to be above all else, conciliatory and cooperative. The basis for this philosophy lies in the Department's beginnings as technical/advisory agency and its statutory charge to endeavor to achieve compliance through negotiation and education before pursuing formal enforcement. This approach has been highly successful and, argues its advocates, can continue to be so.

Some would argue that the above is outdated because DEQ has essentially achieved its goal of educating the regulated community of its responsibility. Because of DEQ's efforts and the attention that environmental regulation has received locally and nationally, the regulated community should be presumed to have knowledge of what is required. Thus arguing that DEQ should switch to a enforcement oriented mode which utilizes more formal actions as a first step.

An attempt has been made over the last several years to develop a third philosophy which attempts to synthesize the above approaches by drawing on their strengths. This philosophy treats the statutory charge of working for voluntary compliance as a legal requirement and requires a willingness to pursue necessary and consistent enforcement action.

Department Discretion

The Department exercises its discretion in determining when and where to enforce. By not having a specific policy prioritizing violations and outlining responses, the different regions and programs have the ability to prioritize the enforcement responses according to their needs. Thus, the Department operates with a rather broad range of prosecutorial discretion. However, unfettered discretion as to the how and when enforcement will be pursued raises several problems including the consistency of enforcement actions.

Discretion is exercised at almost every level in the enforcement process. Field people make the initial decision on how to handle a substantiated violation. A field person may wish to pursue formal enforcement or prefer to handle it informally or through a Regional Notice of Violation letter. The field person's discretion in these instances is checked by a supervisor or regional or program manager. The supervisor or manager exercises discretion in deciding whether to accept the field person's recommendation. Enforcement personnel and Division Administrators also have a say in determining the level of enforcement pursued. In the case of civil penalty assessments, it is the Director's decision whether to issue a penalty.

Thus discretion is controlled through a system of "checks and balances". Superficially, this appears to be an adequate control which does not allow discretion to get out of control. However, without some kind of guidance concerning the priority or seriousness of violations, the danger exists that too much discretion may be exercised too early in the process and evidence necessary to pursue formal enforcement may be lost.

The advantage of the broad exercise of discretion is that it allows individual regions and programs to set priorities within their areas. However, this may create problems including the possibility of inconsistent enforcement responses throughout the state, thus skewing public perception of enforcement.

STATUS OF CURRENT ENFORCEMENT POLICIES

Proposed Enforcement Policy

The idea of establishing a written enforcement policy and guidelines came about in 1984 when Fred Hansen became Director. An internal task force was formed and charged with the job of developing a policy. Between 1984 and 1986, several drafts were written. To date, no policy has been formally adopted. What follows is a summary of the last draft of the policy from November, 1986.

The policy only covers the air (noise), water and solid waste programs. The policy states that the purpose of enforcement is to obtain and maintain compliance, protect public health and the environment, and deter future violators. The policy of the Department was to address all violations and maintain the ability to carry out this responsibility; recognizing limited resources, establish a priority system which addresses violations with greater public health or environmental affects first; to issue permits which contained conditions the Department knew it could enforce; that it is the Department's responsibility to enforce its laws and the regulated community's responsibility to comply; the Department will "endeavor" to achieve compliance through "conference, conciliation and persuasion" (ie.

progressive enforcement); all documented violations will be addressed at the most appropriate practicable level of enforcement necessary to attain compliance; the Department will educate the regulated community about its duty as much as possible but ignorance of the law is no excuse; violators who fail to comply with any given level of enforcement can expect timely escalation until compliance is achieve; it is each division's responsibility to establish procedures to assure violations are addressed in a timely manner until compliance is achieved.

The policy established three classes of violations. Class I violations were those that created a likelihood of harm or significant environmental damage. Class II were those which were significant violations of the law, but were not as serious as Class I in terms of harm. Class III violations were anything that wasn't a Class I or II violation. Repeated violations in any one class could result in the violation being placed in the next higher class.

The policy outlined the appropriate enforcement response for each. Class III violations are generally to be dealt with on the regional (or program) level and are to be addressed with verbal or written warnings. Class II violations are to be addressed with a regional Notice of Violation letter. Class I violations are to be address with a Notice of Intent to Assess a Civil Penalty (5-day warning notice), a civil penalty, a Department or Commission Order, injunctive relief, criminal penalties or a Governor's Order depending on the severity of the violation.

The policy listed examples of different classes of violations in the different programs. It also included a matrix for determining amounts of

civil penalties. The numerical matrix is applied to the mitigating and aggravating factors considered by the Director when assessing a penalty. The matrix was an attempt to create a more objective system for determining the amount of civil penalties than is currently used by the Department. However, the matrix has been criticized as being no less subjective than the current system.

Adopted Hazardous Waste Enforcement Policy

Hazardous waste had an enforcement policy adopted by the EQC in November, 1985. This occurred even though the agency wide policy has yet to be adopted because the Hazardous Waste program was required to have such a policy in place in order to gain federal authorization of a state based Resource Conservation and Recovery Act (RCRA) program.

In general principle, the policies are very similar. The hazardous waste policy sets out the same goals, establishes classes of violations with the same definitions and generally responds to violations similarly. A significant difference is that the hazardous waste program is statutorily authorized to seek immediate civil penalties for RCRA related violations[21].

The policy also speaks to the assessment of civil penalties and how they are to be assessed. It concentrates on the gravity and magnitude factor of OAR 340-12-045. The gravity factor relates to a violation's potential for harm, while the magnitude factor relates to the extent the violator deviated from the standard. Each category is divided into three

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21 See discussion on page 2.

subcategories of major, moderate and minor. A matrix was then created using these categories. The matrix establishes a civil penalty range depending upon where the violation/violator falls into the matrix. The precise amount of the penalty should then be determined by using the remaining factors of OAR 340-12-045 to adjust the penalty upward or downward within the matrix range.

OUTSTANDING ISSUES

Where is EPA Coming From

Many of the Department's programs have resulted from delegation under federal environmental laws. The Department's relationship with EPA is therefore an important factor in the process of creating an enforcement policy. In the case of the Hazardous Waste program, for example, DEQ was required to adopt an enforcement policy in order to obtain authorization to run the base RCRA program.

DEQ is not required by EPA to have a written enforcement policy in other programs. However, EPA has been pushing DEQ to develop an official policy for some time, especially in areas such as water quality where the Department is expected to take formal action against certain types of violations. Thus, it has been argued that the development of such a policy would make the relationship between DEQ and EPA less adversarial. However, it has also been argued that development of such a policy needs to be done in a way that maintains DEQ philosophies and a flexibility which is not always present in EPA guidelines.

WHAT OPTIONS DOES THE DEPARTMENT WANT TO PURSUE

There are several options available to DEQ in terms of enforcement. As has been discussed, the Department has been working on an enforcement policy for several years. There are also options DEQ may choose to pursue concerning its exercise of authority in the assessment of civil penalties.

Adopting an Enforcement Policy as a Rule

It has been postulated by the Department that it is now perhaps the time to formally adopt enforcement policies as rules. In making that decision, several factors need to be considered. First, if a policy is to be adopted as a rule, it must go through the formal rule making process of notice and comment. Once adopted it is no longer a policy, that is, a general way of doing business, but a rule with the full force and effect of law to which the agency is bound and upon which the regulated community may rely. Rule adoption would not only require the Department to follow certain procedures but would also give the regulated community notice of the standards by which it is judged. Referring to a rule as a "policy" or even as "guidelines" is semantics which have no effect on the legal authority as a rule.

If the same policy is adopted as a policy with guidelines established pursuant to it, it does not go through the rule making process and will not be legally binding upon the agency. Guidelines are a suggestion for conduct which may follow from a general policy or way of doing business. They are meant to guide agency procedure, not dictate. Guidelines are not specifically enforceable nor may they be solely relied upon when requiring the agency to take some action pursuant to the policy.

The decision here, however, is not whether it is preferable to have it as a rule or a policy, but whether the policy's effect is such that it is in fact a rule. That is, if what is called a policy falls within the Oregon Administrative Procedures Act (OAPA) definition of a rule, then it must be adopted as such.

ORS 183.310(8) defines a rule as:

> [A]ny agency directive, standard, delegation or statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of any agency. The term includes the amendment or repeal of a prior rule.

If an agency action fits this definition, it is subject to the notice and comment rulemaking requirements of ORS 183.335.

OAPA lists exceptions to the definition of "rule" in ORS 183.310(8)(a) through (f). For purposes of this discussion, subsections a and b are most relevant and read as follows:

> (8) . . . the term [rule] . . . does not include:
>
> (a) Unless a hearing is required by statute, internal management directives, regulations or statements which <u>do not substantially affect the interests of the public:</u>
>
> (A) Between agencies, or their officers or employes;or
>
> (B) Within an agency, between its officers or between employes.

(b) Action by agencies directed to other agencies or other units of government which do not substantially affect the interests of the public. (emphasis added)

The key to the decision is whether the policy and guidelines "substantially affect the interests of the public." The agency must carefully examine the policy and procedure in order to determine the public affect before it can make an informed decision concerning whether such policies and procedures need to adopted as rules. If the agency determines that these policies and procedures fall within the statutory definition of a rule, then they must be adopted as rules so as to comply with the OAPA. Failure to do so would render all actions pursuant to a policy invalid. If it is not desirable to adopt these policies and procedures that substantially affect the public as rules, then they must be modified to lessen the public affect so that they fall in to the statutory exceptions.

Should the Department have One Enforcement Policy or Separate Policies for Hazardous Waste and Air, Water and Solid Waste

As discussed above, the Department currently has an adopted hazardous waste policy and a draft policy for the programs of Air Water and Solid waste. In principle, the two policies are very similar. Both establish similar goals, priorities, classification of violations and enforcement responses. Separate policies originally were created because the Hazardous Waste program had a deadline it had to meet in order to gain authorization to run the base RCRA program.

Having one good general enforcement policy with subparts for specific

program idiosyncracies and differences[22] may be more efficient than separate program policies. Such a policy would need to be designed in a manner that allows new programs to fit in relatively easily thus eliminating the need to reinvent the wheel each time a new program is created. It would also be more efficient and manageable for staff with interprogram responsibility and members of the regulated community with interprogram activities. It also creates the impression of across the board consistency.

An argument against a unified policy is federal authority. If EPA believes that it is necessary to keep the policies separate, then perhaps the policies should be kept so. This may be an efficiency device on EPA's part so that it may keep better track of how specific programs are meeting federal requirements.

There may be one program which is best suited to its own enforcement policy and that is Remedial Action. Other programs have a number of statutes and rules which place both mandatory and discretionary duties on the Department and the regulated community. Remedial Action, on the other hand, is a highly discretionary program. Its nature is such that it deals with past harm and activities that were not illegal at the time they occurred. It is not a program which lends itself very well to enforcement other than in the form of orders.

Civil Penalties

The Department has authority, at least by statute, to assess civil penalties for violations of most of its programs. Statute requires that

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22 For example, a sub policy on hazardous waste would include its immediate civil penalty authority for RCRA related violations.

civil penalty schedules be adopted. All of DEQ's programs with civil penalty authority are subject to the schedule requirement.

Currently, all DEQ programs with penalty authority have existing or proposed schedules. The schedules consist of a minimum amount[23] and a maximum amount established by statute[24].

In order to determine the amount of the penalty for a particular violation, the Department has adopted the use of aggravating and mitigating factors[25]. The purpose of the factors is to help the Director determine a penalty amount. The factors should steer the Director to consider how objective facts surrounding a violation make that violation more or less serious. Ideally, the penalty amount should flow from the determination made in the factors. Mitigating factors should decrease the penalty to an amount no less than the minimum[26] while aggravating factors should increase the penalty towards the maximum.

In fact, the application of these factors is extremely subjective in that what may be aggravating to one person may be mitigating to another[27]. Also, it is almost impossible to determine how they relate to the penalty amount. The factors are not assigned a monetary or factor value by which one can compute the penalty.

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23 Ranging from $25 to $2,500 depending on the violation and the program.

24 See discussion on page 3.

25 OAR 340-12-045.

26 Only the Commission may impose a penalty less than the minimum.

27 See DEQ v. Merit USA, 4-WQ-NWR-87-27.

It has been suggested that the current scheme is not in compliance with the law. That the legislature could not have possibly meant the establishment of a minimum and maximum with a range of several thousand dollars in between. It has also been suggested that the current system for determining civil penalties is so subjective that it fails to give adequate notice to those who receive penalties. That is, it is nearly impossible for a violator to determine how the penalty amount was established by looking at the factors.

The argument for maintaining the current penalty scheme is that it gives the Director flexibility in establishing the penalty amount, while giving him standards (factors) to be used in determining the penalty amount. The scheme is also controlled internally by reviewing past agency action and establishing individual penalties consistent with those actions. While the existing scheme has been criticized internally, it has yet to receive significant challenge form outside the Department.

It may be in the Department's best interest to develop and perhaps adopt by rule a more specific way to determine the civil penalties amounts. If this is done, the Department can correct several major flaws in the current system and provide adequate notice to the regulated community. Some see any attempt to develop a more clear schedule as an attempt to limit the Department's or the Director's discretion. Prosecutorial discretion to pursue the assessment of civil penalties would remain unchanged. Only the exercise of discretion concerning the amount of penalty would change.

While developing the draft enforcement policy, the Enforcement/ Compliance task force developed a matrix to be used for determining civil penalties. The purpose of the matrix was to make the civil penalty determination a more objective process. However, because it left discretion with the Director to determine the value to assign to each factor, it was still extremely subjective[28].

While this matrix may represent a significant departure from the way the Department has determined penalty amounts in the past, there may be other alternatives worth exploring which would be more objective. Alternatives include establishing a schedule with specific amounts for specific violations or establishing schedules with smaller ranges for violations which tend to cause less environmental harm[29]. Another alternative would be to assign monetary amounts to the existing factors. Yet another alternative would be to not only assign a numerical value to the existing factors but also to require the Director to make specific findings, established by rule, to support the choice of the value given to any given factor in a specific case[30].

Independent of how the Commission and Department should determine the amount of a civil penalties is the issue of whether the minimum penalties should be increased for either specific violations or classes of violations.

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28 See discussion on page 8.

29 Residential open burning for example.

30 The Oregon Department of Water Resources has a civil penalty determination system in which the Director makes a specific finding for each factor value. OAR 141-85-090.

Currently, minimum penalties for violations in related areas of air, water and solid waste range from $25 to $100. Minimum penalties in areas related to hazardous waste and materials range from $100 to $2,500.

A minimum penalty should do several things. It should act as a deterrent to potential violators. One may be less willing to go forward with a violation if one was aware that it carried a high price tag even the first time around. It should indicate the seriousness of a violation even if it has only occurred once. However, not all the current minimum penalties reflect this concept. While a serious violation such as the illegal disposal of hazardous waste carries with it $2,500, release of a hazardous air contaminant such as asbestos carries with only a $25 minimum.

If possible, minimum penalties should also remove the economic incentive for noncompliance. Operating any source without a permit when one is required should carry with it a minimum penalty which is equal to at least the cost of the permit. It may be possible to set a number of minimum penalties at an amount which could remove the incentive for noncompliance.

In raising the minimum penalties, one needs to keep in mind the regulated community consists of individuals and business entities. As such, it may take less to get the attention and deter an individual than a business. Although this may not be true in all cases, it is still a difference which may need to reflected.

Procedures for Settling and Mitigating Penalties

Pursuant to ORS 468.130(3), the Commission is authorized to settle or mitigate penalties under such conditions as it considers "proper and consistent with public health and safety". The EQC may delegate any or all

of this authority to the DEQ[31]. By rule, the EQC has delegated to the Director the authority to seek settlement and mitigation of penalties and reserves to itself the final approval of any settlement or mitigation so negotiated[32]. The question has been raised whether all authority in this area should be delegated to the Director, or, at the very least, the process by which the EQC approves such things be changed.

Currently, the procedure for settlement begins with the Director receiving a request for settlement or mitigation (settlement) from a person against whom DEQ issued a civil penalty. DEQ then negotiates a settlement. Once all parties have approved, a settlement agreement is prepared and signed by the parties involved. The Director prepares a settlement memorandum to the EQC which summarizes the case, the terms of the agreement and requests approval. The approval process takes place at the EQC's breakfast meeting.

There are at least two alternative procedures available to the EQC to approve settlements. The first leaves final approval authority with the EQC. This procedure would make approval of settlements a regular agenda item at the EQC's meeting. The approval process would then be public. While not a legal requirement, it may be a good proposal in that it would create an aura of openness.

The second alternative delegates the authority to the Director, thus requiring a rule change. Under this alternative, the Director would not

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31 ORS 468.130(4)

32 OAR 340-12-072.

only be authorized to negotiate, but also to finalize the settlement. This may be an even less public way of proceeding than the EQC breakfast meeting. However, as agreements may often be achieved significantly in advance of a Commission meeting, approval by the Director may be more efficient especially in cases where the agreement may include a compliance schedule.

Yone C. McNally
229-5152
August 4, 1988
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ATTACHMENT F

PROPOSED REVISION OF CIVIL PENALTY RULES

NOTICE OF PUBLIC HEARING

Date Prepared: October 12, 1988
Hearing Date: December 15, 1988
Comments Due: January 15, 1989

WHO IS AFFECTED: People to whom Oregon's air quality, noise pollution, water quality, solid waste, on-site sewage disposal and hazardous waste and materials regulations may apply.

WHAT IS PROPOSED: The DEQ is proposing to revise the civil penalty rules, OAR 340-12-030 through 12-071, and to revise the federally-enforceable Oregon State Implementation (SIP) to be consistent with state rules.

WHAT ARE THE HIGHLIGHTS:

1. Proposed State Rule Revisions:

>The codification of the Department's enforcement policy.
>The description of the Department's formal enforcement actions.
>The classification of violations in terms of environmental harm from the most to least serious.
>The adoption of a civil penalty determination process which combines base penalties established in a box matrix with a formula system.

2. Proposed State Implementation Plan (SIP) Revisions:

>The following rules are being added: OAR 340-12-026, 340-12-041, 340-12-042 and 340-12-048.
>The following existing rules with proposed modifications are being retained: OAR 340-12-030, 340-12-040, 340-12-045, and 340-12-050.
>The following existing rules are being retained: OAR 340-12-035, 340-12-046 and 340-12-047.

HOW TO COMMENT: Copies of the complete proposed rule package may be obtained from the Regional Operations Division, Enforcement, in Portland (811 S.W. Sixth Avenue, Tenth Floor) or the regional office nearest you. For further information, contact Yone C. McNally at 229-5152.

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

2:00 p.m.
Thursday, December 15, 1988
DEQ Offices, Fourth Floor
811 S.W. Sixth Avenue, Portland, Oregon

Oral and written comments will be accepted at the public hearing. Written comments may be sent to the DEQ Enforcement Section, 811 S.W. Sixth Avenue, Tenth Floor, Portland, OR 97204. Written comments must be received no later than 5:00 p.m., January 15, 1989.

WHAT IS THE NEXT STEP:

After public hearing, the Environmental Quality Commission may adopt rule amendments identical to the proposed amendments, adopt modified rule amendments on the same subject matter, or decline to act. The Commission's deliberation may come on March 3, 1989, as part of the agenda of the regularly scheduled Commission meeting. If adopted, the proposed SIP revisions will be submitted to the U.S. Environmental Protection Agency as a revision of the Clean Air Act SIP.

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

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR COMMISSION ACTION

Agenda Item G, November 4, 1988 EQC Meeting

Request for Authorization to Conduct a Public Hearing on Proposed Rules, OAR 340-160-005 through OAR 340-160-150, for "Registration and Licensing Requirements for Underground Storage Tank Service Providers" Rules and Modification to Existing Rules, OAR 340-150-010 and OAR 340-150-150 for "Requirements Under Which Regulated Substances May be Placed into Underground Storage Tanks."

ISSUE

Federal regulations require that underground storage tanks containing petroleum and hazardous materials meet certain installation and operating standards to prevent contamination of ground water by leaks and spills from USTs. Leaks are more likely in improperly constructed and managed USTs.

SUMMATION

Approximately 22,000 regulated USTs have been identified in Oregon. Up to 25 percent may be leaking, threatening public safety and the environment.

The 1987 Oregon Legislature authorized the Commission to adopt rules for a comprehensive underground storage tank program. The Commission adopted interim rules in January 1988. New rules are required to reduce leaks caused by persons who service USTs and to insure that petroleum products and hazardous materials are not placed into USTs that do not have a permit.

Licensing of Service Providers: A minimal program involving only education and inspection, and a comprehensive program requiring education, testing, licensing and inspection were considered. Proposed rules establish educational and licensing requirements for firms providing UST services and supervisors of UST services.

Depositors of Regulated Substances: Methods of identifying permitted tanks were considered, such as tags on fill pipes and displaying the permit at the UST site. Proposed rules require the tank owner or permittee to provide the permit number to those who deposit products into a tank. The product provider must keep records of the permit numbers for three years.

DIRECTORS RECOMMENDATION

Based upon the Summation, it is recommended that the Commission authorize public hearings to take testimony on the proposed underground storage tank rules as presented in Attachments A and B, OAR 340-160-005 through OAR 340-160-150, OAR 340-150-010(12), and OAR 340-150-150.

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, November 4, 1988 EQC Meeting

Request for Authorization to Conduct a Public Hearing on Proposed Rules, OAR 340-160-005 through OAR 340-160-150 for "Registration and Licensing Requirements for Underground Storage Tank Service Providers" Rules and Modification to Existing Rules, OAR 340-150-010 and OAR 340-150-150 for "Requirements Under Which Regulated Substances May be Placed into Underground Storage Tanks."

BACKGROUND

The Problem: Several million underground storage tank systems in the United States contain petroleum and hazardous chemicals. Tens of thousands of these USTs, including their piping, are currently leaking. Many more are expected to leak in the near future. Leaking tanks can cause fires or explosions that threaten human safety. In addition, leaking USTs can contaminate nearby ground water. In 1984 congress responded to the problem of leaking USTs by adding Subtitle I to the Resource Conservation and Recovery Act (RCRA). Subtitle I requires the EPA to develop regulations to protect human health and the environment from leaking USTs by preventing leaks and spills, finding leaks and spills, correcting problems created by leaks and spills, making the owners and operators of USTs financially responsible for leaks and spills, and encouraging each state to have an equivalent UST regulatory program.

Subtitle I required owners of USTS containing regulated substances to notify the appropriate state agency of the existence of such tanks. By October 1987 the Department had received information on 22,409 tanks at 8,303 locations. Ninety-five percent of these tanks contain petroleum products. Seventy-nine percent are unprotected steel tanks with an average age of 15 years. Up to 25 percent of the unprotected tanks may be currently leaking, according to government and industry sources.

In 1987 the Oregon Legislature expanded the authority of the Department over underground storage tanks. The Commission adopted Interim Underground Storage Tank rules on January 22, 1988. These rules initiated an UST permit and fee program, placed requirements on distributors of regulated

substances and sellers of USTs, established interim tank installation and decommissioning standards, and identified civil penalties.

Subtitle I, the state interim UST rules and increasing pressure from the financial and real estate communities are encouraging owners to test, replace, upgrade and possibly permanently decommission existing USTs. Frequently, the testing, installation, retofitting and decommissioning of USTs is being attempted by persons that do not understand UST regulations, technical standards or proper practices.

Filling a tank with a regulated substance can by itself threaten the environment. The state's interim UST rules addressed this threat by prohibiting placement of regulated substances into an UST unless the tank owner had applied for and received a permit from the Department. The rules, however, did not describe the method one would use to identify a permitted tank nor did they cover all persons that may place product into the tank.

Proposed Rules: The Department is proposing rules to regulate persons who provide services on underground storage tanks. The Department is also proposing to modify the interim rules that regulate persons depositing regulated substances into underground storage tanks. Both sets of rules were developed with the assistance of the Underground Storage Tank Advisory Committee. Additionally, the rules on service providers were discussed at public information meetings held in Portland, Medford, Eugene, Bend and Baker during August of 1988.

Proposed Registration and Licensing Requirements for Underground Storage Tank Service Providers shown in Attachment A, includes the following:

1. Regulates two categories of persons who install, retrofit, decommission or test underground storage tanks.
   a. "Service Providers" are persons or firms who are in the business of providing services to underground storage tanks.
   b. "Supervisors" are persons employed by Service Providers to supervise services to underground storage tanks.
2. Service Providers must register and obtain a license from the Department. A sample registration form is shown on Attachment F.
3. Supervisors must pass an examination and obtain a license from the Department.
4. Service Providers must employ a licensed Supervisor or be licensed as a Supervisor.
5. A Supervisor must be present during critical phases of a tank project.

Proposed Amendments to the rules on Depositing Regulated Substances in Underground Storage Tanks shown in Attachment B, includes the following:

1. Defines "Seller" and "Distributor" to mean a person who is engaged in the business of selling regulated substances to the owner or permittee of an underground storage tank.

2. Prohibits any person from depositing a regulated substance into an unpermitted underground storage tank after August 1, 1989.
3. Requires the tank owner or permittee to provide the tank permit number to any person depositing a regulated substance into the tank.
4. If a permit becomes invalid, the tank owner or permittee must notify all sellers or distributors of the new permit status.
5. Sellers and distributors are required to maintain a written record of customer permit numbers for three years and make it available to the Department.

DISCUSSION

Proposed Registration and Licensing Rules: Incorrect testing, installation, retrofitting or decommissioning of USTs can threaten the environment. Tanks and piping may leak a short time after installation or may leak only after the metal corrodes or pipe fittings break. Regulated substances such as oil or hazardous chemicals left in the soil after decommissioning may leach into groundwater. Federal and state regulations will address these concerns through the technical standards on USTs. These rules anticipate that UST installations will be inspected to ensure compliance with the rules. An inspection program should include review of construction plans, field inspection during the key points of construction and final approval by the Department. Inspection would require several visits to the UST site. Additionally, the Department will provide ongoing educational materials to the persons who provide services to USTs. It is unlikely, however, that the Department will ever have sufficient staff to operate a comprehensive plan review, inspection and education program, however.

The legislature envisioned a licensing program that would encourage competency among persons providing tank installation, retrofitting, decommissioning and testing services. The Department and the Underground Storage Tank Advisory Committee considered various education, testing and licensing programs, including licensing and testing of all persons working on any part of an underground storage tank. The Committee recommended that the Department license both the firms responsible for the work and the on-the-job supervisors. Working with the UST Advisory Committee, the Department developed the rules shown in Attachment A.

Proposed Rules Prohibit Depositing Regulated Substances in Unpermitted Tanks: The interim state UST rules contained provisions prohibiting sellers and distributors from depositing regulated substances into unpermitted USTs. These interim rules did not identify how the sellers and distributors would know that the tank did not have a permit. Working with the UST Advisory Committee, the Department considered several approaches, including tank fill pipe tags, posting the permit on the premises, dispenser tags, and written notice from the owner to the sellers and distributors.

The resultant rules shown in Attachment B require the owner and permittee of the tank to give the tank permit number to the person depositing the product in the tank, prior to delivery. The person depositing the product is required to maintain records of deliveries to permitted tanks for three years. The Department may, at any time, ask for those records to verify that the distributor is delivering only to permitted tanks. The records will aid compliance activities during spot checks at locations where a tank is operating without a permit. The State's interim rules are also modified to prohibit any person from depositing product into an unpermitted tank.

The civil penalty schedule is not included with these new rules. They are included within proposed revisions to OAR 340, Division 12, Civil Penalties presented in the previous Agenda Item F.

Underground Storage Tank Advisory Committee: As noted, the Department has drafted the proposed rules based on recommendations from its Underground Storage Tank Advisory Committee. This committee is comprised of 31 individuals representing regulated industry, environmental groups, environmental attorneys, educators, engineers and scientists, the insurance industry, and the public. See Attachment G.

ALTERNATIVES AND EVALUATION

The Department considered several approaches to improving the quality of underground storage tank installation, retrofitting, decommissioning and testing activities including:

1. Status Quo: Use existing staff to provide education to the service providers and inspection of the UST activity. It is unlikely that the Department will have sufficient staff to regularly inspect all installations or to review plans for all new installations or repairs and replacements.
2. Develop an extensive education and licensing program similar to the asbestos program. Educate and license all firms and workers that come in contact with installation or repair of USTs (i.e. laborers, installers, plumbers, electricians, etc.) The Advisory Committee argued that a program similar to the asbestos program is not needed. All workers do not need to be licensed and private industry can provide the education if competency standards are defined.
3. Develop a limited registration and licensing program that initially registers firms, then licenses firms plus requires examination and licensing of supervisors. Not all workers would be licensed.

The Department is proposing a limited registration and licensing program as described in Item 3 above. The proposed program should result in significantly higher competency levels. The firms and supervisors will tend to protect their licenses by providing quality service to USTs. The proposed licensing rules fulfill the intent of the legislature and are

designed to be self supporting through a fee schedule that is also proposed in Attachment A.

The proposed rules that prohibit depositing regulated substances into an unlicensed tank are an improvement on the current interim rules. The Department considered various methods of identifying tanks that had valid permits, including fill pipe tags and tags or permits displayed on the premises or the dispensers. These methods were rejected by both the advisory committee and the Department as unworkable because of the large number of tanks, frequent changes in tank ownership or the permittee plus the physical damage that may occur to any identification tag or sticker.

The Department is proposing rules recommended by the UST Advisory Committee. The proposed rules prohibit any person from depositing product into a regulated tank. Additionally, the proposed rules will require the tank owner or permittee to provide the permit number to any person who deposits product into the UST. The seller or distributor will be required to record the permit number for each UST that receives product and then maintain the record for three years.

DIRECTORS RECOMMENDATION

The Director recommends that the Commission authorize public hearings to take testimony on the proposed underground storage tank rules as presented in Attachments A and B, OAR 340-160-005 through OAR 340-160-150, OAR 340-150-010(12), and OAR 340-150-150.

ATTACHMENTS:

Attachment A:	Proposed Rules for "Registration and Licensing Requirements for Underground Storage Tank Service Providers" Rules
Attachment B:	Proposed Revisions to OAR 340-150-010 and OAR 340-150-150.
Attachment C:	Draft Statement of Need and Fiscal and Economic Impact
Attachment D:	Land Use Consistency Statement
Attachment E:	Public Hearing Notice
Attachment F:	Sample Form for Service Provider Registration
Attachment G:	UST Advisory Committee

LDF:1f
Larry D. Frost
Phone: (503) 229-5769
October 21, 1988

Attachment A
Agenda Item
11-4-88 EQC Meeting

PROPOSED OREGON ADMINISTRATIVE RULES

REGISTRATION AND LICENSING REQUIREMENTS FOR UNDERGROUND STORAGE TANK SERVICE PROVIDERS
ORS 466.705 through ORS 466.995

AUTHORITY, PURPOSE, AND SCOPE

340-160-005 (1) These rules are promulgated in accordance with and under the authority of ORS 466.750.

(2) The purpose of these rules is to provide for the regulation of companies and persons performing services for underground storage tank systems in order to assure that underground storage tank systems are being serviced in a manner which will protect the public health and welfare and the land and waters within the State of Oregon. These rules establish standards for:

(a) Registration and licensing of firms performing services on underground storage tanks,

(b) Examination, qualification and licensing of individuals who supervise the performance of tank services,

(c) Administration and enforcement of these rules by the Department.

(3) Scope.

(a) OAR 340-160-005 through -150 applies to the installation, retrofitting, decommissioning and testing, by any person, of underground storage tanks regulated by ORS 466.705 through ORS 466.835 and OAR 340-150-010 through OAR 340-150-150 except as noted in Subsection (3)(b).

(b) OAR 340-160-005 through OAR 340-160-150 do not apply to services performed on the tanks identified in OAR 340-160-015 or to services performed by the tank owner, property owner or permittee.

DEFINITIONS

340-160-010, As used in these rules,

(1) "Cathodic Protection" means a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. A tank system can be cathodically protected through the application of either galvanic anodes or impressed current.

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

(3) "Decommissioning or Removal" means to remove an underground storage tank from operation, either temporarily or permanently, by abandonment in place or by removal from the ground.

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

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

(6) "Facility" means the location at which underground storage tanks are in place or will be placed. A facility encompasses the entire property

contiguous to the underground storage tanks that is associated with the use of the tanks.

(7) "Fee" means a fixed charge or service charge.

(8) "Firm" means any business, including but not limited to corporations, limited partnerships, and sole proprietorships, engaged in the performance of tank services.

(9) "Installation" means the work involved in placing an underground storage tank system or any part thereof in the ground and preparing it to be placed in service.

(10) "Licensed" means that a firm or an individual with supervisory responsibility for the performance of tank services has met the Department's experience and qualification requirements to offer or perform services related to underground storage tanks and has been issued a license by the Department to perform those services.

(11) "Retrofitting" means the modification of an existing underground storage tank including but not limited to the replacement of monitoring systems, the addition of cathodic protective systems, tank repair, replacement of piping, valves, fill pipes or vents and the installation of tank liners.

(12) "Supervisor" means a licensed individual operating alone or employed by a contractor and charged with the responsibility to direct and oversee the performance of tank services at a facility.

(13) "Tank Services" include but are not limited to tank installation, decommissioning, retrofitting, testing, and inspection.

(14) "Tank Services Provider" is an individual or firm registered and, if required, licensed to offer or perform tank services on regulated underground storage tanks in Oregon.

(15) "Testing" means the application of a method to determine the integrity of an underground storage tank.

(16) "Tightness testing" means a procedure for testing the ability of a tank system to prevent an inadvertent release of any stored substance into the environment (or, in the case of an underground storage tank system, intrusion of groundwater into a tank system).

(17) "Underground Storage Tank" or "UST" means an underground storage tank as defined in OAR 340-150-010 (11).

(18) "Field-Constructed Tank" means an underground storage tank that is constructed in the field rather than factory built because of it's large size; usually greater than 50,000 gallons capacity.

EXEMPTED TANKS

340-150-015 (1) The following regulated underground storage tanks are exempt from the requirements of this part:

(a) Hazardous waste tanks

(b) Hydraulic systems and tanks

(c) Wastewater treatment tanks

(d) Any UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954 (42 USC 2011 and following)

(e) UST systems containing electrical equipment

(f) Any UST system whose capacity is 110 gallons and less

(g) Any UST system that contains a de minimus concentration of regulated substances

(h) Any emergency spill or overflow containment UST system that is expeditiously emptied after use.

(i) Any UST system that is part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under 10 CFR 50 Appendix A

(j) Airport hydrant fuel distribution systems

(k) UST systems with field-constructed tanks

GENERAL PROVISIONS

340-060-020 (1) After May 1, 1989, no firm shall offer or perform tank services in the State of Oregon without having first registered with the Department.

(2) After September 1, 1989, no tank services provider may install, retrofit or decommission an underground storage tank in the State of Oregon without first obtaining a license from the Department.

(3) After May 1, 1990, no tank services provider shall offer to test or perform a test on an underground storage tank without first having obtained a license from the Department.

(4) After the required date, any tank services provider offering to perform tank services must have registered with or been licensed by the Department. Proof of registration and or licensing must be available at all times a tank services provider is performing tank services.

(5) After the required date, a tank services provider registered and/or licensed to perform tank services is prohibited from offering or performing tank services on regulated tanks unless a regulated tank has been issued a permit by the Department.

(6) Any tank services provider licensed or certified by the Department under the provisions of these rules shall:

(a) comply with the appropriate provisions of OAR 340-160-005 through OAR 340-160-050;

(b) maintain a current address on file with the Department; and

(c) perform tank services in a manner which conforms with all federal and state regulations applicable at the time the services are being performed.

(7) A firm registered or, if required, licensed to perform tank services must submit a checklist to the Department following the completion of a tank installation or retrofit.

(a) The checklist will be made available on a form provided by the Department.

(b) The installation and retrofit checklist must be signed by an executive officer of the firm and, following September 1, 1989, by the licensed tank services supervisor.

(c) An as-built drawing of the completed tank installation or retrofit shall be provided with the submission of the installation and retrofit checklist.

(8) After September 1, 1989, a licensed tank services supervisor shall be present at a tank installation, retrofit or decommissioning project when the following project tasks are being performed:

(a) Preparation of the excavation immediately prior to receiving backfill and the placement of the tank into the excavation;

(b) Any movement of the tank vessel, including but not limited to

transferring the tank vessel from the vehicle used to transport it to the project site;

(c) Setting of the tank and its associated piping into the excavation, including placement of any anchoring devices, backfill to the level of the tank, and strapping, if any;

(d) Placement and connection of the piping system to the tank vessel;

(e) Installation of cathodic protection;

(f) All pressure testing of the underground storage tank system, including associated piping, performed during the installation or retrofitting;

(g) Completion of the backfill and filling of the installation.

(h) Preparation for and installation of tank lining systems.

(h) Tank excavation.

(i) Tank purging or inerting.

(j) Removal and disposal of tank contents from cleaning.

(9) A licensed tank services provider shall report the existence of any condition relating to an underground tank system that has or may result in a release of the tank's contents to the environment. This report shall be provided to the Department within 72 hours of the discovery of the condition.

(10) The requirements of this part are in addition to and not in lieu of any other licensing and registration requirement imposed by law.

TYPES OF LICENSES

340-160-025 (1) The Department may issue the following types of licenses:

(a) Tank Services Provider

(b) Supervision of Tank Installation and Retrofitting

(c) Supervision of Tank Decommissioning

(d) Supervision of Tank System Tightness Testing

(e) Supervision of Cathodic Protection System Testing

(2) A license will be issued to firms and individuals who meet the qualification requirements, submit an application and pay the required fee.

REGISTRATION AND LICENSING OF TANK SERVICES PROVIDERS

340-160-030 (1) On or before May 1, 1989, all firms offering or performing tank services in the State of Oregon shall register with the Department.

(2) Registration shall be accomplished by:

(a) Completing a registration application provided by the Department; or

(b) Submitting the following information to the Department:

(i) The name, address and telephone number of the firm.

(ii) The nature of the tank services to be offered

(iii)A summary of the recent project history of the firm (the two year period immediately preceding the application) including the number of projects completed by the firm in each tank services category and identification of any other industry or government licenses held by the firm related to specific tank services.

(iv) Identifying the names of employees or principals responsible for on-site project supervision, and

(c) Including a signed statement that certifies that:

"I ___(name)_____, am the chief executive officer of __(company)_____, and do hereby certify that I have obtained a copy of the applicable laws and rules pertaining to the regulation of underground storage tanks in the State of Oregon and that I have read them and will direct the employees and principals of this company to perform the tank services rendered by this company in a manner that is consistent with their requirements."

(d) Remitting the required registration fee.

(3) After July 1, 1989, firms installing, retrofitting and/or decommissioning underground storage tanks may apply for a tank services provider license from the Department.

(4) After March 1, 1990, firms testing underground storage tanks may apply for a tank services provider license from the Department.

(5) An application for a tank services providers license shall contain:

(a) The information required by 340-160-025 (2) (b), (c) and (d).

(b) A list of employees licensed by the Department to perform and supervise tank services, an identification of the specific tank services for which they are licensed, the date the employee received a license from the Department, and the number of the employee's license.

(c) Remitting the required licensing fee.

(6) The Department will review the application for completeness. If the application is incomplete, the Department shall notify the applicant in writing of the deficiencies.

(7) The Department shall deny, in writing, a license to a tank services provider who has not satisfied the license application requirements.

(8) The Department shall issue a license to the applicant after the application is approved.

(9) The Department shall grant a license for a period of twenty-four (24) months.

(10) Renewals:

(a) License renewals must be applied for in the same manner as is required for an initial license.

(b) The complete renewal application shall be submitted no later than 30 days prior to the expiration date.

(11) The Department may suspend or revoke a license if the tank services provider:

(a) Fraudulently obtains or attempts to obtain a license.

(b) Fails at any time to satisfy the requirements for a license or comply with the rules adopted by the Commission.

(c) Fails to meet any applicable state or federal standard relating to the service performed under the license.

(d) Fails to employ and designate a licensed supervisor for each project.

(12) A tank services provider who has a license suspended or revoked may reapply for a license after demonstrating to the Department that the cause of the revocation has been resolved.

(13) In the event a tank services provider no longer employs a licensed supervisor the tank services provider license is automatically suspended. The contractor license is automatically reinstated, within its

authorized period of issuance, when a licensed supervisor is again employed by the provider and when written notice of the hiring of a licensed supervisor is received by the Department.

SUPERVISOR EXAMINATION AND LICENSING

340-160-035 (1) To obtain a license from the Department to supervise the installation, retrofitting, decommissioning or testing of an underground storage tank, an individual must take and pass a qualifying examination approved by the Department.

(2) Applications for Supervisor Licenses - General Requirements

(a) Applications must be submitted to the Department within thirty (30) days of passing the qualifying examination.

(b) Applications shall be submitted on forms prescribed by the Department and shall be accompanied by the appropriate fee.

(3) The application to be a Licensed Supervisor shall include:

(a) Documentation that the applicant has successfully passed the Supervisor examination.

(b) Any additional information that the Department may require.

(4) A license is valid for a period of twenty-four (24) months after the date of issue.

(5) Renewals

(a) License renewals must be applied for in the same manner as the application for the original license, including re-examination.

(6) The Department may suspend or revoke a Supervisor's license for failure to comply with any state or federal rule or regulation pertaining to the management of underground storage tanks.

(7) If a Supervisor's license is revoked, an individual may not apply for another supervisor license prior to ninety (90) days after the revocation date.

(8) Upon issuance of a Supervisor's license, the Department shall issue an identification card to all successful applicants which shows the license number and license expiration date.

(9) The supervisor's license identification card shall be available for inspection at each project site.

SUPERVISOR EXAMINATIONS

340-160-040 (1) At least once prior to July 1, 1989, and once every quarter thereafter, the Department shall offer a qualifying examination for any person who wishes to become licensed to install, remove, or retrofit underground storage tanks.

(2) At least once prior to March 1, 1990, and twice every year thereafter, the Department shall offer a qualifying examination for any person who wishes to become licensed to test underground storage tanks.

(3) Not less than thirty (30) days prior to offering an examination, the Department shall prepare and make available to interested persons, a study guide which may include sample examination questions.

(4) The Department shall develop and administer the qualifying examinations in a manner consistent with the objectives of this section.

FEES

340-160-150 (1) Fees shall be assessed to provide revenues to operate the underground storage tank services licensing program. Fees are assessed for the following:

(a) Tank Services Provider
(b) Supervisor Examination
(c) Supervisor License
(d) Examination Study Guides

(2) Tank services providers shall pay a non-refundable registration fee of $25.

(3) Tank services providers shall pay a non-refundable license application fee of $100 for a twenty-four (24) month license.

(4) Individuals taking the supervisor licensing qualifying examination shall pay a non-refundable examination fee of $25.

(5) Individuals seeking to obtain a supervisor's license shall pay a non-refundable license application fee of $25 for a two year license.

(6) Examination study guides shall be made available to the public for $10.

KEY DATES
REGISTRATION AND LICENSING OF UNDERGROUND STORAGE TANK
SERVICE PROVIDERS AND SUPERVISORS

	Register	License Required	Test Available	Apply For License
SERVICE PROVIDER: Install, retrofit or decommission	5/1/89	9/1/89	No Test	7/1/89
SERVICE PROVIDER: Tightness test	5/1/89	5/1/90	No Test	3/1/90
SUPERVISOR: Install, retrofit Decommission CP System tester	Not Required	9/1/89	7/1/89	Within 30-Days After Passing Exam
SUPERVISOR: Tightness test	Not Required	5/1/90	3/1/90	Within 30-Days After Passing Exam

Attachment B
Agenda Item
11-4-88 EQC Meeting

PROPOSED MODIFICATIONS TO OREGON ADMINISTRATIVE RULES

DEPOSITING REGULATED SUBSTANCES IN UNDERGROUND STORAGE TANKS
ORS 466.705 through ORS 466.995

Definitions

340-150-010 (1) "Corrective Action" means remedial action taken to protect the present or future public health, safety, welfare or the environment from a release of a regulated substance. "Corrective Action" includes but is not limited to:

(a) The prevention, elimination, removal, abatement, control, minimization, investigation, assessment, evaluation or monitoring of a hazard or potential hazard or threat, including migration of a regulated substance; or

(b) Transportation, storage, treatment or disposal of a regulated substance or contaminated material from a site.

(2) "Decommission" means to remove from operation an underground storage tank, including temporary or permanent removal from operation, abandonment in place or removal from the ground.

(3) "Fee" means a fixed charge or service charge.

(4) "Investigation" means monitoring, surveying, testing or other information gathering.

(5) "Oil" means gasoline, crude oil, fuel oil, diesel oil, lubrication oil, sludge, oil refuse and any other petroleum related product or fraction thereof that is liquid at a temperature of 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute.

(6) "Owner" means the owner of an underground storage tank.

(7) "Permittee" means the owner or a person designated by the owner who is in control of or has responsibility for the daily operation or daily maintenance of an underground storage tank under a permit issued pursuant to these rules.

(8) "Person" means an individual, trust, firm, joint stock company, corporation, partnership, joint venture, consortium, association, state, municipality, commission, political subdivision of a state or any interstate body, any commercial entity and the Federal Government or any agency of the Federal Government.

(9) "Regulated substance" means:

(a) Any substance listed by the United States Environmental Protection Agency in 40 CFR Table 302.4 as amended as of the date October 1, 1987, but not including any substance regulated as a hazardous waste under 40 CFR Part 261 and OAR 340 Division 101, or

(b) Oil.

(10) "Release" means the discharge, deposit, injection, dumping, spilling, emitting, leaking or placing of a regulated substance from an underground storage tank into the air or into or on land or the waters of

the state, other than as authorized by a permit issued under state or federal law.

(11) "Underground storage tank" means any one or combination of tanks and underground pipes connected to the tank, used to contain an accumulation of a regulated substance, and the volume of which, including the volume of the underground pipes connected to the tank, is 10 percent or more beneath the surface of the ground. Such term does not include any:

(a) Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes.

(b) Tank used for storing heating oil for consumptive use on the premises where stored.

(c) Septic tank.

(d) Pipeline facility including gathering lines regulated:

(A) Under the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671);

(B) Under the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001); or

(C) As an intrastate pipeline facility under state laws comparable to the provisions of law referred to in paragraph (A) or (B) of this subsection.

(e) Surface impoundment, pit, pond or lagoon.

(f) Storm water or waste water collection system.

(g) Flow-through process tank.

(h) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

(i) Storage tank situated in an underground area if the storage tank is situated upon or above the surface of a floor. As used in this subsection. "underground area" includes but is not limited to a basement, cellar, mine, drift, shaft or tunnel.

(j) Pipe connected to any tank described in subsections (a) to (i) of this section.

(12) "Seller" or "Distributor" means person who is engaged in the business of selling regulated substances to the owner or permittee of an underground storage tank.

Depositing Regulated Substances in Underground Storage Tanks

340-150-150 (1) After February 1, 1989 no person owning an underground storage tank shall deposit or cause to be deposited a regulated substance into that tank without first having applied for and received an operating permit issued by the department.

(2)(a) After June 1, 1989, the tank owner or permittee shall, prior to accepting delivery of a regulated substance, provide the underground storage tank permit number to any person depositing a regulated substance into the tank.

(b) If, for any reason, a permit becomes invalid, the tank owner or permittee shall provide written notice of the change in permit status to any person previously notified under Subsection (2)(a) of this Section.

[(2)](3) After August 1, 1989 no person [selling or distributing a regulated substance] shall deposit or cause to have deposited [that] a regulated substance into an underground storage tank unless the tank is operating under a [valid] permit issued by the department.

(4)(a) After August 1, 1989, sellers and distributors shall maintain a written record of the permit number for each underground storage tank into which they deposit a regulated substance.

(b) If requested by the Department, a seller or distributor shall provide a written record, by permit number, for tanks into which they have deposited a regulated substances during the last three years of record.

10/21/88

Attachment C
Agenda Item
11-4-88 EQC Meeting

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF ADOPTING OAR Chapter 340 Division 160 and Portions of Division 150	))))	STATEMENT OF NEED FOR RULES

Statutory Authority

ORS 466.705 through ORS 466.995 authorizes rule adoption for the purpose of regulating underground storage tanks. Section 466.750 authorizes the Commission to adopt rules governing licensing procedures for persons servicing underground storage tanks. Section 466.760 limits the distribution of regulated substances to tanks operating under a valid permit.

Need for the Rules

The proposed rules are needed to carry out the authority given to the Commission to adopt rules for regulation of underground storage tanks.

Principal Documents Relied Upon

SB 115 passed by the 1987 Oregon Legislature (ORS 466.705 through ORS 466.995)

Subtitle I of the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act.

The Comprehensive Environmental Response, Compensation and Liability Act of 1980.

Superfund Amendments and Reauthorization Act of 1986.

40CFR Part 280, November 1985.

40CFR Part 280, September 23, 1988

40CFR Part 280, October 21, 1988

40CFR Part 281, September 23, 1988

Financial and Economic Impact

Fiscal Impact

Licensing of Service Providers and Supervisors: Program expenses will be incurred to develop information and tests, manage the testing, registration and licensing activities. The program expenses are expected to be $25,000 per biennium. This expense will be offset by program fees for licenses, tests and study guides.

Depositors of Regulated Substances: Program will be incurred in developing educational material to inform sellers, distributors, tank owners and permittee of their responsibilities. The existing tank permit fees will provide the funding.

Small Business Impact

Licensing of Service Providers and Supervisors: The department estimates that approximately 80 businesses will register and become licensed as a underground storage tank Service Provider, 240 individuals will take the Supervisor licensing exam and 160 will become licensed as underground storage tank Supervisors during the first year of the program. The fees and estimated program income is as follows:

FEES:

Service Provider Registration Fee	$ 25
Service Provider License Fee (Two Years)	$100
Supervisor Examination Fee	$ 25
Supervisor License Fee (Two Years)	$ 25
Study Guide	$ 10

INCOME: (Estimated)

	First Year		Second Year	
	#	Income	#	Income
Registration	80	$ 2,000	0	$ 0
Service Provider License	80	$ 8,000	20	$ 2,000
Supervisor Exam	240	$ 6,000	40	$ 1,000
Supervisor License	160	$ 4,000	32	$ 800
Study Guide	120	$ 1,200	35	$ 350
Subtotal		$21,200		$ 4,150
Two Year Total		$25,350		

The Oregon Legislature required that the licensing program be self supporting. Thus, the fees from registration, licensing, examinations and study guides will be used to support only these activities.

Small businesses engaged in providing services will be required to pay both registration and licensing fees. In turn, these businesses will be the only businesses allowed to provide services for regulated underground storage tanks. Thus, the economic impact on these small businesses should be minimal.

The individual underground storage tank supervisor will be required to pay a $25 nonrefundable fee to take the exam. Upon successful completion of the exam, an additional $25 is required for a two year supervisor's license. The person must pass an exam and pay a $25 exam fee and $25 license fee every two years to remain as a licensed supervisor. In turn, only licensed supervisors have the opportunity to work as a supervisor for a business licensed to provide services on regulated underground storage tanks. The department does not believe that these fee will be an economic burden to the individual.

Federal regulations require that each underground storage tank be upgraded to new tank standards or permanently decommissioned by removal from the ground or filling the tank with an inert material within ten years. The education and licensing of service providers and supervisors will benefit each owner of an underground storage tank by improving the quality of underground storage tank systems. The general public will benefit through reduced contamination of the environment resulting from quality underground storage tank systems.

Depositors of Regulated Substances: Distributors and sellers of regulated substances will be required to maintain records of permit numbers for tanks to which they have delivered product. The tank owner or permittee is required to provide the permit number to the person delivering the product. The distributors and sellers presently obtain many items of information to allow delivery and billing for the delivery of product. Adding the permit number to this information is not an unreasonable economic burden.

Attachment D
Agenda Item
11-4-88 EQC Meeting

Before the Environmental Quality Commission of the State of Oregon

In the Matter of Proposed
Rules OAR 340-160-005 through
340-160-150 and 340-12-067) Land Use Consistency
and Proposed Changes to
OAR 340-150-010 and OAR 340-150-150

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

With regard to Goal 6, the proposed rules are consistent with the goals to maintain and improve the quality of the air, water, and land resources of the state. Registration and licensing of persons and firms engaged in installing, upgrading, decommissioning, and testing underground storage tanks is consistent with the goal to maintain and improve air, water, and land resources. Changes in the rules to prohibit placing regulated substances into unpermitted underground storage tanks are also consistent with Goal 6. Neither rule appears to conflict with other goals.

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

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

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

Attachment E
Agenda Item
11-4-88 EQC Meeting

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Proposed Underground Storage Tank Service Provider Rules and Changes to Interim UST Rules.

WHO IS AFFECTED:

Persons and firms that install, retrofit, decommission, or test underground storage tank systems regulated by the Department's Underground Storage Tank Program. Owners and operators of regulated underground storage tanks. Persons that sell and distribute product to regulated underground storage tanks.

WHAT IS BEING PROPOSED:

The Department has developed a program to register firms that supply underground tank services and license underground tank supervisors. Also, the Department proposes changes to existing rules that regulate the conditions under which persons may deposit regulated substances into underground storage tanks.

WHAT ARE THE HIGHLIGHTS:

A. Registration and licensing requirements for underground storage tank service providers.
   1. Registration of firms that provide underground storage tank services by April 1989.
   2. Licensing of supervisors for underground storage tank projects by August 1989.
   3. Supervisors must pass an examination over technical requirements and state and federal regulations prior to being licensed.
   4. Registered firms are not to perform services on regulated but unper.itted underground storage tanks.
   5. Supervisors and firms shall notify the Department of conditions on a site that have or may result in a release of regulated substances to the environment.

B. Depositing regulated substances into underground storage tanks.
   1. Establish a process by which product distributors must keep records of the permit numbers of regulated tanks to which they deliver product.
   2. Prohibits any person from depositing product into unpermitted, regulated tanks.

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.

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

11/1/86

3. Defines seller and distributor of regulated substances.

HOW TO COMMENT: Public Hearings Schedule

Portland	Eugene
December 9, 1988	December 13, 1988
DEQ Headquarters	Lane Community College
811 SW Sixth Avenue	4000 E 30th Avenue
Portland, Oregon	Eugene, Oregon

Medford	Bend
December 15, 1988	December 20, 1988
City Council Chambers	Cascade Natural Gas
Medford City Hall	334 NE Hawthorne
Medford, Oregon	Bend, Oregon

Pendleton
December 22, 1988
Blue Mountain Community College
M130 - Lecture Hall
2411 NW Garden
Pendleton, Oregon

A Department staff member will be appointed to preside over and conduct the hearings. Written comments should be sent to: Department of Environmental Quality, 811 SW Sixth Avenue, Portland, OR 97204.

The comment period will end January 6, 1989. All comments should be received at the Department by 5:00 p.m.

For more information or copies of the proposed rules, contact Larry Frost at 229-5769 or toll-free at 1-800-452-4011.

WHAT IS THE NEXT STEP: After public testimony has been received and evaluated, the proposed rules will be revised as appropriate and presented to the Environmental Quality Commission in March 1989. The Commission may adopt the Department's recommendation, amend the Department's recommendation, or take no action.

Attachment F
Agenda Item G
11-4-88 EQC Meeting

- S A M P L E -

UNDERGROUND STORAGE TANK SERVICE PROVIDER REGISTRATION FORM

Completed registration includes this registration form, a registration fee of $25.00, and a summary of projects for the preceding two year period. Please submit to Department of Environmental Quality, 811 SW Sixth Avenue, Portland, OR 97204.

NAME OF COMPANY OR FIRM: _____

ADDRESS: _____

_____

PHONE: (____) _____

TANK SERVICES PROVIDED BY YOUR FIRM: _____

_____

NAMES OF LICENSED SUPERVISORS EMPLOYED BY YOUR FIRM:

_____

_____

_____

_____

I _____, am the chief executive officer of _____, and do hereby certify that I have obtained a copy of the applicable laws and rules pertaining to the regulation of underground storage tanks in the State of Oregon and that I have read them and will direct employees and principals of this company to perform the tank services rendered by this company in a manner that is consistent with their requirements.

Signature: _____ Date: _____

Name: _____
(Please Print)

10/12/88

UNDERGROUND STORAGE TANK ADVISORY COMMITTEE
Membership Roster September 15, 1988

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Stoel Rives, Boley, Jones, and Grey
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Art Fuller, Deputy
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Membership Roster September 15, 1988

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NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR COMMISSION ACTION

Agenda Item H, November 4, 1988, EQC Meeting

Request for Authorization to Conduct Public Hearings on New Industrial Rules for PM_{10} Emission Control in the Medford-Ashland AQMA and Grants Pass and Klamath Falls Urban Growth Areas (Amendments to OAR 340, Divisions 20 and 30).

SUMMATION

- A combination of new control requirements and strategies must be adopted to meet new standards for PM_{10} in the Medford-Ashland, Grants Pass, and Klamath Falls areas.

- Reasonable industrial control strategies will not be sufficient to achieve standards compliance in the three areas. Substantial reductions in residential woodburning emissions, and possibly other emission sources, will also be needed. The residential components of the PM_{10} control strategy will be brought to the Commission when the necessary coordination and negotiation with local governments are completed.

- Industrial control rules have been drafted to: (1) Require more effective controls for plywood veneer driers and large wood-fired boilers in the Medford-Ashland and Grants Pass areas ; (2) Increase the particulate emission offset ratio to 1.3 pounds of reduction in existing emissions for every one pound of new emissions, in the Medford-Ashland area; (3) Require additional source-testing and continuous emissions monitoring in the Medford-Ashland and Grants Pass areas; and (4) Reduce the significant emission rate for new or modified industrial sources to five tons per year (from 15 tons per year) in the Klamath Falls area.

- Action now on industrial rules will provide the wood products industries with firm PM_{10} targets in their current planning for pollution control and plant modernization.

DIRECTOR'S RECOMMENDATION

It is recommended that the Commission authorize public hearings to take testimony on the proposed amendments to Specific Air Pollution Control Rules for the Medford-Ashland Air Quality Maintenance Area, OAR 340, Division 30, and the definition of Significant Emission Rate for the Klamath Falls area, OAR 340-20-225(22).

AP1631.1

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, November 4, 1988, EQC Meeting

Request for Authorization to Conduct Public Hearings on New Industrial Rules for PM_{10} Emission Control in the Medford-Ashland AQMA and Grants Pass and Klamath Falls Urban Growth Areas (Amendments to OAR 340, Divisions 20 and 30).

BACKGROUND

The U.S. Environmental Protection Agency (EPA) adopted major revisions to the national ambient air quality standards for particulate matter in July 1987. This action deleted the federal total suspended particulate (TSP) standards and replaced them with new standards for particulate less than ten micrometers in diameter (PM_{10}). These new standards are considered to be more protective of public health.

The new PM_{10} standards triggered several changes to Oregon's air pollution control program. Some of these changes were adopted by the Commission at the April 29, 1988, EQC meeting. These included: (1) Adoption of Oregon PM_{10} ambient air quality standards; (2) Amendments to the emergency action plan; (3) Amendments to the new source review rules; (4) Amendments to the prevention of significant deterioration rules; and (5) Commitments to monitor PM_{10} and determine if there are or will be PM_{10} problems in Group II areas (areas with moderate probability of violating the PM_{10} standards).

The sixth and the most critical PM_{10} addition to the Oregon air pollution control program is the adoption of control strategies for Group I areas (areas with high probability of violating the PM_{10} standards). These strategies were required by federal rules to also be adopted by the end of April 1988. Additional time beyond April 1988 has been needed to develop the necessary consensus and public support for controversial woodheating control strategies. The Department is currently coordinating and negotiating these PM_{10} control strategies with local governments and has advised EPA that the strategies are expected within 12 months after the April 1988 due date. Other western states have had similar problems meeting the April 1988 requirement.

The Department has drafted rules that would require better air pollution control of particulate emissions by wood products industries in the Medford-Ashland, Grants Pass and Klamath Falls areas. These new rules would be an important part of the PM_{10} control strategies for these areas.

Even though the overall control strategies have not yet been completed, the draft industrial rules which have been under consideration since October 1987 are being proposed now in order to provide the wood products industries with firm PM_{10} targets in their planning for pollution control and plant modernization. At least two facilities are currently planning major boiler projects; the draft rules for modifications of large wood-fired boilers would be retroactive to the date the strategies were due to EPA and the date the EQC adopted the ambient PM_{10} standards and PM_{10} new source review requirements (April 29, 1988). The retroactive date is necessary to insure that the new boiler projects are designed to meet the proposed emission limits and that these emission reductions will contribute to the PM_{10} control strategy.

The Commission has the authority to adopt specific regulations for classes of sources in specific areas under ORS 468.015, 468.020, 468.295, and 468.305.

ALTERNATIVES AND EVALUATION

Overview of PM_{10} Control Program

The Oregon PM_{10} control program was the subject of reports to the Commission at the January 22, 1988, EQC meeting and the April 28, 1988, Medford Town Hall meeting. The highlights of these reports are outlined in Attachment A. The existing PM_{10} levels and emission inventories in the following paragraphs provide perspective on the relative severity and sources of the PM_{10} problems in Oregon.

Existing PM_{10} Levels. The design values (or baseline PM_{10} concentrations during 1984-87) have been estimated for each of the Group I areas and are summarized in the table below.

	Approximate Design Value (g/m^3)	
Group I Area	Annual	Peak Day
Klamath Falls	60-90	600 or more
Medford-White City	55-65	260-370
Grants Pass	45-55	180-220
Eugene-Springfield	35-45	200-240
(Standard)	(50)	(150)

Emission Inventories. Residential woodsmoke from stoves and fireplaces, soil and road dust, and the wood products industry are the major PM_{10} source categories within the Medford-Ashland Air Quality Maintenance Area (MA), Grants Pass Urban Growth Boundary (GP), and Klamath Falls Urban Growth Boundary (KF) as summarized in the following table. Soil and road dust is not of as much health concern as woodsmoke or industry emissions and is generally more difficult to control.

	Percent of PM_{10} Emission Inventory					
	Annual PM_{10}			Worst Day PM_{10}		
Source Category	MA*	GP*	KF*	MA*	GP*	KF*
Residential woodsmoke	41	34	64	65	53	83
Wood products industry	21	34	7	13	21	4
Soil and road dust	24	19	12	14	16	9
Motor vehicle exhaust	7	12	6	4	8	3
Other	7	1	11	4	2	1
TOTAL	100	100	100	100	100	100

* MA = Medford-Ashland, GP = Grants Pass, KF = Klamath Falls.

Earlier this year, Dr. Robert Palzer presented a draft report to the Jackson County Commissioners that questioned the Department's estimates of relative contributions of residential and industrial sources to the PM_{10} problem in the Medford area. Specifically, Dr. Palzer estimated that industry contributes twice as much as residential woodsmoke to the annual PM_{10} concentrations and that industry contributes a similar amount as residential woodsmoke to winter PM_{10} concentrations. The Department staff has reviewed Dr. Palzer's work and re-analyzed the Medford air quality data and is convinced that the Department and the independent consultants involved in the Medford airshed studies have identified the source contributions with reasonable accuracy. If the industry PM_{10} emissions are greater than calculated by the Department then the emission reductions credited to proposed industrial control measures will be even greater than presented later in this report.

Proposed Industrial Control Measures

The Department has evaluated potential industrial air pollution control measures for the PM_{10} problem areas. The major elements in this evaluation process were: (1) Calculation of airshed emissions from various residential, industrial and transportation source categories; (2) Identification of the significant industrial source categories; (3) Evaluation of the best available control technology and lowest achievable emission rates for these source categories; (4) Consideration of the environmental benefits and economic costs of the control technology alternatives; and (5) Selection of the proposed industrial control measures.

The selection of proposed industrial control measures were driven by the magnitude of the PM_{10} problems and the industrial contribution to those problems in each of the areas. The guiding principles included: (1) Prevention of exacerbation of existing PM_{10} problems by new industry; (2) Reductions of existing industrial emissions that would be adequate, when combined with reasonable residential woodsmoke reductions, to meet PM_{10} health standards; (3) Optimum continuous performance and reliability of existing and new pollution control equipment; (4) Maximum cost-effectiveness (within the constraints of the first three guiding principles).

Consistent with these principles, the Department has drafted rules that would require better air pollution control of particulate emissions by wood products industries in the Medford-Ashland and Grants Pass areas. These new rules would be an important part of the PM_{10} control strategies for these areas. The Department has also drafted a revised rule that would require stricter review and emission offset requirements for new industrial emission sources in the Klamath Falls area.

Specifically, the draft industrial rules would: (1) Require more effective controls for plywood veneer driers and large wood-fired boilers in the Medford-Ashland and Grants Pass areas (the new boiler requirements would apply to industries with boilers or boiler pollution control equipment modified after EQC adoption of the ambient PM_{10} standards and PM_{10} new source review requirements on April 29, 1988; (2) Increase the particulate emission offset ratio, requiring 1.3 pounds of reduction in existing emissions for every one pound of new emissions, in the Medford-Ashland area; (3) Require additional source-testing and continuous emissions monitoring in the Medford-Ashland and Grants Pass areas; and (4) Reduce the significant emission rate that triggers the need for emission offsets for new or modified industrial sources to five tons per year (from 15 tons per year) in the Klamath Falls area effective April 29, 1988. The proposed rules would not preclude the further control of less significant industrial source categories in the future.

The existing OAR 340, Division 30 has the framework needed for PM_{10} industrial rules for Medford-Ashland and Grants Pass, with the bulk of the special definitions already there, the appropriate categories of sources covered, and provisions in place for compliance schedules and monitoring requirements. The proposed rule for the Klamath Falls area would be a revision to OAR 340-20-225(22). The proposed rules are included as Attachment F and are summarized in Attachment C.

Veneer Driers and Wood-fired Boilers. The largest industrial source categories in the Medford and Grants Pass areas are the plywood veneer driers and wood-fired boilers. The veneer driers and large wood-fired boilers (greater than 35 million Btu per hour heat input) were selected for additional controls. Presently, the particulate emissions from these sources are:

Urban Area and Industry Source Category	PM_{10} Tons/Year
Medford-Ashland AQMA:	
Veneer Driers	271
Large Wood-fired Boilers	257
Total AQMA Industrial PM_{10} Emissions	889
Grants Pass Area:	
Veneer Driers	190
Large Wood-fired Boilers	151
Total Area Industrial PM_{10} Emissions	386

Technology has been developed in recent years that has moved the range of practical controls for veneer driers from 0.5-1.5 pounds per thousand square feet of veneer dried (lb/Msf) to 0.2-0.45 lb/Msf. The range reflects the method of heating the driers (indirect steam heated driers, direct wood-fired, or direct gas-fired). The proposed rule would limit veneer drier emissions to 0.3-0.45 lb/Msf, depending on the method of heating the driers.

Technology is also available to further reduce wood-fired boiler emissions. The wood-fired boilers in Grants Pass currently meet an emission standard of 0.2 grains per standard dry cubic foot (gr/sdcf); in Medford-Ashland, large boilers meet 0.050 gr/sdcf and small boilers meet 0.2 gr/sdcf. Existing boilers in Grants Pass can meet their present limits with a combination of careful maintenance of the boilers and mechanical collectors such as multiclones.

Adopting a limit of 0.050 gr/sdcf for large boilers in Grants Pass (the present limit in Medford-Ashland AQMA) would require the installation of Best Available Control Technology (BACT) which indicates effective technology of relatively modest cost; for wood-fired boilers, this is currently considered to be scrubbers. Adopting a limit of 0.030 gr/sdcf for large boilers in Medford-Ashland and/or Grants Pass would require the installation of Lowest Achievable Emission Rate (LAER), which is the best demonstrated technology regardless of cost; for wood-fired boilers, this is currently considered to be electrostatic precipitators.

The reductions in emissions from setting limits at the rates that could be supported by the technologies described above would be:

Urban Area and Industry Control Measure	PM_{10} Emissions in Tons/Year		
	Before	After	Reduction
Medford-Ashland AQMA:			
Veneer Driers at 0.3-0.45 lb/Msf *	271	169	102 (38%)
Wood-fired Boilers at 0.030 gr/sdcf *	257	173	84 (33%)
Total AQMA Industrial PM_{10} Emissions *	889	703	186 (21%)
Grants Pass Area:			
Veneer Driers at 0.3-0.45 lb/Msf *	190	84	106 (56%)
Wood-fired Boilers at 0.050 gr/sdcf *	151	41	110 (73%)
Wood-fired Boilers at 0.030 gr/sdcf	151	24	127 (84%)
Total Industrial at 0.050 gr/sdcf *	386	170	216 (56%)
Total Industrial at 0.030 gr/sdcf	386	153	233 (60%)

* Proposed by the Department

The proposed reductions would require a minimum of 70% control of veneer drier emissions and 75% control of large wood-fired boiler emissions in the Medford-Ashland and Grants Pass areas. Upon rebuilding, the minimum control efficiency would increase to 85% control of boiler emissions. These industrial reductions of 70-85% would occur throughout the year as well as on the peak PM_{10} days. For comparison, the residential woodsmoke reductions targeted by the citizen advisory committees in these two areas are 40-75% on peak PM_{10} days and 4-25% as an annual average.

None of the boilers or boiler pollution control equipment in the Medford-Ashland and Grants Pass areas have been rebuilt during 1988 but at least two facilities are currently planning major boiler projects. The draft rules for modifications of large wood-fired boilers would be retroactive to the date of EQC adoption of the ambient PM_{10} standards and PM_{10} new source review requirements (April 29, 1988) in order to insure that the new boiler projects are designed to meet the proposed emission limits, even if construction was scheduled to begin prior to final adoption of the proposed rules. If retroactive action is not taken, the potential emission reductions achieved by these projects could be lost to the airshed improvement strategy by being "banked" as emission offset credits.

The population of affected industrial sources is comprised of thirty veneer driers and ten waste wood boilers in the Medford-Ashland AQMA, at a total of eleven industrial sites, and ten veneer driers and eight boilers in Grants Pass at four industrial sites. About a dozen veneer driers in the Medford area already comply with the proposed standards.

The Department has estimated the costs of controls to provide compliance with the proposed rule. The costs are based on installing new control devices on all driers which either do not have devices presently or which would replace existing devices with new ones. The total installed costs for both areas would be about $3.5 million. The cost/benefit would be about $15,000 per ton of additional particulate collected per year ($/T/y) in Medford and about $7000/T/y in Grants Pass. At many sites, existing scrubbers that would be replaced are about ten years old, which is the

useful economic life claimed for them on tax credit applications when they were installed. A good case could be made that the cost figures given above should be discounted by the cost of replacing existing scrubbers and the cost of compliance with the proposed regulations only be the differential costs between replacing existing scrubbers with identical models and the costs of replacing them with superior emission controls. On that basis, the extra costs incurred by compliance with the proposed regulations would be about $2 million, and the cost/benefit ratio would be about $10,000/T/y in Medford and $5,000/T/y in Grants Pass. The additional costs of maintenance and operation should be about $100-200,000 per year for both areas.

The costs of controlling boiler emissions to 0.050 gr/sdcf in Grants Pass would be on the order of $500,000. The ultimate cost in the two areas for replacing controls capable of meeting 0.030 gr/sdcf in order to comply with LAER, would be on the order of $5-$10 million, depending on whether the controls sufficient for the 0.050 gr/sdcf limit were replaced while they still had most of their useful life left or the replacement came at the end of their useful life.

Industrial Emission Offset Ratio. Public comments in recent years on a Department new source permit action in the Medford area indicate that the present emission offset ratio at 1:1 should increased to insure demonstrating a net ambient air quality benefit from such actions. A ratio of 1.3 pounds of offset per pound of new emissions is proposed. This ratio is the same as is used in the State of Washington, so its use in Oregon should not put Oregon industry at a major competitive disadvantage.

Continuous Emission Monitoring Requirements. The existing continuous emission requirement is written in terms of "The Department may require..." equipment to monitor emissions or the parameters which affect emissions. The proposed rule would be more specific, requiring that monitoring be done, but would preserve the option of monitoring emission or process parameters. The goal is to be able to better and more frequently verify that emission control equipment is operated continuously at maximum efficiency. Continuous monitoring could also indicate when repairs or adjustments are needed, facilitating maintaining the efficiency of the equipment.

Significant Emission Rate for New Industry in Klamath Falls. The term "significant emission rate" refers to the size of new or modified industrial emission sources that must be more closely evaluated under the new source review procedures (OAR 340-20-220 to -276). The PM_{10} significant emission rate that triggers the need for emission offsets for all PM_{10} nonattainment areas except the Medford-Ashland area is fifteen tons per year; the significant emission rate in the Medford-Ashland area is five tons per year because of the severity of the airshed problem. A new industrial source with PM_{10} emissions of 15 tons per year would be equivalent to the annual emissions of about 100 woodstove-heated homes in the Klamath Falls area. The Department proposes to change the significant rate for the Klamath Falls area to five tons per year effective April 29, 1988, in order to prevent exacerbation of the already severe PM_{10} problem there. This would affect one pending industry modification and future new or modified industrial sources.

Industry Concerns

The Department has met several times with wood products industries in southern Oregon over the last year regarding additional industrial control requirements. The major industry concerns and the Department responses are summarized in Attachment B. The wood products industries have concerns (regarding costs, competitive disadvantages, etc.) with each of the proposed control measures but the major concerns appear to be: (1) Opposition to the increase in offset ratio for the Medford-Ashland area; and (2) The need for substantial reductions in residential woodburning emissions as soon as possible in order to meet the PM_{10} health standards.

Alternatives

Major alternatives that the Commission could consider include: (1) Waiting to propose additional industrial rules until the Department and local governments have proposed residential woodburning strategies; (2) Requiring LAER boiler limits (ie, 0.030 gr/sdcf) in Medford-Ashland and Grants Pass by a specified date (eg, 3-5 years) instead of upon future modification of the boilers; (3) Applying the increased offset ratio in none or all of the PM_{10} problem areas instead of just the proposed Medford-Ashland AQMA; (4) Requiring additional industrial controls in the Klamath Falls area; and (5) Retaining the 15 ton per year significant PM_{10} emission rate (the rate at which offsets are required) for the Klamath Falls area.

Arguments can be made for each of these alternatives. The Department did not propose these alternatives primarily because all of the proposed rules appear to be justifiably needed and reasonably cost-effective. The listed alternative deletions or additions would tend to be less in balance with the needs for the following reasons:

(1) The technology is available to proceed with industrial controls as the first significant steps in the PM_{10} control strategy for the Medford-Ashland and Grants Pass areas. It is clear, however, that substantial reductions will be needed in residential woodburning emissions to meet PM_{10} health standards in each of these areas. Since some industries are currently updating their pollution control and plant modernization plans, it is important to give them firm PM_{10} targets for their emission controls. The emission reductions could be lost to the PM_{10} control strategies, or industry would have to provide additional controls later at greater expense, if industry moves ahead with control plans prior to adoption of the new rules.

(2) It is generally more cost-effective to require pollution control upgrade upon boiler or control equipment modification than by a specified date.

(3) The offset ratio increase would provide some additional assurance of net air quality benefit in each case of offset transfer. This increase was requested by a local government and a number of residents in the Medford-Ashland area. Based on the relatively small number of offset transfers in past years, an increased offset ratio is not a critical component of the control strategies for all of the PM_{10} problem areas.

(4) The Klamath Falls PM_{10} data collected thus far indicates that residential woodsmoke is the dominant source of PM_{10} in the problem area of Klamath Falls.

(5) The five ton per year significant PM_{10} emission rate for the Klamath Falls area would make it identical to the Medford area. The lower rate is based on the severity of the existing PM_{10} problem and is intended to protect against future exacerbation by any new industry locating near the severe PM_{10} problem area.

DIRECTOR'S RECOMMENDATION

It is recommended that the Commission authorize public hearings to take testimony on the proposed amendments to Specific Air Pollution Control Rules for the Medford-Ashland Air Quality Maintenance Area, OAR 340, Division 30, and the definition of Significant Emission Rate for the Klamath Falls area, OAR 340-20-225(22).

Fred Hansen

Attachments:

A. Overview of PM_{10} Control Program in Oregon.
B. Industry Concerns and Department Responses.
C. Summary of Proposed Rule Revisions.
D. Rulemaking, Land Use and Economic Impact Statements.
E. Draft Public Hearing Notice.
F. Draft Rule Revisions (OAR 340, Divisions 20 and 30).

Merlyn L. Hough:mlh
229-6446
October 19, 1988
AP1631

Attachment A

OVERVIEW OF PM_{10} CONTROL PROGRAM IN OREGON

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

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

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

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

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

Causes of the Problems. The particulate problems are caused by the combination of poor ventilation, especially during the fall and winter months, and particulate emissions from various sources, primarily residential woodsmoke from stoves and fireplaces and, in some instances, wood products industry emissions. A national study of weather patterns by EPA in 1972 indicated that the interior valleys of southwest Oregon had among the poorest atmospheric ventilation in the country.

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

Existing PM_{10} Levels. The design values (or baseline PM_{10} levels during 1984-87) have been estimated for each of the Group I areas and are summarized in the table below. These design values are considered approximate since EPA only recently adopted specific PM_{10} reference methods and the size of the PM_{10} data record (number of monitoring sites, frequency of sampling, months or years of record) varies between areas.

Group I Area	Approximate Design Value (ug/m^3) Annual	Peak Day
Klamath Falls	60-90	600 or more
Medford-White City	55-65	260-370
Grants Pass	45-55	180-220
Eugene-Springfield	35-45	200-240
(Standard)	(50)	(150)

Improvements Needed. The daily standard will be the more difficult to achieve in the Oregon problem areas. In the Group I areas, worst day PM_{10} levels must be reduced by 25-75% in order to meet the daily PM_{10} standard and annual average PM_{10} levels must be reduced 0-30% to meet the annual standard.

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

Controversial Residential Woodburning Control Measures. Some of the measures will be controversial. For example, the Jackson County (including the Medford-White City Group I area) Woodburning Task Force and the original Klamath Falls Air Quality Task Force recommended mandatory curtailment of woodstove and fireplace use (with limited exemptions) during air stagnation periods, expanded public education, clean air utility rates, and financial incentives for replacing woodstoves with cleaner burning units. The Grants Pass and the new Klamath Falls advisory committees have recommended similar strategies except with voluntary, not mandatory, curtailment programs. Some of these strategies require public hearings by local government, and adoption of local ordinances, prior to the EQC public hearings for incorporating the control strategies into the SIP. Jackson County is coordinating a proposed action plan (Attachment 1) with the cities of Medford and Central Point; this proposed action plan includes the recommendations of the Jackson County Woodburning Task Force except that it proposes a voluntary, not mandatory, curtailment program and proposes to re-evaluate the success of the program each spring.

Major Concerns. There are two major concerns with the PM_{10} control strategies. First, these strategies will not be adopted and submitted to EPA by May 1, 1988, as required. Other states and local communities in the Pacific Northwest are experiencing similar problems meeting the May 1, 1988, requirement. Additional time is needed to develop the necessary consensus and public support for controversial woodheating control strategies.

Second, EPA indicates it will have difficulty approving voluntary curtailment programs as part of the control strategy. All three of the southern Oregon curtailment plans currently are moving toward voluntary, not mandatory, programs. Of the three southern Oregon areas, Grants Pass is the most justifiable for a voluntary curtailment program since the PM_{10} problem

is less severe than in Klamath Falls or Medford-White City with only a few days per year in marginal violation of the PM_{10} standards.

Emission Inventories. Residential woodsmoke from stoves and fireplaces, soil and road dust, and the wood products industry are the major PM_{10} source categories within the Medford-Ashland Air Quality Maintenance Area (MA), Grants Pass Urban Growth Boundary (GP), and Klamath Falls Urban Growth Boundary (KF) as summarized in the following table. Soil and road dust is not of as much health concern as woodsmoke or industry emissions and is generally more difficult to control.

	Percent of PM_{10} Emission Inventory					
	Annual PM_{10}			Worst Day PM_{10}		
Source Category	MA	GP	KF	MA	GP	KF
Residential woodsmoke	41	34	64	65	53	83
Wood products industry	21	34	7	13	21	4
Soil and road dust	24	19	12	14	16	9
Motor vehicle exhaust	7	12	6	4	8	3
Other	7	1	11	4	2	1
TOTAL	100	100	100	100	100	100

MLH:mlh
229-6446
DEQ Air Quality Division
10/6/88
AP1631.2

Attachment B

INDUSTRY CONCERNS AND DEPARTMENT RESPONSES

Industry, primarily through its trade association Southern Oregon Timber Industries Association (SOTIA), and also individually, has commented on provisions of the rules at various stages in their development. The industry comments and the Department responses are as follows:

1. Industry: Applicability to only Medford-Ashland AQMA and to Grants Pass Area is unfair, and puts already tightly-regulated installations at a competitive disadvantage.

Department: Limiting these rules to the two areas does mean an extra cost burden for facilities in these areas to bear, which would affect their competitive position. However, imposing the same limits state-wide to all PM_{10}-problem areas, regardless of the amount of industrial contribution to ambient problems, would amount to "control for control's sake", which would be perceived as at least equally unfair by other affected industries. In addition, a state-wide rule would limit the flexibility of DEQ, local agencies, and citizens' committees to design strategies closely related to actual, local problems.

2. Industry: Requiring rebuilt boilers and their emission control systems to meet a limit of 0.030 gr/SDCF while designed to LAER would discourage owner/operators from upgrading equipment and would do no more in any case than existing rules for sources in non-attainment areas.

Department: New or modified sources in non-attainment areas must install LAER under current rules if they increase emissions over significance rates. The wisdom certainly can be questioned in an airshed with a severe problem of allowing control system replacement with the same technology when there is no net change in emissions when available new state-of-the-art technology can provide further emission control. In the proposed rule, the obligation to provide LAER upon rebuilding boilers or their emission control systems would apply regardless of whether there were any changes in emission rates. This is more stringent than existing rules, since other sources in other non-attainment areas would have the leeway afforded by a significance cushion of 5 T/y before being required to install LAER controls. If an emission control system fails to provide compliance and has deteriorated to the extent that minor repairs and adjustments cannot bring it back to adequate performance, then this provision would force replacement with better equipment. Any reduction in emissions from controlling to less than 0.030 gr/SDCF would be available to the owner/operator for internal offsets (i.e., on the same site) at a 1:1 offset ratio, and for transfer to other sites at 1.3:1. If a boiler, limited by inherent efficiency or size, can no longer supply the steam demands of a given site, the owner/operator makes an economic balance whether living with the constraint is a better investment than rebuilding or replacing the equipment. A requirement for LAER certainly would be an element of that balance, although it may not be the major factor.

If there were no continuous improvement in emission controls, presumably there would come a time when the areas became non-attainment, and limits on growth as well as another round of industrial controls - imposed whether or not boilers and emission controls were slated for replacement - would be imposed.

3. Industry: Requiring an offset ratio of 1.3:1 imposes an additional economic burden, and would further discourage voluntary reductions in emission rates by reducing the value of those reductions.

Department: The 1.3:1 offset ratio would not affect internal trades, although it would devalue a voluntary reduction as a sellable external offset by about the 30% difference between 1:1 and 1.3:1. The larger offset ratio would decrease the disadvantage of control technology which was more efficient but also more expensive, by affecting the balance between buying more control and buying offsets, that is, the marginal costs of emission reductions. The Department was motivated to propose this change by a desire to be responsive to public comments made during hearings on Biomass One (a new steam-electric generation facility), to the effect that the public and local government were not satisfied with offsets at 1:1.

The total strategy, involving woodstoves and industry, would provide compliance, but with no margin for error or growth. To allow for growth, there must be continuous improvement in emission controls. The requirement for a ratio of 1.3:1 would be a part of the mechanism for insuring that continued growth will be possible and feasible.

4. Industry: Requiring continuous monitoring and reporting is premature, because of a lack of demonstrated systems for monitoring the emissions typical of veneer dryers. Even if monitoring equipment were available, the data should merely be held for a year, available on request, with no requirement, and consequent burden of time and expense, for its transmission to the Department.

Department: Equipment for continuously monitoring particulate emissions from veneer dryers is not available. That is the reason for only requiring that the monitoring be able to verify continuous functioning of the emission control equipment, which could be done by monitoring its process parameters. The Department disagrees with holding the data rather than reporting it periodically. If data are reported, someone on each mill staff will be responsible for their accuracy, and would make an effort to ensure that the data are accurate, and if the data indicate an operating problem, review the operation to determine the cause. Periodic reporting would also insure, to the public, that someone in the Department would review the performance of the emission control equipment. If the data merely sit in storage, the tendency will be to ignore them, for the Department to lose track of how well the equipment is maintained and is performing. The mechanics of data transmission, on paper or by an electronic medium, are not important by themselves, and the Department would be very willing to work with industry to minimize the burden of reporting.

AP1631.3

Attachment C

SUMMARY OF PROPOSED INDUSTRIAL RULE REVISIONS

Only the sections of the existing rule OAR 340-20 for which proposed amendments have been drafted are described here:

Section 005, Purpose and Applicability, extends the scope of the rule to the Grants Pass Urban Growth Area.

Section 010, Definitions, adds some definitions to the existing set. Specifically, the Grants Pass Area is defined, and "rebuilt boilers" are defined to state the extent of rebuilding that would trigger LAER even in the absence of an increase in emissions. When the regulation is codified, the definition set will be recast into alphabetical order.

Section 015, Wood Waste Boilers, sets an emission limit at 0.050 gr/SDCF for Grants Pass as is the case presently in Medford-Ashland, then goes further to require that a rebuilt boiler must be equipped with emission controls capable of LAER.

Section 020, Veneer Dryers, sets emission limits for veneer dryer exhausts, with different limits according to methods of heating the dryers. The limits are:

> 0.30 lb/Msf for direct heated dryers using gaseous fuels and those heated indirectly with steam.
>
> 0.40 lb/Msf for direct-heated dryers, fueled with wood of moisture content less than 20%.
>
> 0.45 lb/Msf for direct heated dryers, fueled with wood of moisture content more than 20%.
>
> When the combustion gases from a boiler are used for direct heating a dryer, 0.20 lb particulate per 1000 pounds of steam generated is added to the limit for the dryer emission.

Section 020 (6), which required that the emission control equipment installed "can be practicably upgraded" is deleted as the proposed rule is requiring the upgrade now.

Section 045, Emission-Limits Compliance Schedules, would require that compliance proposals be submitted within three months of the effective date of the regulations, and that compliance be demonstrated within 15 months of the Department's approving the compliance proposal.

Section 050, Continuous Monitoring, requires that continuous monitoring equipment be installed which is capable of verifying that emission control equipment is continuously providing compliance with the emission limits. The purposes, as have been discussed above, are to ensure that the emission-control systems are continuously operated, and that their efficiency is

maintained. Continuous monitoring should allay public concerns that the control systems are in continuous use.

The compliance schedule is as follows:

Within one year of the effective date of the regulation, owners/operators would submit a plan for emission and/or process monitoring, allowing time for selecting and testing equipment and methods. The Department's review and approval would be based on a showing that the proposed equipment and methods would be capable of verifying continuous compliance.

Within one year of approval of the plan, the owner/operators would place the instrumentation in operation and verify its functioning.

Within two years of approval of the plan, continuous monitoring and periodic reporting would begin.

The schedule allows for the lack of "off the shelf" equipment capable of measuring and monitoring veneer dryer emissions. Either the industry will have to develop ways to monitor emissions, in cooperation with vendors, or verify that available process monitoring equipment (pressure drop recorders or other means of measuring energy consumption by the emission control devices, for example) can be used to verify compliance.

Section 065, New Sources, would require new sources to comply with the emission limits upon start up. New boilers would have to comply with LAER upon start up.

Section 067, Rebuilt Boilers, makes it explicit that boilers or their controls rebuilt to comply with the 0.050 gr limit, such as those in Grants Pass, need only comply with that limit and need not comply with LAER unless they are rebuilt at some subsequent time.

Section 080, Emission Offsets, would require that offsets required under OAR 340-20-240 (offsets for new or modified sources) must be provided at a ratio of 1.3 pounds of offset per pound of new emission.

AP1631.4

Attachment D

**RULEMAKING STATEMENTS FOR
PROPOSED AMENDMENTS TO INDUSTRIAL RULES
FOR THE MEDFORD-ASHLAND AIR QUALITY MAINTENANCE AREA
AND THE GRANTS PASS AND KLAMATH FALLS URBAN GROWTH AREAS**

STATEMENT OF NEED FOR RULEMAKING

Pursuant to ORS 183.335(7), this statement provides information on the intended action to amend a rule.

(1) Legal Authority

This proposal amends Oregon Administrative Rules (OAR) 340, Divisions 20 and 30. It is proposed under authority of Oregon Revised Statutes (ORS) Chapter 468, including ORS 468.015, 468.020, 468.280, 468.285, 468.295, and 468.305.

(2) Need for these Rules

The U.S. Environmental Protection Agency adopted revisions to the national ambient air quality standards effective July 31, 1988, which replaced the Total Suspended Particulate (TSP) standards with standards for particulate of 10 microns characteristic diameter and under (PM_{10}) per cubic meter (g/m^3).

The states are required to assure attainment and maintenance of EPA's ambient standards. To that end, the states develop strategies for control of appropriate sources of the contaminants which are targeted by the ambient standards. The rules for which this Request for Authorization for Hearing is being made are the Department's strategy for controlling industrial PM_{10} emissions in the Medford-Ashland AQMA and Grants Pass Areas.

(3) Principal Documents Relied Upon

OAR 340, Division 30, Special Rules for the Medford-Ashland Air Quality Maintenance Area

Informational Report: New Federal Ambient Air Quality Standard for Particulate Matter (PM_{10}) and its Effects on Oregon's Air Quality Program. (Presented as Agenda Item D, January 22, 1988, EQC Meeting)

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

LAND USE CONSISTENCY STATEMENT

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

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

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

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

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

FISCAL AND ECONOMIC IMPACT STATEMENT

Adopting these rules would compel the installation of equipment on veneer dryers for which the installed capital costs would be about $2 million dollars in the Medford-Ashland AQMA and about $1.5 million in the Grants Pass Area. Operating costs for the new equipment would not be greatly different from similar costs for existing equipment, based on noting that the energy consumption of new equipment would be very close to the energy consumption of existing equipment. Maintenance costs would rise about 30% over present rates.

The estimated costs of emission controls for boilers is presented below. The estimates are based on one new scrubber at each of four sites in Grants Pass, required upon adoption of the proposed rule, and ultimately 15 electrostatic precipitators (ESP's) in both Medford-Ashland AQMA and Grants Pass Area. On that basis, the costs would be:

Grants Pass immediate:	$1 million
Grants Pass and Medford-Ashland ultimate:	$5-10 million

Since the Department does not have complete information on possible replacement or overhaul schedules for the existing boilers, it is not possible to accurately estimate the effects of inflation or for discounting future expenditures to a net present value. Therefore, those cost data must be regarded as "order of magnitude", and only useful for indicating an idea of possible future costs to the industry.

The requirements for continuous emission monitoring would include developing methods or applications of existing equipment, source testing to verify and calibrate the continuous equipment, and continuing costs of reporting. Those costs are estimated as:

Develop new methods and equipment:	$200,000
Implement results of development:	$300,000
Total cost of using new methods:	$500,000
Use existing process instrumentation:	$100,000
Implement results of development:	$100,000
Total costs of adapting existing methods:	$200,000

Costs of reporting results to the Department could be on the order of $15-20,000 per year for hand-prepared reports, the same magnitude for Department personnel time to review the reports. Using electronic means of data collection and transfer, in a form electronically readable, could reduce the costs to industry and the Department considerably.

AP1631.5

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Proposed Amendments to New Industrial Rules for Medford-Ashland Air Quality Maintenance Area and Grants Pass and Klamath Falls Urban Growth Areas

Hearing Date:
Comments Due:

WHO IS AFFECTED: Residents of Jackson, Josephine and Klamath Counties, and the industries in those counties.

WHAT IS PROPOSED: The Department of Environmental Quality is proposing to amend OAR 340, Division 30, Rules for the Medford-Ashland Air Quality Maintenance Area. The proposed changes would extend the application to the Grants Pass Urban Growth Area, and impose new limits on emissions of PM_{10} from veneer driers and wood-fired boilers, require that additional monitoring be done to continuously verify that emission-control equipment is functioning properly, and modify the emission offset requirements for the Medford-Ashland and Klamath Falls areas.

WHAT ARE THE HIGHLIGHTS:

1. Wood-fired boilers in Grants Pass would be limited the same as in the Medford-Ashland area, and wood-fired boilers in both areas would be limited to lowest achievable emission rates when rebuilt or replaced.
2. Plywood plants in the Medford-Ashland and Grants Pass areas would be required to reduce veneer drier emissions.
3. In both areas, additional continuous emission monitoring equipment would be required.
4. The particulate emission offset ratio would be increased for the Medford-Ashland area, requiring 1.3 pounds of reduction for every pound of new emissions.
5. The particulate emission rate that triggers the need for emission offsets would be reduced to five tons per year for the Klamath Falls area (the same as for the Medford area).

HOW TO COMMENT: Copies of the complete proposed rule package may be obtained from the Air Quality Division in Portland (811 SW Sixth Avenue) or from the regional office nearest you. For further information, contact Merlyn Hough at (503) 229-6446.

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

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

11/1/86

WHAT IS THE NEXT STEP: After public hearing, the Environmental Quality Commission may adopt rule amendments identical to the proposed amendments, adopt modified rule amendments on the same subject matter, or decline to act. If amendments are adopted, they would be submitted to the U.S. Environmental Protection Agency as revisions to the State Clean Air Act Implementation Plan. The Commission's deliberation would come during a regularly scheduled meeting after the public hearing.

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

AD3790 (10/88)

Attachment F

PROPOSED RULE REVISIONS

Definitions
OAR 340-20-225(22) Table 1:

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

OAR 340-20-225(22) Table 2:

Significant Emission Rates for the Nonattainment Portions of the Medford-Ashland Air Quality Maintenance Area and the Klamath Falls Urban Growth 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)

Note: ** For the Klamath Falls Urban Growth Area, the Significant Emission Rates for particulate matter apply to all new or modified sources for which permits have not been issued prior to April 29, 1988.

OAR 340, Division 30

Proposed revisions are indicated on the following pages.

OREGON ADMINISTRATIVE RULES
CHAPTER 340, DIVISION 30 - DEPARTMENT OF ENVIRONMENTAL QUALITY

DIVISION 30

SPECIFIC AIR POLLUTION
CONTROL RULES FOR THE
MEDFORD - ASHLAND AIR QUALITY
MAINTENANCE AREA
AND THE
GRANTS PASS URBAN GROWTH AREA

Purposes and Application

340-30-005 The rules in this division shall apply in the Medford-Ashland Air Quality Maintenance Area (AQMA) and the Grants Pass Urban Growth Area (Area). The purpose of these rules is to deal specifically with the unique air quality control needs of the Medford-Ashland AQMA and the Grants Pass Area. These rules shall apply in addition to all other rules of the Environmental Quality Commission. The adoption of these rules shall not, in any way, affect the applicability in the Medford-Ashland AQMA and the Grants Pass Area of all other rules of the Environmental Quality Commission and the latter shall remain in full force and effect, except as expressly provided otherwise. In cases of apparent conflict, the most stringent rule shall apply.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 4-1978, f. & ef. 4-7-78

~~[Definitions]~~

~~340-30-010 As used in these rules, and unless otherwise required by context:~~

~~(1) "Medford-Ashland Air Quality Maintenance Area" is defined as beginning at a point approximately one mile NE of the town of Eagle Point, Jackson County, Oregon, at the NE corner of Section 36, T35S, R1W; thence south along the Willamette Meridian to the SE corner of Section 25, T37S, R1W; thence SE along a line to the SE corner of Section 9, T39S, R2E; thence SSE to the corner of Section 22, T39S, R2E; thence south to the SE corner of Section 27, T39S, R2E; thence SW to the SE corner of Section 33, T39S, R2E; thence NW to the NW corner of Section 36, T39S, R1E; thence west to the SW corner of Section 26, T39S, T1E; thence west to the SW corner of Section 12, T#(S, R1W; thence NW along a line to the SW corner of Section 20, T38S, R1W; thence west to the SW corner of Section 24, T38S, R2W; thence NW along a line to the SW corner of Section 4, T38S, R2W; thence west to the SW corner of Section 5, T38S, R2W; thence NW along a line to the SW corner of Section 31, T37S, R2W; thence north along a line to the Rogue River, thence north and east along the Rogue River to the north boundary of Section 32, T35S, R1W; thence east along a line to the point of beginning.~~

~~(2) "Charcoal Producing Plant" means an industrial operation which uses the destructive distillation of wood to obtain the fixed carbon in the wood.~~

~~(3) "Air Conveying System" means an air moving device, such as a fan or blower, associated ductwork, and a cyclone or other collection device, the purpose of which is to move material from one point to another by entrainment in a moving airstream.~~

(4) - "Particulate Matter" means any matter, except uncombined water, which exists as a liquid or solid at standard conditions.

(5) - "Standard Conditions" means a temperature of 60 degrees Fahrenheit (15.6 degrees Celsius) and a pressure of 14.7 pounds per square inch absolute (1.03 Kilograms per square centimeter).

(6) - "Wood Waste Boiler" means equipment which uses indirect heat transfer from the products of combustion of wood waste to provide heat or power.

(7) - "Veneer Dryer" means equipment in which veneer is dried.

(8) - "Wigwam Waste Burner" means a burner which consists of a single combustion chamber, has the general features of a truncated cone, and is used for the incineration of wastes.

(9) - "Collection Efficiency" means the overall performance of the air cleaning device in terms of ratio of weight of material collected to total weight of input to the collector.

(10) - "Domestic Waste" means combustible household waste, other than wet garbage, such as paper, cardboard, leaves, yard clippings, wood, or similar materials generated in a dwelling housing four (4) families or less, or on the real property on which the dwelling is situated.

(11) - "Open Burning" means burning conducted in such a manner that combustion air and combustion products may not be effectively controlled including, but not limited to, burning conducted in open outdoor fires, burn barrels, and backyard incinerators.

(12) - "Dry Standard Cubic Foot" means the amount of gas that would occupy a volume of one cubic foot, if the gas were free of uncombined water at standard conditions.

(13) - "Criteria Pollutants" means Particulate Matter, Sulfur Oxides, Nonmethane Hydrocarbons, Nitrogen Oxides, or Carbon Monoxide, or any other criteria pollutant established by the U.S. Environmental Protection Agency.

(14) - "Facility" means an identifiable piece of process equipment. A stationary source may be comprised of one or more pollutant emitting facilities.

(15) - "Lowest Achievable Emission Rate" or "LAER" means, for any source, that rate of emission which is the most stringent emission limitation which is achieved in practice or can reasonably be expected to occur in practice by such class or category of source taking into consideration the pollutant which must be controlled. This term applied to a modified source means that lowest achievable emission rate for that portion of the source which is modified. LAER shall be construed as nothing less stringent than new source performance standards.

(16) - "Modified Source" means any physical change in, or change in the method of, operation of a stationary source which increases the potential emission of criteria pollutants over permitted limits, including those pollutants not previously emitted.

(a) A physical change shall not include routine maintenance, repair, and replacement.

(b) A change in the method of operation, unless limited by previous permit conditions, shall not include:

(A) An increase in the production rate, if such increase does not exceed the operating design capacity of the sources;

(B) Use of an alternative fuel or raw material, if prior to

December 21, 1976, the source was capable of accommodating such fuel or material; or

(G) Change in ownership of a source.

(17) "New Source" means any source not previously existing or permitted in the Medford-Ashland Air Quality maintenance Area on the effective date of these rules.

(18) "Offset" means the reduction of the same or similar air contaminant emissions by the source;

(a) Through in-plant controls, change in process, partial or total shut-down of one or more facilities or by otherwise reducing criteria pollutants; or

(b) By securing from another source or, through rule or permit action by DEQ, in an irrevocable form, a reduction in emissions similar to that provided in subsection (a) of this section.

(19) "Source" means any structure, building, facility, equipment, installation or operation, or combination thereof, which is located on one or more contiguous or adjacent properties and which is owned or operated by the same person, or by persons under common control.

(20) "Volatile Organic Compound", (VOC), means any compound of carbon that has a vapor pressure greater than 0.1 mm of Hg at [standard conditions (temperature)] 20 ^{o}G, [pressure 760 mm of Hg).] Excluded from the category of Volatile Organic Compound are carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, ammonium carbonate, and those compounds which the U.S. Environmental Protection Agency classifies as being of negligible photochemical reactivity which are methane, ethane, methylchloroform, and trichlorotrifluoroethande.

(21) "Department" means Department of Environmental Quality.

(22) "Emission" means a release into the outdoor atmosphere of air contaminants.

(23) "Person" includes individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, the state and any agencies thereof, and the federal government and any agencies thereof.

(24) "Veneer" means a single flat panel of wood not exceeding 1/4 inch in thickness formed by slicing or peeling from a log.

(25) "Opacity" means the degree to which an emission reduces transmission of light and obscures the view of an object in the background.

(26) "Fugitive emissions" means dust, fumes, gases, mist, odorous matter, vapors, or any combination thereof not easily given to measurement, collection and treatment by conventional pollution control methods.

~~(27) - "Hardboard" means a flat panel made from wood that has been reduced to basic wood fibers and bonded by adhesive properties under pressure.~~

~~(28) - "Particleboard" means matformed flat panels consisting of wood particles bonded together with synthetic resin or other suitable binders.~~

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 1-1978, f. & ef. 4-7-78; DEQ 9-1979, f. & ef. 5-3-79; DEQ 3-1980, f. & ef. 1-28-80; DEQ 14-1981, f. & ef. 5-6-81

Definitions

340-32-011 As used in these rules, and unless otherwise required by context:

(1) "Air Conveying System" means an air moving device, such as a fan or blower, associated ductwork, and a cyclone or other collection device, the purpose of which is to move material from one point to another by entrainment in a moving airstream.

(2) "Charcoal Producing Plant" means an industrial operation which uses the destructive distillation of wood to obtain the fixed carbon in the wood.

(3) "Collection Efficiency" means the overall performance of the air cleaning device in terms of ratio of weight of material collected to total weight of input to the collector.

(4) "Criteria Pollutants" means Particulate Matter, Sulfur Oxides, Nonmethane Hydrocarbons, Nitrogen Oxides, or Carbon Monoxide, or any other criteria pollutant established by the U.S. Environmental Protection Agency.

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

(6) "Design Criteria" means the numerical as well as verbal description of the basis of design, including but not necessarily limited to design flow rates, temperatures, humidities, contaminant descriptions in terms of types and chemical species, mass emission rates, concentrations, and specification of desired results in terms of final emission rates and concentrations, and scopes of vendor supplies and owner-supplied equipment and utilities.

(7) "Domestic Waste" means combustible household waste, other than wet garbage, such as paper, cardboard, leaves, yard clippings, wood, or similar materials generated in a dwelling housing four (4) families or less, or on the real property on which the dwelling is situated.

(8) "Dry Standard Cubic Foot" means the amount of gas that would occupy a volume of one cubic foot, if the gas were free of uncombined water at standard conditions.

(9) "Emission" means a release into the outdoor atmosphere of air contaminants.

(10) "Facility" means an identifiable piece of process equipment. A stationary source may be comprised of one or more pollutant-emitting facilities.

(11) "Fugitive Emissions" means dust, fumes, gases, mist, odorous matter, vapors, or any combination thereof not easily given to measurement, collection and treatment by conventional pollution control methods.

(12) "General Arrangement", in the context of the compliance schedule requirements in section 340-32-045(2), means drawings or reproductions which show as a minimum the size and location of the control equipment on a source plot plan, the location of equipment served by the emission-control system, and the location, diameter, and elevation above grade of the ultimate point of discharging contaminants to the atmosphere.

(13) "Grants Pass Urban Growth Area" means the area within the Grants Pass Urban Growth Boundary as shown on the Plan and Zoning Maps for the City of Grants Pass as of 1 February 1988.

(14) "Hardboard" means a flat panel made from wood that has been reduced to basic wood fibers and bonded by adhesive properties under pressure.

(15) "Lowest Achievable Emission Rate" or "LAER" means, for any source, that rate of emission which is the most stringent emission limit which is achieved in practice or can reasonably be expected to occur in practice by such class or category of source taking into consideration the pollutant which must be controlled. This term applied to a modified source means that lowest achievable emission rate for that portion of the source which is modified. LAER shall be construed as nothing less stringent than new source performance standards.

(16) "Medford-Ashland Air Quality Maintenance Area" is defined as beginning at a point approximately one mile NE of the town of Eagle Point, Jackson County, Oregon, at the NE corner of Section 36, T35S, R1W; thence south along the Willamette Meridian to the SE corner of Section 25, T37S, R1W; thence SE along a line to the SE corner of Section 9, T39S, R2E; thence SSE to the corner of Section 22, T39S, R2E; thence south to the SE corner of Section 27, T39S, R2E; thence SW to the SE corner of Section 33, T39S, R2E; thence NW to the NW corner of Section 36, T39S, R1E; thence west to the SW corner of Section 26, T39S, T1E; thence west to the SW corner of Section 12, T#(S, R1W; thence NW along a line to the SW corner of Section 20, T38S, R1W; thence west to the SW corner of Section 24, T38S, R2W; thence NW along a line to the SW corner of Section 4, T38S, R2W; thence west to the SW corner of Section 5, T38S, R2W; thence NW along a line to the SW corner of Section 31, T37S, R2W; thence north along a line to the Rogue River, thence north and east along the Rogue River to the north boundary of Section 32, T35S, R1W; thence east along a line to the point of beginning.

(17) "Modified Source" means any physical change in, or change in the method of, operation of a stationary source which increases the potential emission of criteria pollutants over permitted limits, including those pollutants not previously emitted

(a) A physical change shall not include routine maintenance, repair, and replacement.

(b) A change in the method of operation, unless limited by previous permit conditions, shall not include:

(A) An increase in the production rate, if such increase does not exceed the operating design capacity of the sources;

(B) Use of an alternative fuel or raw material, if prior to December 21, 1976, the source was capable of accommodating such fuel or material; or

(C) Change in ownership of a source.

(18) "New Source" means any source not previously existing or having an Air Contaminant Discharge Permit on the effective date of these rules.

(19) "Offset" means the reduction of the same or similar air contaminant emissions by the source:

(a) Through in-plant controls, change in process, partial or total shut-down of one or more facilities or by otherwise reducing criteria pollutants; or

(b) By securing from another source or, through rule or permit action by DEQ, in an irrevocable form, a reduction in emissions similar to that provided in subsection (a) of this section.

(20) "Opacity" means the degree to which an emission reduces transmission of light and obscures the view of an object in the background.

(21) "Open Burning" means burning conducted in such a manner that combustion air and combustion products may not be effectively controlled including, but not limited to, burning conducted in open outdoor fires, burn barrels, and backyard incinerators.

(22) "Particleboard" means matformed flat panels consisting of wood particles bonded together with synthetic resin or other suitable binders.

(23) "Particulate Matter" means any matter, except uncombined water, which exists as a liquid or solid at standard conditions.

(24) "Person" includes individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, the state and any agencies thereof, and the federal government and any agencies thereof.

(25) "Rebuilt Boiler" means a physical change after April 29, 1988, to a wood-waste boiler or its air-contaminant emission control system which is not considered a "modified source" and for which the fixed, depreciable capital cost of added or replacement components equals or exceeds fifty percent of the fixed depreciable cost of a new component which has the same productive capacity.

(26) "Source" means any structure, building, facility, equipment, installation or operation, or combination thereof, which is located on one or more contiguous or adjacent properties and which is owned or operated by the same person, or by persons under common control.

(27) "Standard Conditions" means a temperature of 60 degrees Fahrenheit (15.6 degrees Celsius) and a pressure of 14.7 pounds per square inch absolute (1.03 Kilograms per square centimeter).

(28) "Veneer" means a single flat panel of wood not exceeding 1/4 inch in thickness formed by slicing or peeling from a log.

(29) "Veneer Dryer" means equipment in which veneer is dried.

(30) "Wigwam Waste Burner" means a burner which consists of a single combustion chamber, has the general features of a truncated cone, and is used for the incineration of wastes.

(31) "Wood Waste Boiler" means equipment which uses indirect heat transfer from the products of combustion of wood waste to provide heat or power.

Wood Waste Boilers

340-30-015 (1) No person shall cause or permit the emission of particulate matter from any wood waste boiler with a heat input greater than 35 million BTU/hr in excess of 0.050 grain per dry standard cubic foot (1.4 grams per cubic meter) of exhaust gas, corrected to 12 percent carbon dioxide, [as-an-annual-average].

(2) No person owning or controlling any wood waste boiler with a heat input greater than 35 million BTU/hour shall cause or permit the emission of any air contaminant into the atmosphere for a period or periods aggregating more than 3 minutes in any one hour equal to or greater than 20 percent opacity.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ -1978. f. & ef. 4-7-78; DEQ 29-1980. f. & ef. 10-29-80

(3) No person shall cause or permit the emission of particulate matter from any rebuilt boiler with a heat input greater than 35 million Btu/hour unless the rebuilt boiler has been equipped with emission control equipment which:

(a) continuously and routinely limits emission of particulate matter to 0.030 grains per standard dry cubic foot, corrected to 12% CO_2.

(b) is designed to limit emissions to LAER.

(c) is capable of limiting visible emissions such that their opacity does not exceed 10% for more than an aggregate of 3 minutes in any one hour.

Veneer Dryer Emission Limitations

340-30-020 (1) No person shall operate any veneer dryer such that visible air contaminants emitted from any dryer stack or emission point exceed:

(a) A design opacity of 10%,

(b) An average operating opacity of 10%, and

(c) A maximum opacity of [20%] 15%.

Where the presence of uncombined water is the only reason for the failure to meet the above requirements, said requirements shall not apply.

(d) 0.30 pounds per 1,000 square feet of veneer dried (3/8" basis) for direct natural gas or propane fired veneer dryers;

(e) 0.30 pounds per 1,000 square feet of veneer dried (3/8" basis) for steam heated veneer dryers;

(f) 0.40 pounds per 1,000 square feet of veneer dried (3/8" basis) for direct wood fired veneer dryers using fuel which has a moisture content by weight less than 20%;

(g) 0.45 pounds per 1,000 square feet of veneer dried (3/8" basis) for direct wood fired veneer dryers using fuel which has a moisture content by weight greater than 20%;

(h) In addition to paragraphs (3)(c) and (d) of this section, 0.20 pounds per 1,000 pounds of steam generated.

The heat source for direct wood fired veneer dryers is exempted from rule 340-21-030.

(2) No person shall operate a veneer dryer unless:

(a) The owner or operator has submitted a program and time schedule for installing an emission control system which has been approved in writing by the Department as being capable of complying with subsections (1)(a), (b) and (c).

(b) The veneer dryer is equipped with an emission control system which has been approved in writing by the Department and is capable of complying with subsections (1)(b) and (c), or

(c) The owner or operator has demonstrated and the Department has agreed in writing that the dryer is capable of being operated and is operated in continuous compliance with subsections (1)(b) and (c).

(3) Each veneer dryer shall be maintained and operated at all times such that air contaminant generating processes and all contaminant control equipment shall be at full efficiency and effectiveness so that the emission of air contaminants is kept at the lowest practicable levels.

(4) No person shall willfully cause or permit the installation or use of any means, such as dilution, which, without resulting in a reduction in the total amount of air contaminants emitted, conceals an emission which would otherwise violate this rule.

(5) Where effective measures are not taken to minimize fugitive emissions, the Department may require that the equipment or structures in which processing, handling and storage are done, be tightly closed, modified, or operated in such a way that air contaminants are minimized, controlled, or removed before discharge to the open air.

~~[(6) Air pollution control equipment installed to meet the opacity requirements of section (1) of this rule shall be designed such that the particulate collection efficiency can be practicably upgraded.]~~

(6) [~~(7)~~] Compliance with the visible emission limits in section (1) of this rule shall be determined in accordance with the Department's Method 9 on file with the Department as of November 16, 1979.

Stat. Auth.: ORS Ch 468
Hist.: DEQ -1978. f. & ef. 4-7-78; DEQ 3-1980 f. & ef. 1-28-80

Air Conveying Systems (Medford-Ashland AQMA Only)

340-30-025 All air conveying systems emitting greater than 10 tons per year of particulate matter to the atmosphere at the time of adoption of these rules shall, with the prior written approval of the Department, be equipped with a control system with collection efficiency of at least 98.5 percent.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ -1978. f. & ef. 4-7-78

Wood Particle Dryers at Particleboard Plants

340-30-030 No person shall cause or permit the total emission of particulate matter from all wood particle dryers at a particleboard plant site to exceed 0.40 pounds per 1,000 square feet of board produced by the plant on a 3/4" basis of finished product equivalent ~~[as an annual average]~~.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 4-1978. f. & ef. 4-7-78; DEQ 14-1981. f. & ef. 5-6-81

Hardboard Manufacturing Plants

340-30-031 No person shall cause or permit the total emissions of particulate matter from all facilities at a hardboard plant to exceed 0.25 pounds per 1,000 square feet of hardboard produced on a 1/8" basis of finished product equivalent ~~[as an annual average]~~.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 14-1981. f. & ef. 5-6-81

Wigwam Waste Burners

340-30-035 No person owning or controlling any wigwam burner shall cause or permit the operation of the wigwam burner.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 4-1978, f. & ef. 4-7-78: DEQ 29-1980, f. & ef. 10-29-80

Charcoal Producing Plants

340-30-040 (1) No person shall cause or permit the emission of particulate matter from charcoal producing plant sources including, but not limited to, charcoal furnaces, heat recovery boilers, and wood dryers using any portion of the charcoal furnace off-gases as a heat source, in excess of a total from all sources within the plant site of 10.0 pounds per ton of charcoal produced (5.0 grams per Kilogram of charcoal produced) ~~[as an annual average.]~~.

(2) Emissions from char storage, briquette making, boilers not using charcoal furnace off-gases, and fugitive sources are excluded in determining compliance with section (1).

(3) Charcoal producing plants as described in section (1) of this rule shall be exempt from the limitations of 340-21-030(1) and (2) and 340-21-040 which concern particulate emission concentrations and process weight.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 4-1978, f. & ef. 4-7-78

Control of Fugitive Emissions <u>(Medford-Ashland AQMA Only)</u>

340-30-043 (1) Large sawmills, all plywood mills and veneer manufacturing plants, particleboard and hardboard plants, charcoal manufacturing plants, stationary asphalt plants and stationary rock crushers shall prepare and implement site-specific plans for the control of fugitive emissions. (The air contaminant sources listed are described in OAR 340-20-155, Table 1, paragraphs 10a, 14a, 14b, 15, 17, 18, 29, 34a and 42a, respectively.)

(2) Fugitive emission control plans shall identify reasonable measures to prevent particulate matter from becoming airborne. Such reasonable measures shall include, but not be limited to the following:

(a) Scheduled application of asphalt, oil, water, or other suitable chemicals on unpaved roads, log storage or sorting yards, materials stockpiles, and other surfaces which can create airborne dust;

(b) Full or partial enclosure of materials stockpiled in cases where application of oil, water, or chemicals are not sufficient to prevent particulate matter from becoming airborne;

(c) Installation and use of hoods, fans, and fabric filters to enclose and vent the handling of dusty materials;

(d) Adequate containment during sandblasting or other similar operations;

(e) Covering, at all times when in motion, open bodied trucks transporting materials likely to become airborne; and

(f) Procedures for the prompt removal from paved streets of earth or other material which does or may become airborne.

(3) Fugitive emission control plans shall be prepared and implemented in accordance with the schedule outline in OAR 340-30-045.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 6-1983, f. & ef. 4-18-83

Requirement for Operation and Maintenance Plans <u>(Medford-Ashland AQMA Only)</u>

340-30-044 (1) Operation and Maintenance Plans shall be prepared by all holders of Air Contaminant Discharge permits except minimal source permits and special letter permits. All sources subject to regular permit requirements shall be subject to operation and maintenance requirements.

(2) The purposes of the operation and maintenance plans are to:

(a) Reduce the number of upsets and breakdown in particulate control equipment;

(b) Reduce the duration of upsets and downtimes; and

(c) Improve the efficiency of control equipment during normal operations.

(3) The operation and maintenance plans should consider, but not be limited to, the following:

(a) Personnel training in operation and maintenance;

(b) Preventative maintenance procedures, schedule and records;

(c) Logging of the occurrence and duration of all upsets, breakdowns and malfunctions which result in excessive emissions;

(d) Routine follow-up evaluation upsets to identify the cause of the problem and changes needed to prevent a recurrence;

(e) Periodic source testing of pollution control units as required by air contaminant discharge permits;

(f) Inspection of internal wear points of pollution control equipment during scheduled shutdowns; and

(g) Inventory of key spare parts.

(4) The operation and maintenance plan shall be prepared and implemented in accordance with the schedule outlined in OAR 340-30-045.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 6-1983, f. & ef. 4-18-83

Compliance Schedules

340-30-045 Sources affected by [~~these rules~~] Sections 340-30-025 through 340-30-040 shall comply with each increment of progress as soon as practicable but in no case later than the dates listed in Table I.

Stat. Auth. ORS Ch. 468
Hist. DEQ 4-1978 f. & ef. 4-7-78; DEQ 27-1980 f. & ef. 10-29-80; DEQ 14-1981, f. & ef. 5-6-81; DEQ 6-1983, f. & ef. 4-18-83

Emission-Limits Compliance Schedules

340-30-046 Compliance with the emission limits for wood-waste boilers and veneer dryers established in sections 340-30-015 and 340--30-020 shall be provided according to the following schedules:

(1) Within three months of the effective date of these rules, submit Design Criteria for emission control systems for Department review and approval;

(2) Within three months of receiving the Department's approval of the Design Criteria, submit a General Arrangement and copies of purchase orders for the emission-control devices;

(3) Within two months of placing purchase orders for emission-control devices, submit vendor drawings as approved for construction of the emission-control devices and specifications of other major equipment in the emission-control system (such as fans, scrubber-medium recirculation and make up systems) in sufficient detail to demonstrate that the requirements of the Design Criteria will be satisfied;

(4) Within one year of receiving the Department's approval of Design Criteria, complete construction;

(5) Within fifteen months of receiving the Department's approval of Design Criteria, demonstrate compliance.

Continuous Monitoring

340-30-050 The Department [~~may~~] will require the installation and operation of [~~instruments and recorders~~] instrumentation for measuring and recording emissions and/or the parameters which affect the emission of air contaminants from [~~sources covered by these rules~~] wood-waste fired boilers, veneer dryers, and particleboard dryers to ensure that the sources and the air pollution control equipment are operated at all times at their full efficiency and effectiveness so that the emission of air contaminants is kept at the lowest practicable level. The [~~instruments and recorders~~] instrumentation shall be periodically calibrated. The method and frequency of calibration shall be approved in writing by the Department. The recorded information shall be kept for a period of at least one year and shall be made available to the Department upon request. The selection, installation, and use of the instrumentation shall be done according to the following schedule:

(a) Within one year from the effective date of these rules, the persons responsible for the affected facilities shall submit to the Department a plan for process and or emission monitoring. The Department's primary criterion for review and approval of the plans will be the ability of proposed instrumentation to demonstrate continuous compliance with these regulations.

(b) Within one year from the Department's approval of the plan(s), the persons responsible for the affected facilities shall purchase, install, place in operation the instrumentation as approved, and verify that it is capable of demonstrating continuously the compliance status of the affected facilities.

(c) Within two years of the Department's approval of the plan(s), the persons responsible for the affected facilities shall commence continuous monitoring and reporting results to the Department, at a frequency and in a form agreed upon by the Department and the responsible persons.

Source Testing

340-30-055 (1) The person responsible for the following sources of particulate emissions shall make of have made tests to determine the type, quantity, quality, and duration of emissions, and/or process parameters affecting emissions, in conformance with test methods on file with the Department at the following frequencies: [~~Source Test Frequencies:~~]

(a) Wood Waste Boilers with heat input greater than 35 million Btu/hr. -- Once every year; [~~*~~]

(b) Veneer Dryers -- Once every year until January 1, [~~1983~~], 1991 and once every 3 years thereafter;

(c) Wood Particle Dryers at Hardboard and Particleboard Plants -- Once every year;

(d) Charcoal Producing Plants -- Once every year. [~~*~~]

[~~*NOTE: If this test exceeds the annual emission limitation then three (3) additional tests shall be required at three (3) month intervals with all four (4) tests being averaged to determine compliance with the annual standard. No single test shall be greater than twice the annual average emission limitation for that source.~~]

(2) Source testing shall begin at these frequencies within 90 days of the date by which compliance is to be achieved for each individual emission source.

(3) These source testing requirements shall remain in effect unless waived in writing by the Department because of adequate demonstration that the source is consistently operating at lowest practicable levels, [or that continuous emission monitoring systems are producing equivalent information.]

(4) Source tests on wood waste boilers shall not be performed during periods of soot blowing, grate cleaning, or other operating conditions which may result in temporary excursions from normal. The steam production date during the source test shall be considered the maximum permittee's steaming rate for the boiler.

(5) Source tests shall be performed within 90 days of the startup of air pollution control systems.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 4-1978, f. & ef. 4-7-78

Total Plant Site Emissions

340-30-060 [DEQ 4-1978, f. & ef. 4-7-78;
Repealed by DEQ 25-1981, f. & ef. 9-8-81]

New Sources

340-30-065 New sources shall be required to comply with rules

340-30-015(3) and 340-30-020 through 340-30-[040] 110 immediately upon initiation of operation.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 4-1978, f. & ef. 4-7-78

Rebuilt Sources

340-30-067 Rebuilt sources shall immediately comply with the requirements of 340-30-015(3) except that in the Grants Pass Urban Growth Area this provision will apply to sources that are rebuilt after they have complied with 340-30-015(1)

Open Burning (Medford-Ashland AQMA Only)

340-30-070 No open burning of domestic waste shall be initiated on any day or any time when the Department advises fire permit issuing agencies that open burning is not allowed because of adverse meteorological or air quality conditions.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 4-1978, f. & ef. 4-7-78

Emission Offsets

340-30-110 [DEQ 9-1979, f. & ef. 5-3-79;
Repealed by DEQ 25-1981, f. & ef. 9-8-81]

In the Medford-Ashland AQMA, emission offsets required in accordance with OAR 340-20-240 for new or modified sources shall provide reductions in emissions equal to 1.3 times the emission increase from the new or modified sources.

OREGON ADMINISTRATIVE RULES
CHAPTER 340, DIVISION 30 - DEPARTMENT OF ENVIRONMENTAL QUALITY

TABLE I
(340-30-045)
COMPLIANCE SCHEDULE

Division 340-30 Rule	Submit Plans to the Dept.	Place Purchase Orders	Begin Construction	Complete Construction	Demonstrate Compliance
-015 Woodwaste Boilers	1/1/79	3/1/79	6/1/79	11/1/79	1/1/80
-020 Veneer Dryers	~~[1/1/79]~~ 7/1/89	~~[3/1/79]~~ 9/1/89	~~-[5/1/79]~~ 12/1/89	~~[11/1/79]~~ 5/1/90	~~[1/1/80]~~ 7/1/90
-025 Air Conveying Systems	3/15/80	5/15/80	9/1/80	12/1/80	1/1/81
-030 Particle Dryers	7/30/81	1/1/82	5/1/82	1/1/83	6/30/83
-035 Wigwam Burners	1/1/79	3/1/79	6/1/79	11/1/79	1/1/80
-040 Charcoal Producing Plants	1/1/80	3/1/80	9/1/80	7/1/81	1/1/82
-043 Fugitive Emissions Control	10/1/83				6/1/84
-044 Operation and Maintenance	10/1/83				6/1/84

AP1631.6

Attachment I
EQC Agenda Item I
November 4, 1988

Technical Amendment

The Department proposes the following technical amendments to subsections (1), (3) and (4) of the Scope and Applicability section of the petroleum UST cleanup rules (340-122-215) to correct unintended effects of the previous language.

340-122-215 Scope and Applicability

(1) [Except where otherwise noted in this section, this section applies] Sections 340-122-205 to 340-122-260 of these rules apply to:

(a) An owner or permittee ordered or authorized to conduct cleanup or related activities by the Director under ORS 466.705 to 466.835 and 466.895; or

(b) Any person ordered or authorized to conduct remedial actions or related activities by the Director under ORS 466.540 to 466.590.

(2) Notwithstanding OAR 340-122-215(1)(b), the Director may require that investigation and cleanup of a release from a petroleum UST system be governed by OAR 340-122-010 to 340-122-110, if, based on the magnitude or complexity of the release or other considerations, the Director determines that application of OAR 340-122-010 through 340-122-110 is necessary to protect the public health, safety, welfare and the environment.

(3) [Corrective actions for] Cleanup of releases from UST systems [substances identified as hazardous wastes under 40 CFR Part 261, and] containing regulated substances under ORS 466.705 other than petroleum shall be governed by OAR 340-122-010 to 340-122-110 or as otherwise provided under applicable law.

(4) The Director may determine that the investigation and cleanup of releases from petroleum underground storage tank systems which are exempted under ORS 466.710(1) through (10) inclusive, shall be conducted under 340-122-205 to 340-122-260, based upon the authority provided under ORS 466.540 to 466.590.

EQC Agenda Item I
Technical Amendment

The attached Technical Amendment changes subsections (1), (3) and (4) of the Scope and Applicability section (340-122-215) of the proposed petroleum UST cleanup rules (EQC Agenda Item I, Attachment I, page 4).

The changes in 340-122-215 (1) are to clarify that all sections of the proposed rules apply to the persons identified in (1) (a) and (b).

The changes in 340-122-215 (3) are to clarify the intent of the rules in regards to cleanup of regulated substances other than petroleum. Cleanup of other regulated substances will be handled through the Remedial Action Cleanup Rules or other applicable laws. The wording related to "hazardous wastes under 40 CFR Part 261" is removed because it is specifically stated in the definition of petroleum that petroleum does not include these substances.

The addition of "petroleum" in line two of 340-122-215 (4) is inserted to clarify the applicability of this subsection to petroleum UST systems only.

These changes are made to clarify the original intent and applicability of the petroleum UST cleanup rules.

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR COMMISSION ACTION

Agenda Item I, November 4, 1988, EQC Meeting

Request for Adoption of Proposed Cleanup Rules for Leaking Petroleum Underground Storage Tank Systems, OAR 340-122-201 to 340-122-260 and Amendments to OAR 340-122-010 and 340-122-030.

SUMMATION

State legislation [ORS 466.705 to 466.835 and 466.895 (Senate Bill 115) and ORS 466.540 to 466.590 (Senate Bill 122)] requires protection of public health, safety, welfare and the environment, but does not specify the level of protection or the degree of cleanup necessary to do so. The proposed rules were developed in order to delineate these processes.

The proposed cleanup rules, based on Subpart F of the Environmental Protection Agency's draft leaking underground storage tank regulations, were included in the extensive review and public comment process used for the remedial action cleanup rules. On October 4, 1988 the Remedial Action Advisory Committee reviewed the final regulations, found no substantive changes, and recommended their adoption.

The primary alternative to adoption of these rules considered by the Department was to handle petroleum UST cleanup activities in the same manner as remedial action cleanups. Due to the fact that petroleum products can often be removed from soil and water more easily than other hazardous substances, it was felt that a less burdensome process was appropriate in most cases. The Department does, however, retain the option of using the more extensive remedial action cleanup process at the Director's discretion.

One significant issue that surfaced during public comment on these proposed rules concerned mandatory reporting requirements for home heating oil USTs. These systems are currently exempt from the reporting requirements in the UST statutes. The Department has modified the scope of the proposed rules in order to eliminate the mandatory reporting and initial abatement requirements. The Department does, however, retain the authority for cleanup of releases from these systems at its discretion.

DIRECTOR'S RECOMMENDATION

It is recommended that the Commission approve the proposed cleanup rules for leaking petroleum underground storage tank systems, OAR 340-122-201 to 340-122-260 and amendments to OAR 340-122-010 and 340-122-030.

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, November 4, 1988, EQC Meeting

Request for Adoption of Proposed Cleanup Rules for Leaking Petroleum Underground Storage Tank Systems, OAR 340-122-201 to 340-122-260 and Amendments to OAR 340-122-010 and 340-122-030.

BACKGROUND

Sites with petroleum releases pose a threat to public health and the environment. These substances may contaminate groundwater, surface water, air, and soil and threaten safe drinking water supplies. Uncontrolled petroleum releases may migrate off-site, further polluting the environment.

The 1987 Oregon Legislature responded to the need to clean up contaminated sites by enacting Senate Bill 122, the state superfund law. This law, codified in ORS 466.540 through 466.590, establishes a comprehensive statewide program to identify, investigate and clean up releases of hazardous substances in the environment. Although the law requires protection of public health, safety, welfare and the environment, it does not specify the level of protection or the degree of cleanup necessary to do so. The same is true of Senate Bill 115 (ORS 466.705 to 466.835 and 466.895) which establishes a statewide program to deal specifically with releases associated with underground storage tanks (USTs). The purpose of these proposed rules is to provide the process and the criteria for investigation and cleanup of releases associated with petroleum USTs.

The proposed rules, except for subsection 340-122-245, are based directly on Subpart F of the Environmental Protection Agency's final regulations on USTs, published on September 8, 1988. The late approval of EPA's final regulations has resulted in the request for adoption of these rules at this time rather than concurrent with the adoption of the remedial action rules approved by the EQC on September 9, 1988. The federal approach was reviewed by the Remedial Action Advisory Committee (RAAC) and approved by them because it provided an excellent framework for investigation and cleanup of these types of sites. Also, adoption

of these proposed rules, which incorporate the federal regulations, would assist the Department in receiving federal authorization from EPA for the underground storage tank program.

A significant issue that surfaced during public comment on these proposed rules concerned mandatory reporting requirements for home heating oil leaks. Home heating oil storage tanks at residences are currently exempt from the reporting requirements in the UST statutes (ORS 466.705 to 466.835 and 466.895). The Department references these statutes in the Scope & Applicability subsection of the proposed rules (Attachment I, page 4), which maintains the exempt status and thus eliminates the mandatory reporting and initial abatement requirements for exempt UST systems. The Department does, however, retain the option of using either the expedited UST cleanup approach proposed in these rules or the more extensive remedial action process for cleanup of releases from these systems and other exempt systems should it be necessary.

ALTERNATIVES AND EVALUATION

The primary alternative considered to the proposed rules was to handle petroleum UST cleanup activities in the same manner that remedial action for other hazardous substances are dealt with (i.e. through OAR 340-122-001 to 340-122-110). This is an appropriate approach for cases which severely affect groundwater, but the nature of petroleum releases and the technology available for cleanup led to the conclusion that a less burdensome approach could be used to expedite most petroleum UST cleanups and still obtain the desired level of protection.

Another reason for developing a separate approach to cleanups for petroleum UST releases is the large number of regulated underground storage tanks. There are approximately 23,000 regulated USTs in Oregon. Over 90% of these contain petroleum products. The scope of the problem is so large that both the Department and the RAAC considered it essential to develop rules that provided an expedited approach to these cleanups.

The proposed rules do, however, allow the Department to shift a petroleum UST cleanup to the remedial action cleanup process (OAR 340-122-001 to 340-122-110) if the magnitude or complexity of the problem warrants such action.

An important part of the rules which facilitates an expedited process is subsection 340-122-245 on Numeric Soil Cleanup Levels for Motor Fuel and Heating Oil. This is the only major portion of the rules not based on the federal regulations. This subsection requires the Department to develop, and then propose to the EQC, a matrix of numeric cleanup levels applicable only to soil contamination resulting from leaks of motor fuel and heating oil

from underground storage tanks. The cleanup levels are intended to be stringent and to provide a high degree of protection so that they would be sufficient to protect public health, safety, welfare and the environment. We expect to return to the Commission within six months of the adoption of these rules to discuss the structure of the matrix and request the EQC to authorize a public hearing.

Until such a matrix is developed and adopted, these rules provide two potential courses of action for soil cleanup. First, the Department may determine that initial abatement and cleanup activities have resulted in a cleanup level which protects public health and the environment. Secondly, if the release is significant and not immediately cleaned up, the Corrective Action Plan section of the rules would be used.

When a release to groundwater occurs, the Department also has two potential courses of action. First, if the release is minor or relatively straightforward to clean up (e.g. floating free product, easily recoverable), the Corrective Action Plan section in these rules could be used. Secondly, instances where the complexity of the release warrants use of more extensive procedures and controls, the remedial action rules (OAR 340-122-010 to 340-122-110) could be used.

Minor amendments to the existing remedial action rules, subsections 340-122-010 (Purpose) and 340-122-030 (Scope and Applicability), have been included with this request in order to maintain technical consistency between the two sets of administrative rules (see Attachment I, page 13).

DIRECTOR'S RECOMMENDATION

It is recommended that the Commission approve the proposed cleanup rules for leaking petroleum underground storage tank systems, OAR 340-122-201 to 340-122-260 and amendments to OAR 340-122-010 and 340-122-030.

Fred Hansen

Attachments

I. Proposed Rules OAR 340-122-201 to 340-122-260 and Amendments to OAR 340-122-010 and 340-122-030
II. Rulemaking Statements:
    Statement of Need for Rulemaking
    Land Use Consistency
    Fiscal and Economic Impact
III. Summary and Response to Public Comments
IV. Hearing Notice
V. List of Advisory Committee Members
VI. ORS 466.705 to 466.835 and 466.895 (Senate Bill 115)
VII. ORS 466.540 to 466.590 (Senate Bill 122)
VIII. Federal UST Regulations - Subpart F

Alan D. Kiphut:adk
229-6834
10-14-88

Attachment I
EQC Agenda Item I
November 4, 1988

CLEANUP RULES FOR LEAKING PETROLEUM UST SYSTEMS
OAR 340-122-201 to 340-122-260

CLEANUP RULES FOR LEAKING PETROLEUM UST SYSTEMS

340-122-205 Purpose

(1) These rules establish the standards and process to be used for the determination of investigation and cleanup activities necessary to protect the public health, safety, welfare and the environment in the event of a release or threat of a release from a petroleum UST system subject to regulation under ORS 466.705 to 466.835 and 466.895, and 466.540 to 466.590.

340-122-210 Definitions

For the purpose of this section, terms not defined in this subsection have the meanings set forth in ORS 466.540 and 466.705. Additional terms are defined as follows unless the context requires otherwise:

(1) "Above-ground release" means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the above-ground portion of a petroleum UST system and releases associated with overfills and transfer operations during petroleum deliveries to or dispensing from a petroleum UST system.

(2) "Ancillary equipment" means any devices including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of regulated substances to and from a petroleum UST system.

(3) "Below-ground release" means any release to the subsurface of the land or to groundwater. This includes, but is not limited to, releases from the below-ground portion of a petroleum UST system and releases associated with overfills and transfer operations as the petroleum is delivered to or dispensed from a petroleum UST system.

(4) "Cleanup" or "cleanup activity" has the same meaning as "corrective action" as defined in ORS 466.705 or "remedial action" as defined in ORS 466.540.

(5) "Director" means the Director of the Department of Environmental Quality or the Director's authorized representative.

(6) "Excavation zone" means the area containing the tank system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the petroleum UST system is placed at the time of installation.

(7) "Free product" means petroleum in the non-aqueous phase (e.g., liquid not dissolved in water).

(8) "Heating oil" means petroleum that is No. 1, No.2, No.4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels when used as substitutes for one of these fuel oils.

(9) "Motor fuel" means petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No.1 or No.2 diesel fuel, or any grade of gasohol, typically used in the operation of a motor engine.

(10) "Owner", as used in this section, has the meaning set forth in ORS 466.705(8).

(11) "Permittee", as used in this section, has the meaning set forth in ORS 466.705(9).

(12) "Petroleum" means gasoline, crude oil, fuel oil, diesel oil, lubricating oil, oil sludge, oil refuse, and crude oil fractions and refined petroleum fractions, including gasoline, kerosene, heating oils, diesel fuels, and any other petroleum related product, or waste or fraction thereof that is liquid at a temperature of 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute. (Note: this definition does <u>not</u> include any substance identified as a hazardous waste under 40 CFR Part 261.)

(13) "Petroleum UST system" means any one or combination of tanks, including underground pipes connected to the tanks, that is used to contain an accumulation of petroleum and the volume of which, including the volume of the underground pipes connected to the tank, is 10 percent or more beneath the surface of the ground; and includes associated ancillary equipment and containment system.

(14) "Responsible person" means any person ordered or authorized to undertake remedial actions or related activities under ORS 466.540 through 466.590.

340-122-215 Scope and Applicability

(1) Except where otherwise noted in this section, this section applies to:

(a) An owner or permittee ordered or authorized to conduct cleanup or related activities by the Director under ORS 466.705 to 466.835 and 466.895; or

(b) Any person ordered or authorized to conduct remedial actions or related activities by the Director under ORS 466.540 to 466.590.

(2) Notwithstanding OAR 340-122-215(1)(b), the Director may require that investigation and cleanup of a release from a petroleum UST system be governed by OAR 340-122-010 to 340-122-110, if, based on the magnitude or complexity of the release or other considerations, the Director determines that application of OAR 340-122-010 through 340-122-110 is necessary to protect the public health, safety, welfare and the environment.

(3) Corrective actions for releases of substances identified as hazardous wastes under 40 CFR Part 261, and regulated substances under ORS 466.705 other than petroleum shall be governed by OAR 340-122-010 to 340-122-110.

(4) The Director may determine that the investigation and cleanup of releases from underground storage tank systems which are exempted under ORS 466.710(1) through (10) inclusive, shall be conducted under 340-122-205 to 340-122-260, based upon the authority provided under ORS 466.540 to 466.590.

340-122-220 Initial Response

Upon confirmation of a release or after a release from the UST system is identified in any manner, owners, permittees or responsible persons shall perform the following initial response actions within 24 hours of the discovery of a release.

(1) Report the following releases to the Department:

(a) All below-ground releases from the petroleum UST system in any quantity;

(b) All above-ground releases to land from the petroleum UST system in excess of 42 gallons, or less than 42 gallons if the owner, permittee or responsible person is unable to contain or clean up the release within 24 hours; and

(c) All above-ground releases to water which result in a sheen on the water.

(2) Take immediate action to prevent any further release of the regulated substance into the environment; and

(3) Identify and mitigate fire, explosion, and vapor hazards.

340-122-225 Initial abatement measures and site check

(1) Unless directed to do otherwise by the Director, owners, permittees or responsible persons shall perform the following abatement measures:

(a) Remove as much of the regulated substance from the UST system as is necessary to prevent further release to the environment;

(b) Visually inspect any aboveground releases or exposed below ground releases and prevent further migration of the released substance into surrounding soils and groundwater;

(c) Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the UST excavation zone and entered into subsurface structures;

(d) Remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement, or cleanup activities. If these remedies include treatment or disposal of soils, the owner, permittee or responsible person shall comply with applicable state and local requirements;

(e) Measure for the presence of a release where contamination is most likely to be present at the UST site. In selecting sample types, sample locations, and measurement methods, the owner, permittee and responsible person shall consider the nature of the stored substance, the type of backfill, depth to groundwater and other factors as appropriate for identifying the presence and source of the release; and

(f) Investigate to determine the possible presence of free product, and begin free product removal as soon as practicable and in accordance with subsection 340-122-235.

(2) Within 20 days after release confirmation, or within another reasonable period of time determined by the Director, owners, permittees or responsible persons shall submit a report to the Director summarizing the initial abatement steps taken under paragraph (1) of this subsection and any resulting information or data.

340-122-230 Initial site characterization

(1) Unless directed to do otherwise by the Director, owners, permittees or responsible persons shall assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures in subsection 340-122-225(1). This information shall include, but is not necessarily limited to the following:

(a) Data on the nature and estimated quantity of release;

(b) Data from available sources and/or site investigations concerning the following factors: surrounding populations, water quality, use and approximate locations of wells potentially affected by the release, subsurface soil conditions, locations of subsurface sewers, climatological conditions, and land use;

(c) Results of the measurements required under subsection 340-122-225(1)(e); and

(d) Results of the free product investigations required under subsection 340-122-225(1)(f), to be used by owners, permittees, or responsible persons to determine whether free product shall be recovered under subsection 340-122-235.

(2) Within 45 days of release confirmation or another reasonable period of time determined by the Director, owners, permittees or responsible persons shall submit the information collected in compliance with paragraph (1) of this subsection to the Director in a manner that demonstrates its applicability and technical adequacy, or in a format and according to the schedule required by the Director.

340-122-235 Free product removal

At sites where investigations under subsection 340-122-225(1)(f) indicate the presence of free product, owners, permittees or responsible persons shall remove free product to the maximum extent practicable as determined by the Director while continuing, as necessary, any actions initiated under subsection 340-122-220 through 340-122-230, or preparing for actions required under subsections 340-122-240 through 340-122-250. In meeting the requirements of this subsection, owners, permittees or responsible persons shall:

(1) Conduct free product removal in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site, and that properly treats, discharges or disposes of recovery byproducts in compliance with applicable local, state and federal regulations;

(2) Use abatement of free product migration as a minimum objective for the design of the free product removal system;

(3) Handle any flammable products in a safe and competent manner to prevent fires or explosions; and

(4) Unless directed to do otherwise by the Director, prepare and submit to the Director, within 45 days after confirming a release, a free product removal report that provides at least the following information:

(a) The name of the person(s) responsible for implementing the free product removal measures;

(b) The estimated quantity, type, and thickness of free product observed or measured in wells, boreholes, and excavations;

(c) The type of free product recovery system used;

(d) Whether any discharge has taken place on-site or off-site during the recovery operation and where this discharge is located or will be located;

(e) The type of treatment applied to, and the effluent quality from, any discharge;

(f) The steps that have been or are being taken to obtain necessary permits for any discharge;

(g) The disposition of the recovered free product; and

(h) Other matters deemed appropriate by the Director.

340-122-240 Investigations for soil and groundwater cleanup

(1) In order to determine the full extent and location of soils contaminated by the release and the presence and concentrations of dissolved product contamination in the groundwater, owners, permittees or responsible persons shall conduct investigations of the release, the release site, and the surrounding area possibly affected by the release if any of the following conditions exist:

(a) There is evidence that groundwater wells have been affected by the release;

(b) Free product is found to need recovery in compliance with subsection 340-122-235;

(c) There is evidence that contaminated soils may be in contact with groundwater (e.g., as found during conduct of the initial response measures or investigations required under subsections 340-122-225 through 340-122-235); and

(d) The Director requests an investigation, based on the potential effects of contaminated soil or groundwater on nearby surface water and groundwater resources.

(2) Owners, permittees or responsible persons shall submit the information collected under paragraph (1) of this subsection as soon as practicable or in accordance with a schedule established by the Director.

340-122-245 Numeric Soil Cleanup Levels for Motor Fuel and Heating Oil

(1) The Director shall develop and propose to the Environmental Quality Commission for rulemaking, matrices with numeric soil cleanup levels for motor fuel and heating oil, which may include but are not limited to specific constituents such as benzene, xylene, toluene, and ethylbenzene.

(2) The matrices shall establish numeric soil cleanup levels that provide a high degree of protection in accordance with OAR 340-122-040(1).

(3) Within 6 months after the effective date of these rules, the Director shall request the Environmental Quality Commission to commence rulemaking and authorize a public hearing on the proposed matrices, in accordance with ORS 466.745.

(4) Until adoption of such matrices by rule, cleanup levels shall be determined under OAR 340-122-250(2) as applicable, unless the Director determines that abatement and cleanup conducted under subsections 340-122-220 and 340-122-225 have resulted in a cleanup level adequate to protect public health, safety, welfare and the environment.

(5) The matrices may include, but not be limited to, the following factors;

(a) Distance to groundwater;

(b) Soil type;

(c) Geology of the site;

(d) Average annual precipitation; and

(e) Other factors deemed appropriate by the Director.

(6) The owner, permittee, or responsible person may either:

(a) Propose clean up of the soils to a level specified in the matrices; or

(b) Develop a Corrective Action Plan for soils under OAR 340-122-250(2).

(7) The Director shall not approve cleanup actions proposed under OAR 340-122-245(6)(a) if the Director determines that the numeric soil cleanup levels are not appropriate or adequate to protect public health, safety, welfare and the environment. In such case, the Director shall require the owner, permittee, or responsible person, to develop a corrective action plan, under OAR 340-122-250, or 340-122-010 to 340-122-110.

340-122-250 Corrective Action Plan

(1) At any point after reviewing the information submitted in compliance with subsections 340-122-220 through 340-122-230, the Director may require owners, permittees or responsible persons to submit additional information or to develop and submit a corrective action plan for

responding to contaminated soils and groundwater. If a plan is required, owners, permittees or responsible persons shall submit the plan according to a schedule and format established by the Director. Alternatively, owners, permittees or responsible persons may, after fulfilling the requirements of subsections 340-122-220 through 340-122-230, choose to submit a corrective action plan for responding to contaminated soil and groundwater. In either case, owners, permittees or responsible persons are responsible for submitting a plan that provides for adequate protection of public health, safety, welfare and the environment as determined by the Director, and shall modify their plan as necessary to meet this standard.

(2) The Director shall approve the corrective action plan only after ensuring that implementation of the plan will adequately protect public health, safety, welfare and the environment. In making this determination, the Director shall consider the following factors, as appropriate:

(a) The physical and chemical characteristics of the regulated substance, including its toxicity, persistence, and potential for migration;

(b) The hydrogeologic characteristics of the facility and the surrounding area;

(c) The proximity, quality, and current and future uses of nearby surface water and groundwater;

(d) The potential effects of residual contamination of nearby surface water and groundwater;

(e) An exposure assessment;

(f) Any information assembled in compliance with this subsection;

(g) The impact of the release on adjacent properties; and

(h) Other matters deemed appropriate by the Director.

(3) Upon approval of the corrective action plan or as directed by the Director, owners, permittees or responsible persons shall implement the plan, including modifications to the plan made by the Director. They shall monitor, evaluate, and report the results of

implementing the plan in accordance with a schedule and in a format established by the Director.

(4) Owners, permittees or responsible persons may, in the interest of minimizing environmental contamination and promoting more effective cleanup, begin cleanup of soil and groundwater before the corrective action plan is approved provided that they:

(a) Notify the Director of their intention to begin cleanup;

(b) Comply with any conditions imposed by the Director, including halting cleanup or mitigating adverse consequences from cleanup activities; and

(c) Incorporate these self-initiated cleanup measures in the corrective action plan that is submitted to the Director for approval.

340-122-255 Additional reporting

The owner, permittee, or responsible person shall provide any additional information beyond that required under subsection 340-122-225(2), as requested by the Director.

340-122-260 Public participation

(1) The Department shall maintain a list of all confirmed releases and ensure that site release and cleanup information are made available to the public for inspection upon request.

(2) For each confirmed release, upon written request by 10 or more persons or by a group having 10 or more members, the Department shall conduct a public meeting at or near the facility for the purpose of receiving verbal comment regarding proposed cleanup activities, except for those cleanup activities conducted under OAR 340-122-245.

(3) For each confirmed release that requires a corrective action plan, the Department shall provide notice to the public by means designed to reach those members of the public directly affected by the release and the planned corrective action. This notice may include, but is not limited to, public notice in local newspapers, block advertisements, public service announcements, publication in a state register, letters to individual households, or personal contacts by field staff.

(4) The Department shall ensure that site release information and decisions concerning the corrective action plan are made available to the public for inspection upon request.

(5) Before approving a corrective action plan, the Department may hold a public meeting to consider comments on the proposed corrective action plan if there is sufficient public interest, or for any other reason.

(6) The Department shall give public notice that complies with paragraph (3) of this subsection if implementation of an approved corrective action plan does not achieve the established cleanup levels in the plan and termination of that plan is under consideration by the Department.

AMENDMENTS TO OAR 340-122-010 AND 340-122-030

340-122-010 PURPOSE

(2) These rules also establish the standards and process to be used under ORS 466.540 to 466.590 and ORS 466.705 to 466.835 and 466.895 for the determination of remedial action or corrective action of releases of petroleum from underground storage tanks necessary to assure protection of the present and future public health, safety, welfare and the environment in the event of a release or threat of a release of petroleum.

340-122-030 SCOPE AND APPLICABILITY

(4) OAR 340-122-205 to 340-122-260 shall apply to corrective action for releases of petroleum from underground storage tanks that are subject to ORS 466.705 to 466.835 and 466.895, except as provided under OAR 340-122-215(2) which authorizes the Director to order the cleanup under 340-122-010 to 340-122-110.

Attachment II
EQC Agenda Item I
November 4, 1988

RULEMAKING STATEMENTS

STATEMENT OF NEED FOR RULEMAKING

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

(1) Legal Authority

ORS 466.553(1) authorizes the Environmental Quality Commission to adopt rules, in accordance with the applicable provision of ORS 183.310 to 183.550, necessary to carry out the provisions of ORS 466.540 to 466.590. ORS 466.720(1) directs the Commission to adopt a state-wide underground storage tank program. ORS 466.745(1) authorizes the Commission to adopt rules necessary to carry out the provisions of 466.705 to 466.835 and 466.895. In addition, ORS 468.020 authorizes the Commission to adopt such rules and standards as it considers necessary and proper in performing the functions vested by law in the Commission.

(2) Need for the Rule

ORS 466.553(2)(a) requires the Commission to adopt rules establishing the levels, factors, criteria or other provisions for the degree of cleanup including the control of further releases of a hazardous substance, and the selection of the remedial actions necessary to assure protection of the public health, safety, welfare and the environment.

ORS 466.745(1)(e)(j)(k) and (L) authorize the Commission to adopt rules establishing requirements for reporting a release from an underground storage tank, reporting corrective action taken in response to a release, taking corrective action in response to a release, and any other requirements necessary to carry out the provisions of ORS 466.705 to 466.835 and 466.895. Although both sets of statutes require protection of public health, safety, welfare and the environment, they do not define or specify the level of protection or the degree of cleanup. Rules are needed to implement the statutes and delineate the decision making process for degree of cleanup and selection of cleanup action.

(3) Principal Documents Relied Upon in this Rulemaking

-- ORS 466.705 to 466.835 and 466.895
-- ORS 466.540 to 466.590
-- OAR Chapter 340, Divisions 41, 47, 50, 61 and 108
-- Comprehensive Environmental Response, Compensation, and Liability Act, P.L. 96-510, as amended by P.L. 99-499.
-- Environmental Protection Agency's final Technical Requirements for Underground Storage Tanks, 40 CFR Part 280.

LAND USE CONSISTENCY

The proposal appears to affect land use and to be consistent with the Statewide Planning Goals. Specifically, the proposed rules comply with Goal 6 by improving the quality of the air, water and land resources of the state through the cleanup of sites contaminated by releases of petroleum substances. The cleanup actions performed pursuant to the proposed rules will identify the extent of petroleum substance contamination and protect public health, safety, welfare and the environment.

These proposed rules do not appear to conflict with other land use goals.

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

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

FISCAL AND ECONOMIC IMPACT

Subsection 340-122-245 of the proposed rules requires the Department to develop matrices of soil cleanup levels for motor fuel and heating oil and then propose them to the EQC for rule adoption within six months of the effective date of these proposed rules. If the EQC adopts the soil cleanup matrices, this will probably result in significant but indeterminable savings to owners, permittees and responsible persons.

Providing a predetermined cleanup level will result in significant but indeterminable savings because the owner, permittee, or responsible person would not have to perform more extensive and costly investigation and reporting procedures in other subsections of these proposed rules or the adopted remedial action cleanup rules.

This approach was adopted, in part, because a very large number of the sites that will be cleaned up, and most of the underground storage tank sites, will be for releases of motor fuel and heating oil. Many of these tanks are owned by small businesses, which cannot afford the economic burden of closing down operations and conducting extensive investigation and cleanup.

The costs of cleanups for leaking underground storage tanks have ranged from $25,000 to $1 million nationally and from $5,000 to $200,000 in Oregon. Average costs in Oregon may be approximately $50,000. If there ae 2,000 sites with leaking petroleum USTs over the next 10 years, the total costs will be approximately $100 million.

A small portion of these costs will be paid by the Federal Leaking Underground Storage Tank Trust Fund for releases with no viable responsible person. The balance will be paid by the liable person(s). Close to a majority of these costs may be borne by small businesses that own gas stations. Local and state agencies, which operate gasoline stations for fleets or otherwise own underground storage tanks, will bear some of these costs.

Attachment III
EQC Agenda Item I
November 4, 1988

SUMMARY AND RESPONSE TO COMMENTS

CLEANUP STANDARD AND REMEDIAL ACTION (340-122-040; 340-122-080; 340-122-090)

Comment -- Background exceeds the Department's statutory authority

Associated Oregon Industries (AOI) and other commentors commented that the Background standard should be deleted from the proposed rules because Background exceeds the Department's statutory authority and is technically and financially impossible to achieve.

Response

The Department has been advised by the Oregon Department of Justice that the proposed rules' use of Background as a cleanup standard does not exceed the Environmental Quality Commission's (EQC) rulemaking authority under the state superfund statute. ORS 466.553(2)(a) requires that the EQC adopt rules "establishing the levels, factors, criteria or other provisions for the degree of cleanup... and the selection of remedial actions necessary to protection of the public health, safety, welfare and the environment." The legislature did not prescribe a level or degree of cleanup, or define what remedial actions are necessary to assure protection of the public health, safety, and welfare and the environment. Rather, it left this determination to the EQC, in its rulemaking, and to the Director, in the Director's selection of a remedial action for a specific site. The only constraint placed on the EQC is that it "may" take into account several criteria set forth in ORS 466.553(2)(b). These criteria, incidentally, include the requirements of Oregon's Resource Conservation and Recovery Act (RCRA) program (ORS 466.005-466.385 and related regulations), which program, in turn, requires cleanup to Background in certain instances. The only constraints placed on the Director's decisionmaking, in addition to EQC's direction through its rules, is that the Director select a remedial action that will attain a degree of cleanup assuring protection of human health, safety, and welfare and the environment and, to the maximum extent practicable, be protective, cost-effective, and use permanent solutions and alternative treatment technologies or resource recovery technologies. ORS 466.573(1).

The proposed rules adhere to these statutory requirements. Background is established as a standard under 340-122-040, but not

an absolute standard. Contrary to industry's characterization, Background will not automatically be mandated for every site. Rather, the rules establish a process for selecting a cleanup level, in which Background serves as a benchmark for determining what cleanup level is protective. As the proposed rule plainly states, Background or the lowest concentration level satisfying the "protection" and "feasibility" criteria will be required. (340-122-040(2)). This flexible standard recognizes that Background might not be achievable in all instances. The use of Background as a standard and a benchmark, however, will provide consistency in the selection of remedial actions, as well as incentive in the development of remedial actions toward cleanup methods and technologies that assure protection of human health and the environment.

The Department would note that the Remedial Action Advisory Committee revisited this issue in light of industry's concerns. The committee elected to retain the rules' use of Background, while recommending that wording be added to 340-122-040 expressly recognizing that Background might not be possible or feasible in all instances. The Department believes this clarification is consistent with the proposed rules' intent.

Comment -- "Protection" vis-a-vis "Feasibility" (340-122-090)

Oregon Student Public Interest Research Group (OSPIRG) comments that the proposed rules should be revised to make clear that the "protection" criteria set forth under 340-122-090(1)(a) and (5) has primacy over the "feasibility" criteria set forth under 340-122-090(1)(b), (6) through (9). AOI, on the other hand, commented that the "protection" criteria is given too much weight, and that, as with the "feasibility" criteria, it need only be achieved "to the maximum extent practicable".

Response

Both commentors misread 340-122-090 and the statute upon which it is based. The proposed rule places "protection" and "feasibility" on equal but independent footing, in that the rule requires the director to select a remedial action that achieves both. While any remedial action must be protective, it also must be cost-effective, use permanent solutions and alternative technologies or resource recovery technologies, be implementable, and be effective, to the maximum extent practicable.

This scheme tracks the statutory requirement set forth under ORS 466.573(1)(a) and (b). AOI's argument that protection need only be achieved to the maximum extent practicable, since it is so qualified under ORS 466.573(1)(b), ignores the independent requirement of protectiveness established without qualifier under ORS 466.573(1)(a), as well the context of the state superfund statute. See ORS 466.547(2)(b)(A), 466.553(2)(a), 466.570.

Comment -- Effect of cleanup standard on liability

Boeing commented that the adoption of Background as a standard would effectively impose liability on innocent adjacent landowners contrary to ORS 466.567(2)(b).

This comment appears to confuse the determination of liability under the statute with the selection of an environmental solution under the rules. The proposed rules only provide the means for determining appropriate remediation for contamination, regardless of property boundaries or legal liability. The issue of what party or parties will pay for such remediation is unaffected by use of Background as a cleanup standard.

Comment -- Burden of justifying alternative remedial action Options (340-122-090(5)(d) and 340-122-090(10))

The proposed rules require a person responsible for undertaking a remedial action to demonstrate to the Director that any remedial action advocated over another satisfies the "protection" and "feasibility" criteria. AOI and other industry commentors commented that this proposed rule exceeds statutory authority by shifting the Director's duty to select a remedial action to a third party. Boeing offered a similar comment regarding the burden to show that a remedial action is protective under 340-122-090(5)(d).

Response

The Department disagrees with these comments because the proposed rules clearly leave the actual selection of a remedial action to the Director. 340-122-090(1). Subsections (5)(d) and (10) merely require the responsible person to develop the information necessary for the Director to make an informed comparison of remedial action options developed under the feasibility study. If a liable person advocates one remedial action option over another, it is reasonable to require that person to show that the option satisfies the rules' cleanup standards and criteria. This responsibility should also encourage parties to thoroughly explore and evaluate cleanup methods and technologies.

GENERAL

Comment -- Adequacy of public notice on proposed rules

Comments were received from AOI and Teledyne Wah Chang Albany (TWCA) that the Department did not provide adequate notice to the regulated community regarding these proposed regulations both in terms of the date of notification and the extent of the

distribution of the notification. AOI and TWCA requested an extension of time to July 25, 1988 to allow further time to comment. AOI further requested that "A Chance to Comment" (the Department's standard form announcing public hearings) should be mailed within 7 days of EQC approval to hold public hearings.

Response

As required by the Administrative Procedures Act, notice of public hearings was published in the Secretary of State's Bulletin on June 15, 1988. Also, A Chance to Comment was mailed to approximately 1000 persons who had either expressed an interested in receiving information on the Department's remedial action program or had indicated an interest in receiving notice about any public hearing on hazardous and solid waste issues. This notice was mailed in two parts: on June 10, 1988 and June 15, 1988. Consequently, the mailing went out within 1 day and 5 days, respectively, of EQC approval to hold public hearings.

These two mailing lists include representatives from a variety of industries throughout Oregon and the Northwest as well as the media, colleges and universities, municipal entities, state agencies, and environmental and citizen groups. Individuals who have expressed an interest in this program and asked to be placed on the mailing list are also included.

A news release and fact sheet about the rules, along with the "Chance to Comment" notice, was sent to over 400 newspapers, television stations and radio stations throughout the state. This resulted in news stories about the proposed rules in the Daily "Journal of Commerce," on July 12, 1988 and a news broadcast over Oregon News Network.

Several articles updating the rule-making process have been published over a 6-month period in the "Oregon Superfund Informational Bulletin", the Remedial Action section's "newsletter" that is distributed to approximately 400 persons.

In addition, the Remedial Action Advisory Committee consisting of 22 persons representing a broad spectrum of groups from industry, local government, citizens and environmental groups has been discussing the rules since November 1988. Also members of the Underground Storage Tank Advisory Committee and the Solid Waste Advisory Committee both had presentations made regarding the development of these rules. Several members of the UST Advisory Committee are also members of the Remedial Action Advisory Committee.

The Department extended the public comment period to July 25, 1988.

Comment -- Definitions and other statutory provisions

Comments were received from various commentors (AOI) concerning the absence of certain definitions found in the statute, as well as requirements or other provisions that are included in the statute -- ORS 466.540 to 466.590 -- and requesting their inclusion in the rules.

Response

In drafting these rules, the Department took the approach that the rules should primarily expand on the statute rather than repeat all of its definitions or other provisions. The Department recognizes that it will be necessary for interested parties to work with both the statute and the rules to assure a complete understanding of the law.

Comment -- New topics for rulemaking

Comments were received that identified new areas for which rules should be developed, including the Site Inventory process.

Response

These topics are outside the scope of the current rulemaking process but will be considered as potential topics for future rulemaking.

Comment -- Deadlines

Comments were received that various deadlines should be added to the rules, for example, Oregon Student Public Interest Research Group (OSPIRG) recommended a deadline of one year for the completion of a preliminary assessment.

Response

The Department is opposed to deadlines for any of the proposed activities because sites vary significantly in the degree of hazard that they pose and the Department must be able to prioritize its work so that the worst sites are worked on first and lower priority sites may be delayed as necessary.

The legislature specifically recognized that resources are limited by including the language: "...as expeditiously as possible within budgetary constraints..." in the requirement for a preliminary assessment to be performed (ORS 466.563(2)).

The appearance of accountability that such deadlines could provide actually obfuscate the real situation which is one of continually changing scopes of work, understanding of the problems and

hazards, and unavailability of resources. Remedial action is acutely site-specific and requires activities and solutions tailor made to each individual problem.

The activities and decisions proposed in the rules will help to structure the Department's response to sites but should not be regarded as a mandatory framework with a uniform schedule that all sites must meet. The rules clearly state in OAR 340-122-050(2) that the sequence, scope and combination of activities is flexible and subject to the discretion of the director. The Site Inventory required by ORS 466.557 is the appropriate vehicle for providing visibility and accountability to the public on the status of removal and remedial actions.

Comment -- Mandated vs discretionary activities and decisions

OSPIRG and other commentors have suggested that various activities or decisions should be mandatory rather than discretionary.

Response

The Department has considered each of the uses of "shall" vs "may" and believes that the discretion provided is appropriate and desirable except in the provision described below. The Department would be unnecessarily burdened if each decision required a waiver or good cause exclusion as proposed by OSPIRG. Rather it is the Department's duty to determine in each specific case, what requirements are appropriate and to tailor them to the particular needs and problems of that site.

The Department agrees that 340-122-040(4) of the section on Standards should be changed from "may" to "shall".

Comment -- Director's Discretion and Findings

The City of Portland Bureau of Water Works (PBWW) and OSPIRG commented that the rules vest too much discretion in the Director and recommended, among other things, that the rules require the Director to make findings regarding many of the criteria under the rules.

Response

The Department thinks that the discretion vested in the Director is consistent with the state superfund statute and necessary in order to afford flexibility to address varied and complex cleanup situations. Moreover, the Bureau of Water Works' comment might be partly based on a misconception of the nature of the Director's action selecting a remedial action. That action usually will not be in the form of an administrative order or final agency action

subject to judicial review. The findings and conclusions of law usually required to support such administrative actions will therefore not be required for the director's selection of a remedial action. It is nonetheless the Department's intent that the proposed rules will provide the framework for informed decision-making based upon a record developed through the remedial investigation and feasibility study, and that, regardless of form, any remedial action decision will include determinations of the remedial action's protectiveness and feasibility.

Comment -- Centralized review

OSPIRG recommends that the Environmental Cleanup Division be required to review all significant cleanup decisions.

Response

The Department believes that most matters such as this which concern the administrative implementation of these rules are better left to the discretion of the Department and are not an appropriate subject for rules. The Department is currently in the process of identifying and clarifying the roles and responsibilities of various departmental programs with respect to these remedial action activities and decision making.

Comment -- ARARs

Several commentors (Boeing, AOI, TWCA) objected to the Department's statement (in the June 10, 1988 Memorandum to the EQC requesting authorization for public hearings on the proposed remedial action rules), that the proposed rules "are expected to be regarded as an ARAR (applicable or relevant and appropriate requirement) on federal superfund sites."

Response

The Department is withdrawing the statement from its next memorandum requesting authorization of the proposed rules because the rules do not address ARARs and are therefore outside the scope of this rulemaking proceeding. Furthermore, it is unknown whether the EPA will regard the proposed rules as ARARs.

DEFINITIONS 340-122-030 (Formerly 340-122-020)

Comment -- Move the Definitions

PGE requested that the section on definitions -- proposed OAR 340-122-030 -- be moved to an earlier part of the rules so that definitions are given before the terms are used in the rules.

Response

The Department agrees with PGE's request to move the definitions and has changed the sequence by moving the definition's section prior to the standard's section and renumbering accordingly.

Comment -- Changes to statutory definitions

AOI commented that certain definitions differ from those in the statute.

Response

In some cases, the Department has expanded on a statutory definition such as "director" or "environment". These elaborations are within the Department's statutory authority and are used to clarify and specify the intended meaning or application of certain terms.

For example, the rules add the language: "...or the Director's authorized representative" to the definition of "director". It is the Department's intention that Department staff will be designated to perform the work necessary for the director to make the various determinations, and that although the director will review most major decisions, the director must be able to designate an authorized representative to review and approve any determination.

The expansion on the term "environment" clarifies the multi-media approach of this law and is within the statutory authorization.

The addition of the term "site" to be used interchangeably with the term "facility", is done to conform with common usage and the alternate usage in the rules.

Comment -- "Material compliance" for permitted releases exclusion

See 340-122-020

SCOPE AND APPLICABILITY 340-122-020 (Formerly 340-122-030)

Comment -- "Material" compliance for permitted releases

Northwest Pulp & Paper commented that the definition of "permitted release" under 340-122-030(f) should include releases that are in "material" compliance with a permit.

Response

The Department agrees that this revision would be consistent with ORS 466.567(1)(d) and will recommend that the rule be adopted with such revision. The Department believes that noncompliance should be significant from an environmental protection perspective and that short term, transient episodes that are out of compliance should not automatically disqualify the permitted release from this exclusion. This is even more true with minor technical or administrative noncompliance. However, the director retains the discretion to determine when noncompliance is "material" and when it is not as well as to invoke the provision of proposed 340-122-020(2) which authorizes the director to apply these rules when the director determine that they are necessary to protect public health or the environment.

Comment -- Permitted Releases

PGE commented that permitted releases should not be subject to cleanups under the proposed rules.

Response

The Department generally agrees with this position. The state superfund statute implies that, to a certain extent, permitted releases should be exempt, by providing that persons whose acts were in material compliance with applicable permits shall not be strictly liable for remedial action costs or natural resource damages. ORS 466.567(1)(d). However, as has been seen under the federal Superfund program, many of today's polluted sites are the result of yesterday's lawful practices. While a specific release might be lawful, the accumulation of a hazardous substance from that release might nonetheless threaten human health and the environment. The proposed rule strikes a balance by generally exempting permitted releases while allowing the Director to apply the superfund process if necessary to protect public health, safety, or welfare or the environment. (340-122-020(2)). This conditional exemption would also preserve the Department's ability to apply these rules to state cleanups of a contaminated site resulting from a permitted release, regardless of whether a private party would be liable for the cleanup under ORS 466.567.

Comment -- Broaden "Permitted Releases" exemption

NWPP further comments that the words "specifically identified" should be deleted from 340-122-030(f) in order to allow all hazardous substances that are subject to a permit to be conditionally exempted from these rules.

PGE comments that municipal solid waste facilities and "generic permitted releases" should also be included in the conditional exemption for permitted releases.

Response

The Department and the Remedial Action Advisory Committee considered and rejected a broader definition of "permitted releases" which would include discharges that were implicitly authorized but not specifically identified. In order to justify this conditional exemption, the Department believes that it must be able to assume that the specific hazardous substance does not pose a threat to public health or the environment. In order to make that assumption, the permit must include an identification and a condition concerning that specific hazardous substance.

This approach was taken not only because it could be presumed that in most cases a permitted release already is protective of public health and the environment, but that the Department can use its permitting authority to require cleanup or take other actions to protect public health and the environment. Releases that result from a material violation of a permit or that are not specifically identified, are subject to these proposed rules because their impact on public health or the environment was not contemplated by the permit and the permit authority itself may not be sufficient to carry out the cleanup. Also, if the permit is defunct, then the Oregon superfund law may be the only recourse available, especially to impose liability on a prior owner or operator for past practices.

Comment -- Relationship to other cleanup actions

Regarding the relationship between ORS 466.540 to 466.590 and other laws that provide authority to conduct cleanup, NWPP commented that preference should be established for the use of other laws where it is more appropriate and expedient to do so. OSPIRG commented that 340-122-020(3)'s exemption of releases for which cleanup actions have been completed under other programs should be reversed -- that is, the superfund rules should apply unless it is determined that the other programs are equally or more protective.

Response

The Department thinks both approaches would be impracticable. Under OSPIRG'S approach, there will be no way of knowing what is "protective" under the state superfund program -- and therefore no way to determine the equivalence of other programs -- until almost the entire state superfund process has been completed.

The remedial action law, ORS 466.540 to 466.590, is one of several cleanup authorities available to the Department. Each permitting

or cleanup law available to the Department has unique provisions regarding the chemical substances and/or facilities covered, investigatory and enforcement powers, liable persons, cleanup and monitoring requirements, related permits, assessment and investigatory techniques, penalties and damages, and funds available for the Department to oversee or undertake cleanup activities. For each site cleanup, the Department must consider a wide variety of factors and circumstances in order to determine which authority and Department program will provide the optimal strategy to cleanup the site. The Department is currently developing a comprehensive approach for making these determinations in an effective and timely manner.

The rules currently propose -- OAR 340-122-060(4) -- that the director shall determine the statutory authority under which the Department and the potentially responsible party shall conduct any investigation and cleanup, or related activities. The director is authorized to revise this determination as appropriate and requires notification of such revision to the potentially responsible party.

This provision reflects the view of the Department and the RAAC that considerable discretion is necessary before and during an investigation or cleanup to determine the enforcement and administrative strategy for conducting these activities. It is only after the cleanup is completed, when it can be presumed that public health and the environment are protected, that the exemptions are applicable. Even then, the director may determine that the rules apply if needed to protect public health and the environment.

Comment -- Exempt cleanups in progress

Northwest Pulp & Paper commented that the exemption for other programs' cleanup actions should apply to ongoing actions as well as to completed actions.

Response

The Department thinks that extending the exemption in this way would hinder the Department's ability to employ the various cleanup authorities that might be needed to fully address complex contamination problems.

PRELIMINARY ASSESSMENTS 340-122-060

Comment -- Additional information

OSPIRG expresses concern that if the information about a release is not "reliable and definite" that the Department may not conduct

a preliminary assessment as required by the statute and recommends language requiring that the Department seek additional information on a standardized form that is kept in a file that is open to the public.

Response

The rules provide that the Department "may" request additional information if the information received by the Department is not sufficiently reliable or definite. The Department agrees that the request for additional information should be made mandatory in order to meet the statutory requirement and will change "may" to "shall".

The proposed rule already provides that a memo shall be filed and available to persons who request it. The form of that memo and the procedures for using it should be left to the discretion of the Department in its implementation of this requirement.

Comment -- Preliminary Assessment (340-122-060)

AOI commented that the proposed rule regarding preliminary assessments is defective in three respects:

1) AOI contends that the rule would allow the Department to conduct a "simple desk review" instead of undertaking a full review of existing data, a site inspection, and a good faith effort to discover additional information as required by statute.

2) AOI commented that the same site inspection and review must support any existing information that the Department might rely upon as equivalent to a preliminary assessment under 340-122-060(1)(c).

3) AOI commented that the proposed rule exceeds statutory authority in its allowing the Department to perform or "require to be performed" a preliminary assessment. AOI contends that this potential shifting of the duty to perform a preliminary assessment from the Department to another person violates ORS 466.563, which provides that "the Department shall conduct" preliminary assessments.

Response

1) The Department thinks that the provisions of 340-122-060(1)(a) and (2) require these tasks.

2) The Department agrees with this comment and has revised the proposed rule accordingly.

3) The Department thinks that AOI's reading of the statute is unduly narrow. The state superfund statute empowers the Director to authorize or order other persons to conduct "any removal or remedial action or related actions". ORS 466.570(2) and (4). The definitions of removal and remedial action are sufficiently broad to encompass such investigatory work as a preliminary assessment. See ORS 466.540(15) and (17). Moreover, if a preliminary assessment is not performed by a liable person ordered to do so, the Department's costs of performing the preliminary assessment arguably may be recovered from that person. Further, although in most instances the Department contemplates it will perform the preliminary assessment, the owner or operator of a facility very often will have direct and ready access to information regarding a facility's history and hazardous substance practices. The owner or operator might desire to perform a preliminary assessment pursuant to a consent agreement with the Department. These practical considerations, as well as the statute, support the proposed rules' allowing either the Department or another person to perform a preliminary assessment.

REMEDIAL INVESTIGATION AND FEASIBILITY STUDY 340-122-080

Comment -- Feasibility Study

OSPIRG commented that a feasibility study under 340-122-080(3) should require in all instances the development of a remedial action option attaining Background.

Response

The proposed rule currently states that a feasibility study may include development of a background remedial action option. The Department points out that the actual range of remedial action options for particular sites will be determined on a case-by-case basis, and that in most instances development of a background option will be required.

PUBLIC PARTICIPATION 340-122-100

Comment -- Change "preferred" to "proposed" remedial action

AOI recommends that the public notice include the Department's "proposed", rather than the Department's "preferred", remedial action option.

Response

The Department accepts the recommendation as being more consistent with the framework of the remedial action selection process.

Comment -- Notification of interested community organizations

AOI recommends that the section that requires the Department to "Make a reasonable effort to identify and notify interested community organizations" about the remedial action proposal be deleted because there is not a statutory duty to do so. The Oregon Environmental Council (OEC) recommends that specific organizations or types of organizations be listed.

Response

The Department believes that the proposed language achieves the intent of the legislation and is consistent with how the Department would implement the requirement anyway. Adding a list of organizations, however, is unnecessary and inappropriate, and better left to the Department's discretion in its implementation of the requirement rather than to the rulemaking process.

ADMINISTRATIVE RECORD 340-122-110

Comment -- Administrative Record (340-122-110)

AOI and Boeing commented that documents excluded from the administrative record under 340-122-110(2) should be included in the record.

Response

The Department first points out that any non-privileged document forming a basis of the Director's selection of a remedial action will be included in the administrative record, pursuant to 340-122-110(1). The Director further retains the discretion to designate into the record documents that are otherwise excluded under subsection 110(2). For example, draft documents excluded from the record under subsection 110(2)(a) would nonetheless be made part of the administrative record under subsection 110(1)(a) to the extent the draft documents constituted factual information, data, or analyses relied upon by the Director.

The other exemptions from the administrative record usually will not be relevant to the Director's selection of a remedial action. Documents relating to the liability of persons under ORS 466.567, for instance, might bear on the Department's enforcement strategy, but not on whether a remedial action option is protective or technologically feasible. Similarly, documents relating to state

remedial action costs or financial capability of either the state or a private party are not relevant to whether a remedial action option is cost-effective under 340-122-090(6).

CORRECTIVE ACTION OF PETROLEUM RELEASES 340-122-120

Comment -- Home Heating Oil Underground Storage Tanks

Several commentors, including the Oil Heat Institute, Star Oilco and in several letters received after the public comment period closed, stated that home heating oil tanks were excluded from federal regulation and that the mandatory reporting and initial abatement requirements of this section were unreasonable.

Response

[NOTE: The Department has postponed adoption of the entire section -- 340-122-120 -- on Corrective Action for Petroleum Releases so the revisions identified in the current response are expected to be incorporated in the rules when they are proposed.

Under federal law, underground storage tanks (UST) containing petroleum are regulated under Subtitle I of the Resource Conservation and Recovery Act (RCRA), which requires that various technical requirements for design, installation and monitoring must be met by certain deadlines in order to obtain an operating permit. In addition to these permit requirements, RCRA also establishes corrective action requirements for petroleum and hazardous substances releases. Several broad categories of tanks, however, are excluded from regulation under RCRA including heating oil stored in an UST which is directly used for heating a residence. Not exempted are USTs containing heating oil that are used for other purposes or stored in a tank used to distribute heating oil to dealers or residences. Also, under the federal superfund law, any release of petroleum is exempted from the cleanup provisions of that law. Thus under federal law, cleanups of petroleum from UST releases generally occur under the corrective action provisions of RCRA Subtitle I.

Under state law, USTs containing petroleum are regulated by the state UST law -- ORS 466.700 to 466.835 -- which is similar to RCRA Subtitle I in most respects and includes the same exemptions. Thus home heating oil tanks are exempted from the state UST permitting program. The state superfund law -- ORS 466.540-466.590 -- however, does not include an exemption for petroleum products. In fact it specifically includes "oil" in the list of hazardous substances and "underground storage tanks" in its list of "facilities". Thus under state law, cleanups of petroleum from UST releases may occur under either the UST law or under the state superfund law.

In the draft proposed rules, circulated for public comment, the Department proposed that all underground storage tanks (USTs) containing petroleum be subject to the UST corrective action section -- 340-122-120 -- for the following reasons. First, from an environmental perspective it is not relevant whether the petroleum was released from a permitted or an unpermitted tank. Secondly, this section provided an expedited approach for performing cleanups by its relatively more specific requirements and a more rapid process for controlling, abating, investigating and reporting releases, and in determining cleanup levels through use of a soil cleanup matrix. This expedited approach was intended to achieve quicker cleanups than would generally be possible using the standard hazardous substance cleanup process enumerated in sections 340-122-010 to 340-122-110.

The Corrective Action section -- 340-122-120 -- however, includes certain mandatory reporting requirements. The statutory basis for the UST release reporting requirement is ORS 466.700-466.835. This authority cannot be used to require release reporting of USTs that are exempted from this law. Thus it is inappropriate to include release reporting requirements for all unpermitted USTs, including residential heating oil USTs.

The department has not proposed in this current rulemaking, any reporting requirements for releases of any type of hazardous substance. The Department is relying on other statutes and rules to require, or provide an incentive for, reporting releases. The department may consider reporting requirements in future rulemaking.

In addition to the reporting requirement, the proposed corrective action section included mandatory initial abatement requirements -- 340-122-120(3) -- which require action to stop and contain further release, remove contaminated soil, written reports on these initial actions, and an investigation and cleanup of any free product.

Home heating oil USTs and other unpermitted USTs probably number in the tens of thousands in Oregon. The Department is not prepared at this time to subject the owners of these USTs to the mandatory requirements of this section. The Department believes that a decision on how to regulate currently exempted USTs, including home heating oil USTs and other currently exempted USTs, is premature pending current study of these issues by the federal Environmental Protection Agency. The Department, however, must have rules to provide for cleanup of such releases since petroleum and underground storage tanks are both within the scope of the state superfund law. Thus the Department plans to revise the proposed rules in the following ways:

1) Revise the scope of 340-122-120 to be exactly the same scope as the federal RCRA Subtitle I and ORS 466.700-466.835

2) Provide that the department, at its discretion, may determine whether a corrective action on an UST exempted from RCRA subtitle I is conducted according to the UST corrective action section 340-122-120 or the superfund cleanup process enumerated in sections 340-122-010 to 340-122-110.

With respect to exempted USTs, such a revision would result in the elimination of the mandatory reporting and initial abatement requirements but retain the department's discretion to utilize either the expedited corrective action approach for petroleum UST releases or the standard superfund process.

Attachment IV
EQC Agenda Item I
November 4, 1988

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Public Hearing on Remedial Action Cleanup Rules

Hearing Dates: 7/15/88
7/18/88
Comments Due: 7/18/88

WHAT IS PROPOSED:

The Department of Environmental Quality (DEQ) proposes that the Environmental Quality Commission (EQC) adopt rules to implement the state superfund law passed by the 1987 Oregon Legislature, codified as ORS 466.540 to 466.590. The proposed rules (OAR Chapter 340, Division 122) establish methods for determining the degree of cleanup of hazardous substances and the selection of the remedial action in order to assure protection of the public health, safety, welfare and the environment.

WHO IS AFFECTED:

The proposed rules will affect persons who currently own or operate, or have previously owned or operated, a site where hazardous substances have been released, or any other potentially responsible person, as specified in ORS 466.567. Also affected may be citizens who live near sites contaminated with hazardous substances.

WHAT ARE THE HIGHLIGHTS:

The proposed rules address the problem of cleaning up sites contaminated by hazardous substances in Oregon. These sites range from abandoned industrial areas with on-site contamination to areas affected by hazardous substances migrating from these abandoned sites. They can be as small as an unmarked drum improperly discarded or as large as an abandoned industrial facility leaking thousands of gallons of contaminants into the groundwater.

The proposed rules establish procedures for investigating potentially contaminated sites in order to determine whether hazardous substances have been released. If a release has occurred, the site will be further investigated and, if necessary, a remedial action, i.e., a cleanup method, will be selected.

Remedial actions selected for sites must meet the two following requirements, (which are referred to as being "protective" and "practicable", respectively):

1) Protect present and future public health, safety, welfare and the environment; and

2) To the maximum extent practicable: be cost effective, be implementable, be efficacious, and use permanent solutions and alternative technologies or resource recovery technologies.

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

11/1/88

FOR FURTHER INFORMATION: (over)

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

WHAT IS THE NEXT STEP:

After public hearings and the comment period, DEQ will evaluate and prepare a response to the comments. The DEQ will then recommend to the EQC that the Commission adopt the proposed rules at the August 19, 1988 EQC meeting. The EQC may either adopt the rules as proposed, or adopt a modified version of the proposed rules.

For more information, or to receive a copy of the proposed rules, call Allan Solares at (503) 229-5071, or toll-free in Oregon, 1-800-452-4011.

ZB7571

Attachment V
EQC Agenda Item I
November 4, 1988

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Riedel Environmental Services Inc
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authorized local government official, permit the official at all reasonable times to have access to and copy, records relating to the type, quantity, storage locations and hazards of the oil or hazardous material.

(2) In order to carry out subsection (1) of this section a local government official may enter to inspect at reasonable times any establishment or other place where oil or hazardous material is present.

(3) As used in this section, "local government official" includes but is not limited to an officer, employe or representative of a county, city, fire department, fire district or police agency. [1985 c.733 §13; 1987 c.158 §91]

466.670 Oil and Hazardous Material Emergency Response and Remedial Action Fund. (1) The Oil and Hazardous Material Emergency Response and Remedial Action Fund is established separate and distinct from the General Fund in the State Treasury. As permitted by federal court decisions, federal statutory requirements and administrative decisions, after payment of associated legal expenses, moneys not to exceed $2.5 million received by the State of Oregon from the Petroleum Violation Escrow Fund of the United States Department of Energy that is not obligated by federal requirements to existing energy programs shall be paid into the State Treasury and credited to the fund.

(2) The State Treasurer shall invest and reinvest moneys in the Oil and Hazardous Material Emergency Response and Remedial Action Fund in the manner provided by law.

(3) The moneys in the Oil and Hazardous Material Emergency Response and Remedial Action Fund are appropriated continuously to the Department of Environmental Quality to be used in the manner described in ORS 466.675. [1985 c.733 §14]

466.675 Use of moneys in Oil and Hazardous Material Emergency Response and Remedial Action Fund. Moneys in the Oil and Hazardous Material Emergency Response and Remedial Action Fund may be used by the Department of Environmental Quality for the following purposes:

(1) Training local government employes involved in response to spills or releases of oil and hazardous material.

(2) Training of state agency employes involved in response to spills or releases of oil and hazardous material.

(3) Funding actions and activities authorized by ORS 466.645, 466.205, 468.800 and 468.805.

(4) Providing for the general administration of ORS 466.605 to 466.680 including the purchase of equipment and payment of personnel costs of the department or any other state agency related to the enforcement of ORS 466.605 to 466.680. [1985 c.733 §15; 1987 c.158 §92]

466.680 Responsibility for expenses of cleanup; record; damages; order; appeal. (1) If a person required to clean up oil or hazardous material under ORS 466.645 fails or refuses to do so, the person shall be responsible for the reasonable expenses incurred by the department in carrying out ORS 466.645.

(2) The department shall keep a record of all expenses incurred in carrying out any cleanup projects or activities authorized under ORS 466.645, including charges for services performed and the state's equipment and materials utilized.

(3) Any person who does not make a good faith effort to clean up oil or hazardous material when obligated to do so under ORS 466.645 shall be liable to the department for damages not to exceed three times the amount of all expenses incurred by the department.

(4) Based on the record compiled by the department under subsection (2) of this section the commission shall make a finding and enter an order against the person described in subsection (1) or (3) of this section for the amount of damages, not to exceed treble damages, and the expenses incurred by the state in carrying out the action authorized by this section. The order may be appealed in the manner provided for appeal of a contested case order under ORS 183.310 to 183.550.

(5) If the amount of state incurred expenses and damages under this section are not paid by the responsible person to the department within 15 days after receipt of notice that such expenses are due and owing, or, if an appeal is filed within 15 days after the court renders its decision if the decision affirms the order, the Attorney General at the request of the director, shall bring an action in the name of the State of Oregon in a court of competent jurisdiction to recover the amount specified in the notice of the director. [1985 c.733 §16]

466.685 [1985 c.733 §19; repealed by 1987 c.735 §2]

466.690 [1985 c.733 §20; repealed by 1987 c.735 §2]

UNDERGROUND STORAGE TANKS
(General Provisions)

466.705 Definitions for ORS 466.705 to 466.835 and 466.895. As used in ORS 466.705 to 466.835 and 466.895:

(1) "Corrective action" means remedial action taken to protect the present or future public health, safety, welfare or the environment from a release of a regulated substance. "Corrective action" includes but is not limited to:

(a) The prevention, elimination, removal, abatement, control, minimization, investigation, assessment, evaluation or monitoring of a hazard or potential hazard or threat, including migration of a regulated substance; or

(b) Transportation, storage, treatment or disposal of a regulated substance or contaminated material from a site.

(2) "Decommission" means to remove from operation an underground storage tank, including temporary or permanent removal from operation, abandonment in place or removal from the ground.

(3) "Fee" means a fixed charge or service charge.

(4) "Guarantor" means any person other than the permittee who by guaranty, insurance, letter of credit or other acceptable device, provides financial responsibility for an underground storage tank as required under ORS 466.815.

(5) "Investigation" means monitoring, surveying, testing or other information gathering.

(6) "Local unit of government" means a city, county, special service district, metropolitan service district created under ORS chapter 268 or a political subdivision of the state.

(7) "Oil" means gasoline, crude oil, fuel oil, diesel oil, lubricating oil, sludge, oil refuse and any other petroleum related product or fraction thereof that is liquid at a temperature of 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute.

(8) "Owner" means the owner of an underground storage tank.

(9) "Permittee" means the owner or a person designated by the owner who is in control of or has responsibility for the daily operation or maintenance of an underground storage tank under a permit issued pursuant to ORS 466.760.

(10) "Person" means an individual, trust, firm, joint stock company, corporation, partnership, joint venture, consortium, association, state, municipality, commission, political subdivision of a state or any interstate body, any commercial entity and the Federal Government or any agency of the Federal Government.

(11) "Regulated substance" means:

(a) Any substance listed by the United States Environmental Protection Agency in 40 CFR Table 302.4 pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended (P.L. 96-510 and P.L. 98-80), but not including any substance regulated as a hazardous waste under 40 CFR Part 261 and OAR 340 Division 101;

(b) Oil; or

(c) Any other substance designated by the commission under ORS 466.630.

(12) "Release" means the discharge, deposit, injection, dumping, spilling, emitting, leaking or placing of a regulated substance from an underground storage tank into the air or into or on land or the waters of the state, other than as authorized by a permit issued under state or federal law.

(13) "Underground storage tank" means any one or combination of tanks and underground pipes connected to the tank, used to contain an accumulation of a regulated substance, and the volume of which, including the volume of the underground pipes connected to the tank, is 10 percent or more beneath the surface of the ground.

(14) "Waters of the state" has the meaning given that term in ORS 468.700. [1987 c.539 §2 (enacted in lieu of 468.901)]

466.710 Application of ORS 466.705 to 466.835. ORS 466.705 to 466.835 and 466.895 shall not apply to a:

(1) Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes.

(2) Tank used for storing heating oil for consumptive use on the premises where stored.

(3) Septic tank.

(4) Pipeline facility including gathering lines regulated:

(a) Under the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671);

(b) Under the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001); or

(c) As an intrastate pipeline facility under state laws comparable to the provisions of law referred to in paragraph (a) or (b) of this subsection.

(5) Surface impoundment, pit, pond or lagoon.

(6) Storm water or waste water collection system.

(7) Flow-through process tank.

(8) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

(9) Storage tank situated in an underground area if the storage tank is situated upon or above the surface of a floor. As used in this subsection, "underground area" includes but is not limited to a basement, cellar, mine, drift, shaft or tunnel.

(10) Pipe connected to any tank described in subsections (1) to (8) of this section. [Formerly 468.911; 1987 c.539 §18]

466.715 Legislative findings. (1) The Legislative Assembly finds that:

(a) Regulated substances hazardous to the public health, safety, welfare and the environment are stored in underground tanks in this state; and

(b) Underground tanks used for the storage of regulated substances are potential sources of contamination of the environment and may pose dangers to the public health, safety, welfare and the environment.

(2) Therefore, the Legislative Assembly declares:

(a) It is the public policy of this state to protect the public health, safety, welfare and the environment from the potential harmful effects of underground tanks used to store regulated substances.

(b) It is the purpose of ORS 466.705 to 466.835 and 466.895 to enable the Environmental Quality Commission to adopt a state-wide program for the prevention and reporting of releases and for taking corrective action to protect the public and the environment from releases from underground storage tanks. [1987 c.539 §4 (enacted in lieu of 468.902)]

(Administration)

466.720 State-wide underground storage tank program; federal authorization. (1) The Environmental Quality Commission shall adopt a state-wide underground storage tank program. Except as otherwise provided in ORS 466.705 to 466.835 and 466.895, the state-wide program shall establish uniform procedures and standards to protect the public health, safety, welfare and the environment from the consequences of a release from an underground storage tank.

(2) The commission and the department are authorized to perform or cause to be performed any act necessary to gain interim and final authorization of a state program for the regulation of underground storage tanks under the provisions of Section 9004 of the Federal Resource Conservation and Recovery Act, P.L. 94-580 as amended and P.L. 98-616, Section 205 of the federal So Waste Disposal Act, P.L. 96-482 as amended a federal regulations and interpretive and guidan documents issued pursuant to P.L. 94-580 amended, P.L. 98-616 and P.L. 96-482. The co mission may adopt, amend or repeal any r necessary to implement ORS 466.705 to 466.8 and 466 895. [Subsection (1) enacted as 1987 c.539 subsection (2) formerly 468.913]

466.725 Limitation on local gover ment regulation. (1) Except as provided ORS 466.730, a local unit of government may n enact or enforce any ordinance, rule or regulati relating to the matters encompassed by the sta program established under ORS 466.720.

(2) Any ordinance, rule or regulation enact by a local unit of government of this state th encompasses the same matters as the state pr gram shall be unenforceable, except for an or nance, rule or regulation:

(a) That requires an owner or permittee report a release to the local unit of government;

(b) Adopted by a local unit of governme operating an underground storage tank progra pursuant to a contract entered into according the provisions of ORS 466.730. [1987 c.539 (enacted in lieu of 468.904)]

Note: Section 46, chapter 539, Oregon Laws 1987, p vides:

Sec. 46. Section 8 of this Act [ORS 466.725] does become operative until nine months after the Environmen Quality Commission adopts a state-wide underground stor tank program under section 6 of this Act [ORS 466.720] a has filed a copy of such rules with the Secretary of State prescribed in ORS 183.310 to 183.550. [1987 c.539 §46]

466.730 Delegation of program admi istration to state agency or local gover ment by agreement. (1) The commission m authorize the department to enter into a contra or agreement with an agency of this state or local unit of government to administer all or pa of the underground storage tank program.

(2) Any agency of this state or any local un of government that seeks to administer an unde ground storage tank program under this sectio shall submit to the department a description the program the agency or local unit of gover ment proposes to administer in lieu of all or pa of the state program. The program descriptio shall include at least the following:

(a) A description in narrative form of th scope, structure, coverage and procedures of th proposed program.

(b) A description, including organizatio charts, of the organization and structure of th

contracting state agency or local unit of government that will have responsibility for administering the program, including:

(A) The number of employes, occupation and general duties of each employe who will carry out the activities of the contract.

(B) An itemized estimate of the cost of establishing and administering the program, including the cost of personnel listed in subparagraph (A) of this paragraph and administrative and technical support.

(C) An itemization of the source and amount of funding available to the contracting state agency or local unit of government to meet the costs listed in subparagraph (B) of this paragraph, including any restrictions or limitations upon this funding.

(D) A description of applicable procedures, including permit procedures.

(E) Copies of the permit form, application form and reporting form the state agency or local unit of government intends to use in the program.

(F) A complete description of the methods to be used to assure compliance and for enforcement of the program.

(G) A description of the procedures to be used to coordinate information with the department, including the frequency of reporting and report content.

(H) A description of the procedures the state agency or local unit of government will use to comply with trade secret laws under ORS 192.500 and 468.910.

(3) Any program approved by the department under this section shall at all times be conducted in accordance with the requirements of ORS 466.705 to 466.835 and 466.895.

(4) An agency or local unit of government shall exercise the functions relating to underground storage tanks authorized under a contract or agreement entered into under this section according to the authority vested in the commission and the department under ORS 466.705 to 466.835 and 466.895 insofar as such authority is applicable to the performance under the contract or agreement. The agency or local unit of government shall carry out these functions in the manner provided for the commission and the department to carry out the same functions. [1987 c.539 §9]

466.735 Cooperation with Building Codes Agency and State Fire Marshal. Nothing in ORS 466.705 to 466.835 and 466.895 is intended to interfere with, limit or abridge the authority of the Building Codes Agency or the State Fire Marshal, or any other state agency or local unit of government relating to combustion and explosion hazards, hazard communications or land use. The complementary relationship between the protection of the public safety from combustion and explosion hazards, and protection of the public health, safety, welfare and the environment from releases of regulated substances from underground storage tanks is recognized. Therefore, the department shall work cooperatively with the Building Codes Agency, the State Fire Marshal and local units of government in developing the rules and procedures necessary to carry out the provisions of ORS 466.705 to 466.835 and 466.895. [1987 c.539 §10]

466.740 Noncomplying installation prohibited. No person shall install an underground storage tank for the purpose of storing regulated substances unless the tank complies with the standards adopted under ORS 466.745 and any other rule adopted under ORS 466.705 to 466.835 and 466.895. [1987 c.539 §11]

Note: Section 47, chapter 539, Oregon Laws 1987, provides:

Sec. 47. Section 11 of this Act [ORS 466.740] does not become operative until the Environmental Quality Commission has adopted rules under section 13 of this Act [ORS 766.745] and has filed a copy of such rules with the Secretary of State, as prescribed in ORS 183.310 to 183.550. [1987 c.539 §47]

466.745 Commission rules; considerations. (1) The commission may establish by rule:

(a) Performance standards for leak detection systems, inventory control, tank testing or comparable systems or programs designed to detect or identify releases in a manner consistent with the protection of public health, safety, welfare or the environment;

(b) Requirements for maintaining records and submitting information to the department in conjunction with a leak detection or identification system or program used for each underground storage tank;

(c) Performance standards for underground storage tanks including but not limited to design, retrofitting, construction, installation, release detection and material compatibility;

(d) Requirements for the temporary or permanent decommissioning of an underground storage tank;

(e) Requirements for reporting a release from an underground storage tank;

(f) Requirements for a permit issued under ORS 466.760;

(g) Procedures that distributors of regulated substances and sellers of underground storage tanks must follow to satisfy the requirements of ORS 466.760;

(h) Acceptable methods by which an owner or permittee may demonstrate financial responsibility for responding to the liability imposed under ORS 466.815;

(i) Procedures for the disbursement of moneys collected under ORS 466.795;

(j) Requirements for reporting corrective action taken in response to a release;

(k) Requirements for taking corrective action in response to a release; and

(L) Any other rule necessary to carry out the provisions of ORS 466.705 to 466.835 and 466.895..

(2) The commission may adopt different requirements for different areas or regions of the state if the commission finds either of the following:

(a) More stringent rules or standards are necessary:

(A) To protect specific waters of the state, a sole source or sensitive aquifer or any other sensitive environmental amenity; or

(B) Because conditions peculiar to that area or region require different standards to protect public health, safety, welfare or the environment.

(b) Less stringent rules or standards are:

(A) Warranted by physical conditions or economic hardship;

(B) Consistent with the protection of the public health, safety, welfare or the environment; and

(C) Not less stringent than minimum federal requirements.

(3) The rules adopted by the commission under subsection (1) of this section may distinguish between types, classes and ages of underground storage tanks. In making such distinctions, the commission may consider the following factors:

(a) Location of the tanks;

(b) Soil and climate conditions;

(c) Uses of the tanks;

(d) History of maintenance;

(e) Age of the tanks;

(f) Current industry recommended practices;

(g) National consensus codes;

(h) Hydrogeology;

(i) Water table;

(j) Size of the tanks;

(k) Quantity of regulated substances periodically deposited in or dispensed from the tank;

(L) The technical ability of the owner or permittee; and

(m) The compatibility of the regulated substance and the materials of which the tank is fabricated.

(4) In adopting rules under subsection (1) of this section, the commission shall consider all relevant federal standards and regulations on underground storage tanks. If the commission adopts any standard or rule that is different than a federal standard or regulation on the same subject, the report submitted to the commission by the department at the time the commission adopts the standard or rule shall indicate clearly the deviation from the federal standard or regulation and the reasons for the deviation. [1987 c.53 §13 (enacted in lieu of 468.908)]

(Licenses; Permits)

466.750 License procedure for persons servicing underground tanks. (1) In order to safeguard the public health, safety and welfare, to protect the state's natural and biological systems, to protect the public from unlawful underground tank installation and retrofit procedures and to assure the highest degree of leak prevention from underground storage tanks, the commission may adopt a program to regulate persons providing underground storage tank installation and removal, retrofit, testing and inspection services.

(2) The program established under subsection (1) of this section may include a procedure to license persons who demonstrate, to the satisfaction of the department, the ability to service underground storage tanks. This demonstration of ability may consist of written or field examinations. The commission may establish different types of licenses for different types of demonstrations, including but not limited to:

(a) Installation, removal, retrofit and inspection of underground storage tanks;

(b) Tank integrity testing; and

(c) Installation of leak detection systems.

(3) The program adopted under subsection (1) of this section may allow the department after opportunity for hearing under the provisions of ORS 183.310 to 183.550, to revoke a license of any person offering underground tank service who commits fraud or deceit in obtaining a license or who demonstrates negligence or incompetence in performing underground tank service

(4) The program adopted under subsection (1) of this section shall:

(a) Provide that no person may offer to perform or perform services for which a license is required under the program without such license.

(b) Establish a schedule of fees for licensing under the program. The fees shall be in an amount sufficient to cover the costs of the department in administering the program.

(5) The following persons shall apply for an underground storage tank permit from the department:

(a) An owner of an underground storage tank currently in operation;

(b) An owner of an underground storage tank taken out of operation between January 1, 1974, and the operative date of this section; and

(c) An owner of an underground storage tank that was taken out of operation before January 1, 1974, but that still contains a regulated substance. [1987 c.539 §§14, 15]

Note: Section 48, chapter 539, Oregon Laws 1987, provides:

Sec. 48. Section 15 of this Act [ORS 466.750 (5)] does not become operative until 90 days after the Environmental Quality Commission has adopted rules under section 13 of this Act [ORS 466.745] and has filed a copy of such rules with the Secretary of State, as prescribed in ORS 183.310 to 183.550. [1987 c.539 §48]

466.760 When permit required; who required to sign application. (1) No person shall install, bring into operation, operate or decommission an underground storage tank without first obtaining a permit from the department.

(2) No person shall deposit a regulated substance into an underground storage tank unless the tank is operating under a permit issued by the department.

(3) Any person who assumes ownership of an underground storage tank from a previous permittee must complete and return to the department an application for a new permit before the person begins operation of the underground storage tank under the new ownership.

(4) Any person who deposits a regulated substance into an underground storage tank or sells an underground storage tank shall notify the owner or operator of the tank of the permit requirements of this section.

(5) The following persons must sign an application for a permit submitted to the department under this section or ORS 466.750 (5):

(a) The owner of an underground storage tank storing a regulated substance;

(b) The owner of the real property in which an underground storage tank is located; and

(c) The proposed permittee, if a person other than the owner of the underground storage tank or the owner of the real property. [1987 c.539 §16]

Note: Section 49, chapter 539, Oregon Laws 1987, provides:

Sec. 49. Section 16 of this Act [ORS 466.760] does not become operative until one year after the Environmental Quality Commission has adopted rules under section 13 of this Act [ORS 466.745] and has filed a copy of such rules with the Secretary of State, as prescribed in ORS 183.310 to 183.550. [1987 c.539 §49]

Note: Section 17, chapter 539, Oregon Laws 1987, provides:

Sec. 17. If the department is unable to issue a final permit before the operative date of section 16 of this 1987 Act [ORS 466.760], the department may issue a temporary or conditional permit. A temporary or conditional permit shall expire when the department grants or denies the final permit. A temporary or conditional permit does not authorize any activity, operation or discharge that violates any law or rule of the State of Oregon or the Department of Environmental Quality. [1987 c.539 §17]

466.765 Duty of owner or permittee of underground storage tank. In addition to any other duty imposed by law and pursuant to rules adopted under ORS 466.705 to 466.835 and 466.895, the owner or the permittee of an underground storage tank shall:

(1) Prevent releases;

(2) Install, operate and maintain underground storage tanks and leak detection devices and develop and maintain records in connection therewith in accordance with standards adopted and permits issued under ORS 466.705 to 466.835 and 466.895;

(3) Furnish information to the department relating to underground storage tanks, including information about tank equipment and regulated substances stored in the tanks;

(4) Promptly report releases;

(5) Conduct monitoring and testing as required by rules adopted under ORS 466.745 and permits issued under ORS 466.760;

(6) Permit department employes or a duly authorized and identified representative of the department at all reasonable times to have access to and to copy all records relating to underground storage tanks;

(7) Pay all costs of investigating, preventing, reporting and stopping a release;

(8) Decommission tanks, as required by rules adopted under ORS 466.745 and permits issued under ORS 466.760;

(9) Pay all fees;

(10) Conduct any corrective action required under ORS 466.810; and

(11) Perform any other requirement adopted under ORS 466.540, 466.705 to 466.835, 466.895 and 478.308. [1987 c.539 §20 (enacted in lieu of 468.905)]

466.770 Corrective action required on contaminated site. (1) If any owner or permittee of a contaminated site fails without sufficient cause to conduct corrective action under ORS 466.765, the department may undertake any investigation or corrective action with respect to the contamination on the site.

(2) The department shall keep a record of all expenses incurred in carrying out any corrective action authorized under subsection (1) of this section, including charges for services performed and the state's equipment and materials utilized.

(3) Any owner or permittee of a contaminated site who fails without sufficient cause to conduct corrective action as required by an order of the department under ORS 466.810 shall be liable to the department for damages not to exceed three times the amount of all expenses incurred by the department in carrying out the necessary corrective action.

(4) Based on the record compiled by the department under subsection (2) of this section, the commission shall make a finding and enter an order against the person described in subsection (1) or (3) of this section for the amount of damages, not to exceed treble damages, and the expenses incurred by the state in carrying out the actions authorized by this section. The order may be appealed in the manner provided for appeal of a contested case order under ORS 183.310 to 183.550.

(5) If the amount of corrective action costs incurred by the department and damages under this section are not paid by the responsible person to the department within 15 days after receipt of notice that such expenses are due and owing, or, if an appeal is filed within 15 days after the court renders its decision if the decision affirms the order, the Attorney General, at the request of the director, shall bring an action in the name of the State of Oregon in a court of competent jurisdiction to recover the amount specified in the notice of the director.

(6) Subsection (5) of this section shall not apply if the department and the responsible person are negotiating or have entered into a settlement agreement, except that if the responsible person fails to pay the corrective action costs as provided in the negotiated settlement the director may request the Attorney General to tak action as set forth in subsection (5) of this se tion.

(7) All moneys received by the departme under this section shall be paid into the fu established in ORS 466.790.

(8) As used in this section:

(a) "Contamination" means any abandonin spilling, releasing, leaking, disposing, dischar ing, depositing, emitting, pumping, pouring, em tying, injecting, escaping, leaching, placing dumping of a regulated substance from an unde ground storage tank into the air or on any lan or waters of the state, so that such regulat substance may enter the environment, be emitt into the air or discharged into any waters. Su contamination authorized by and in complian with a permit issued under ORS chapter 454, 4 468, 469, ORS 466.005 to 466.385 or federal l shall not be considered as contamination unc ORS 466.540, 466.705 to 466.835, 466.895 a 478.308.

(b) "Site" means any area or land. [1987 c. §24]

466.775 Grounds for refusal, modific tion, suspension or revocation of permit. The department may refuse to issue, modi suspend, revoke or refuse to renew a permit if t department finds:

(a) A material misrepresentation or fa statement in the application for the permit;

(b) Failure to comply with the conditions the permit; or

(c) Violation of any applicable provision ORS 466.705 to 466.835 and 466.895, a applicable rule or standard adopted under O 466.705 to 466.835 and 466.895 or an order issu under ORS 466.705 to 466.835 and 466.895.

(2) The department may modify a per issued under ORS 466.760 if the departm finds, after notice and opportunity for heari that modification is necessary to protect public health, safety, welfare or the environme

(3) The department shall modify, suspe revoke or refuse to issue or renew a per according to the provisions of ORS 183.310 183.550 for a contested case proceeding. [1987 c §21]

466.780 Variance upon petition. Upon petition by the owner and the permitte an underground storage tank, the commiss may grant a variance from the requirements any rule or standard adopted under ORS 466. if the commission finds:

(a) The alternative proposed by the petitioner provides protection to the public health, safety, welfare and the environment, equal to or greater than the rule or standard; and

(b) The alternative proposal is at least as stringent as any applicable federal requirements.

(2) The commission may grant a variance under subsection (1) of this section only if the commission finds that strict compliance with the rule or standard is inappropriate because:

(a) Conditions exist that are beyond the control of the petitioner; or

(b) Special physical conditions or other circumstances render strict compliance unreasonable, burdensome or impracticable.

(3) The commission may delegate the authority to grant a variance to the department.

(4) Within 15 days after the department denies a petition for a variance, the petitioner may file with the commission a request for review by the commission. The commission shall review the petition for variance and the reasons for the department's denial of the petition within 150 days after the commission receives a request for review. The commission may approve or deny the variance or allow a variance on terms different than the terms proposed by the petitioner. If the commission fails to act on a denied petition within the 150-day period the variance shall be considered approved by the commission. [1987 c.539 §22]

(Finance)

466.785 Fees. (1) Fees may be required of every permittee of an underground storage tank. Fees shall be in an amount determined by the commission to be adequate to carry on the duties of the department or the duties of a state agency or local unit of government that has contracted with the department under ORS 466.730. Such fees shall not exceed $25 per tank per year.

(2) Fees collected by the department under this section shall be deposited in the State Treasury to the credit of an account of the department. All fees paid to the department shall be continuously appropriated to the department to carry out the provisions of ORS 466.705 to 466.835 and 466.895. [1987 c.539 §23]

Note: The amendments to section 23, chapter 539, Oregon Laws 1987 [compiled as ORS 466.785], by section 50, chapter 539, Oregon Laws 1987, become effective July 1, 1989. See section 51, chapter 539, Oregon Laws 1987.

466.785. (1) Fees may be required of every permittee of an underground storage tank. Fees shall be in an amount determined by the commission to be adequate to carry on the duties of the department or the duties of a state agency or local unit of government that has contracted with the department under ORS 466.730. Such fees shall not exceed $20 per tank per year.

(2) Fees collected by the department under this section shall be deposited in the State Treasury to the credit of an account of the department. All fees paid to the department shall be continuously appropriated to the department to carry out the provisions of ORS 466.705 to 466.835 and 466.895.

466.790 Leaking Underground Storage Tank Cleanup Fund; sources; uses. (1) The Leaking Underground Storage Tank Cleanup Fund is established separate and distinct from the General Fund in the State Treasury.

(2) The following moneys, as they pertain to an underground storage tank, shall be deposited into the State Treasury and credited to the Leaking Underground Storage Tank Cleanup Fund:

(a) Moneys recovered or otherwise received from responsible parties for corrective action; and

(b) Any penalty, fine or damages recovered under ORS 466.770.

(3) The State Treasurer may invest and reinvest moneys in the Leaking Underground Storage Tank Cleanup Fund in the manner provided by law.

(4) The moneys in the Leaking Underground Storage Tank Cleanup Fund are appropriated continuously to the department to be used as provided in subsection (5) of this section.

(5) Moneys in the Leaking Underground Storage Tank Cleanup Fund may be used by the department for the following purposes:

(a) Payment of corrective action costs incurred by the department in responding to a release from underground storage tanks;

(b) Funding of all actions and activities authorized by ORS 466.770; and

(c) Payment of the state cost share for corrective action, as required by section 9003(h)(7)(B) of the federal Solid Waste Disposal Act, P.L. 96-482. [1987 c.539 §26]

466.795 Underground Storage Tank Insurance Fund. (1) The Underground Storage Tank Insurance Fund is established separate and distinct from the General Fund in the State Treasury to be used solely for the purpose of satisfying the financial responsibility requirements of ORS 466.815.

(2) Fees received by the department pursuant to subsection (6) of this section, shall be deposited into the State Treasury and credited to the Underground Storage Tank Insurance Fund.

(3) The State Treasurer may invest and reinvest moneys in the Underground Storage Tank Insurance Fund in the manner provided by law.

(4) The moneys in the Underground Storage Tank Insurance Fund are appropriated continuously to the department to be used as provided for in subsection (5) of this section.

(5) Moneys in the Underground Storage Tank Insurance Fund may be used by the department for the following purposes, as they pertain to underground storage tanks:

(a) Compensation to the department or any other person, for taking corrective actions; and

(b) Compensation to a third party for bodily injury and property damage caused by a release.

(6) The commission may establish an annual financial responsibility fee to be collected from an owner or permittee of an underground storage tank. The fee shall be in an amount determined by the commission to be adequate to meet the financial responsibility requirements established under ORS 466.815 and any applicable federal law.

(7) Before the effective date of any regulations relating to financial responsibility adopted by the United States Environmental Protection Act pursuant to P.L. 98-616 and P.L. 99-499, the department shall formulate a plan of action to be followed if it becomes necessary for the Underground Storage Tank Insurance Fund to become operative in order to satisfy the financial responsibility requirements of ORS 466.815. In formulating the plan of action, the department shall consult with the Director of the Department of Insurance and Finance, owners and permittees of underground storage tanks and any other interested party. The plan of action must be reviewed by the Legislative Assembly or the Emergency Board before implementation. [1987 c.539 §28]

466.800 Records as public records; exceptions. (1) Except as provided in subsection (2) of this section, any records, reports or information obtained from any persons under ORS 466.765 and 466.805 shall be made available for public inspection and copying during the regular office hours of the department at the expense of any person requesting copies.

(2) Unless classified by the director as confidential, any records, reports or information obtained under ORS 466.705 to 466.835 and 466.895 shall be available to the public. Upon a showing satisfactory to the director by any person that records, reports or information, or particular parts thereof, if made public, would divulge methods, processes or information entitled to protection as trade secrets under ORS 192.501 to 192.505, the director shall classify as confidential such record, report or information, or particular part thereof. However, such record, report or information may be disclosed to any other officer, medical or public safety employe or authorized representative of the state concerned with carrying out ORS 466.705 to 466.835 and 466.895 or when relevant in any proceeding under ORS 466.705 to 466.835 and 466.895.

(3) Any record, report or information obtained or used by the department or the commission in administering the state-wide underground storage tank program under ORS 466.705 to 466.835 and 466.895 shall be available to the United States Environmental Protection Agency upon request. If the record, report or information has been submitted to the state under a claim of confidentiality, the state shall make that claim of confidentiality to the Environmental Protection Agency for the requested record, report or information. The federal agency shall treat the record, report or information subject to the confidentiality claim as confidential in accordance with applicable federal law. [Formerly 468.910]

(Enforcement)

466.805 Site inspection; subpena or warrant. (1) In order to determine compliance with the provisions of ORS 466.705 to 466.835 and 466.895 and rules adopted under ORS 466.705 to 466.835 and 466.895 and to enforce the provisions of ORS 466.705 to 466.835 and 466.895, any employes of or an authorized and identified representative of the department may:

(a) Enter at reasonable times any establishment or site where an underground storage tank is located;

(b) Inspect and obtain samples of a regulated substance contained in an underground storage tank; and

(c) Conduct an investigation of an underground storage tank, associated equipment, contents or the soil, air or waters of the state surrounding an underground storage tank.

(2) If any person refuses to comply with subsection (1) of this section, the department or a duly authorized and identified representative of the department may obtain a warrant or subpena to allow such entry, inspection, sampling or copying. [1987 c.539 §30 (enacted in lieu of 468.907)]

466.810 Investigation on noncompliance; findings and orders; decommissioning tank; hearings; other remedies. (1) Whenever the department has reasonable

cause to believe that an underground storage tank or the operation of an underground storage tank violates ORS 466.705 to 466.835 and 466.895 or fails to comply with a rule, order or permit issued under ORS 466.705 to 466.835 and 466.895, the department may investigate the underground storage tank.

(2) After the department investigates an underground storage tank under subsection (1) of this section, the department may, without notice or hearing, make such findings and issue such orders as it considers necessary to protect the public health, safety, welfare or the environment.

(3) The findings and orders made by the department under subsection (2) of this section may:

(a) Require changes in the operation, practices or operating procedures found to be in violation of ORS 466.705 to 466.835 and 466.895 or the rules adopted under ORS 466.705 to 466.835 and 466.895;

(b) Require the owner or operator to comply with the provisions of a permit;

(c) Require compliance with a schedule established in the order; and

(d) Require any other actions considered necessary by the department.

(4) After the department issues an order under subsection (2) of this section, the department may decommission the underground storage tank or contract with another person to decommission the underground storage tank.

(5) The department shall serve a certified copy of any order issued by it under subsection (2) of this section to the permittee or the permittee's duly authorized representative at the address furnished to the department in the permit application or other address as the department knows to be used by the permittee. The order shall take effect 20 days after the date of its issuance, unless the permittee requests a hearing on the order before the commission. The request for a hearing shall be submitted in writing within 20 days after the department issues the order.

(6) All hearings before the commission or its hearing officer shall be conducted according to applicable provisions of ORS 183.310 to 183.550 for contested cases.

(7) Whenever it appears to the department that any person is engaged or about to engage in any act or practice that constitutes a violation of ORS 466.705 to 466.835 and 466.895 or the rules and orders adopted under ORS 466.705 to 466.835 and 466.895 or of the terms of any permit issued under ORS 466.705 to 466.835 and 466.895, the department, without prior administrative hearing, may institute actions or proceedings for legal or equitable remedies to enforce compliance therewith or to restrain further violations thereof. [1987 c.539 §32]

466.815 Financial responsibility of owner or permittee. (1) The commission may by rule require an owner or permittee to demonstrate and maintain financial responsibility for:

(a) Taking corrective action;

(b) Compensating a third party for bodily injury and property damage caused by a release; and

(c) Compensating the department, or any other person, for expenses incurred by the department or any other person in taking corrective action.

(2) The financial responsibility requirements established by subsection (1) of this section may be satisfied by insurance, guarantee by third party, surety bond, letter of credit or qualification as a self-insurer or any combination of these methods. In adopting rules under subsection (1) of this section, the commission may specify policy or other contractual terms, conditions or defenses necessary or unacceptable to establish evidence of financial responsibility.

(3) If an owner or permittee is in bankruptcy, reorganization or arrangement pursuant to the federal bankruptcy law, or if jurisdiction in any state or federal court cannot be obtained over either an owner or a permittee likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this section may be asserted directly against the guarantor. In the case of action under paragraph (b) of subsection (1) of this section, the guarantor is entitled to invoke all rights and defenses that would have been available to the owner or permittee if the action had been brought against the owner or permittee by the claimant and all rights and defenses that would have been available to the guarantor if the action had been brought against the guarantor by the owner or permittee.

(4) The total liability of a guarantor shall be limited to the aggregate amount the guarantor provided as evidence of financial responsibility to the owner or permittee under subsection (2) of this section. This subsection does not limit any other state or federal statutory, contractual or common law liability of the guarantor for bad faith in negotiating or in failing to negotiate the settlement of any claim. This subsection does not diminish the liability of any person under section

107 or 111 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, or other applicable law.

(5) Corrective action and compensation programs financed by a fee paid by owners and permittees and administered by the department may be used to satisfy all or part of the financial responsibility requirements of this section.

(6) No rule requiring an owner or permittee to demonstrate and maintain financial responsibility shall be adopted by the commission before review by the appropriate legislative committee as determined by the President of the Senate and the Speaker of the House of Representatives. [1987 c.539 §27]

466.820 Reimbursement to department; procedure for collection; treble damages. (1) The owner and the permittee of an underground storage tank found to be in violation of any provision of ORS 466.705 to 466.835 and 466.895, shall reimburse the department for all costs reasonably incurred by the department, excluding administrative costs, in the investigation of a leak from an underground storage tank. Department costs may include investigation, design engineering, inspection and legal costs necessary to correct the leak.

(2) Payment of costs to the department under subsection (1) of this section shall be made to the department within 15 days after the end of the appeal period or, if an appeal is filed, within 15 days after the court or the commission renders its decision, if the decision affirms the order.

(3) If such costs are not paid by the owner or the permittee of the underground storage tank to the department within the time provided in subsection (2) of this section, the Attorney General, upon the request of the director, shall bring action in the name of the State of Oregon in the Circuit Court of Marion County or the circuit court of any other county in which the violation may have taken place to recover the amount specified in the order of the department.

(4) In addition to any other penalty provided by law, if any person is found in violation of any provision of ORS 466.540, 466.705 to 466.835, 466.895 and 478.308, the commission or the court may award damages in the amount equal to three times the amount of all expenses incurred by the department in investigating the violation.

(5) Moneys reimbursed shall be deposited to the State Treasury to the credit of an account of the department and are continuously appropriated to the department for the purposes of administering ORS 466.540, 466.705 to 466.835, 466.895 and 478.308. [1987 c.539 §34 (enacted in lieu of 468.914)]

466.825 Strict liability of owner or permittee. The owner and permittee of an underground storage tank found to be the source of a release shall be strictly liable to any owner or permittee of a nonleaking underground storage tank in the vicinity, for all costs reasonably incurred by such nonleaking underground storage tank owner or permittee in determining which tank was the source of the release. [1987 c.539 §35]

466.830 Halting tank operation upon clear and immediate danger. (1) Whenever, in the judgment of the department from the results of monitoring or observation of an identified release, there is reasonable cause to believe that a clear and immediate danger to the public health, welfare, safety or the environment exists from the continued operation of an underground storage tank, the department may, without hearing or prior notice, order the operation of the underground storage tank or site halted by service of an order on the owner or permittee of the underground storage tank or site.

(2) Within 24 hours after the order is served under subsection (1) of this section, the department shall appear in the appropriate circuit court to petition for the equitable relief required to protect the public health, safety, welfare or the environment. [1987 c.539 §36]

466.835 Compliance and correction costs as lien; enforcement. (1) All compliance and corrective action costs, penalties and damages for which a person is liable to the state under ORS 466.705 to 466.835 and 466.895 shall constitute a lien upon any real and personal property owned by the person.

(2) The department shall file a claim of lien on real property to be charged with a lien under subsection (1) of this section with the recording officer of each county in which the real property is located and shall file a claim of lien on personal property to be charged with a lien under subsection (1) of this section with the Secretary of State. The lien shall attach and become enforceable on the date of the filing. The lien claim shall contain:

(a) A statement of the demand;

(b) The name of the person against whose property the lien attaches;

(c) A description of the property charged with the lien sufficient for identification; and

(d) A statement of the failure of the person to conduct compliance and corrective actions as required.

(3) A lien created by this section may be foreclosed by a suit on real and personal property in the circuit court in the manner provided by law for the foreclosure of liens.

(4) Nothing in this section shall affect the right of the state to bring an action against any person to recover all costs and damages for which a person is liable under the provisions of ORS 466.705 to 466.835 and 466.895. [1987 c.539 §37]

OREGON HANFORD WASTE BOARD

Note: Sections 1 to 16, chapter 514 Oregon Laws 1987, provide:

Sec. 1. (1) The Legislative Assembly finds and declares that Oregon is not assured that the United States Department of Energy will:

(a) Consider the unique features of Oregon and the needs of the people of Oregon when assessing Hanford, Washington, as a potentially suitable location for the long-term disposal of high-level radioactive waste; or

(b) Insure adequate opportunity for public participation in the assessment process.

(2) Therefore, the Legislative Assembly declares that it is in the best interests of the State of Oregon to establish an Oregon Hanford Waste Board to serve as a focus for the State of Oregon in the development of a state policy to be presented to the Federal Government, to insure a maximum of public participation in the assessment process. [1987 c.514 §1]

Sec. 2. Nothing in sections 1 to 16 of this Act shall be interpreted by the Federal Government or the United States Department of Energy as an expression by the people of Oregon to accept Hanford, Washington, as the site for the long-term disposal of high-level radioactive waste. [1987 c.514 §2]

Sec. 3. As used in sections 1 to 16 of this Act:

(1) "Board" means the Oregon Hanford Waste Board.

(2) "High-level radioactive waste" means fuel or fission products from a commercial nuclear reactor after irradiation that is packaged and prepared for disposal.

(3) "United States Department of Energy" means the federal Department of Energy established under 42 U.S.C.A. 7131 or any successor agency assigned responsibility for the long-term disposal of high-level radioactive waste. [1987 c.514 §3]

Sec. 4. There is created an Oregon Hanford Waste Board which shall consist of the following members:

(1) The Director of the Oregon Department of Energy or designee;

(2) The Water Resources Director or designee;

(3) The Director of the Department of Environmental Quality or designee;

(4) The Assistant Director for Health or designee;

(5) The State Geologist or designee;

(6) A representative of the Public Utility Commission who has expertise in motor carriers;

(7) A representative of the Governor;

(8) One member representing the Confederated Tribes of the Umatilla Indian Reservation;

(9) One member of the public, appointed by the Governor subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565, who shall serve as chairperson;

(10) Two members of the public advisory committee created under section 9 of this Act, selected by the public advisory committee; and

(11) Three members of the Senate, appointed by the President of the Senate, and three members of the House of Representatives, appointed by the Speaker of the House of Representatives who shall serve as advisory members without vote. [1987 c.514 §4]

Sec. 5. (1) Each member of the Oregon Hanford Waste Board shall serve at the pleasure of the appointing authority. For purposes of this subsection, for those members of the board selected by the public advisory committee, the appointing authority shall be the public advisory committee.

(2) Each public member of the board shall receive compensation and expenses as provided in ORS 292.495. Each legislative member shall receive compensation and expenses as provided in ORS 171.072.

(3) The board shall be under the supervision of the chairperson. [1987 c.514 §5]

Sec. 6. The Oregon Hanford Waste Board:

(1) Shall serve as the focal point for all policy discussions within the state government concerning the disposal of high-level radioactive waste in the northwest region.

(2) Shall recommend a state policy to the Governor and to the Legislative Assembly.

(3) After consultation with the Governor, may make policy recommendations on other issues related to the United States Hanford Reservation at Richland, Washington, including but not limited to defense wastes, disposal and treatment of chemical waste and plutonium production. [1987 c.514 §6]

Sec. 7. In carrying out its purpose as set forth in section 6 of this Act, the Oregon Hanford Waste Board shall:

(1) Serve as the initial agency in this state to be contacted by the United States Department of Energy or any other federal agency on any matter related to the long-term disposal of high-level radioactive waste.

(2) Serve as the initial agency in this state to receive any report, study, document, information or notification of proposed plans from the Federal Government on any matter related to the long-term disposal of high-level radioactive waste. Notification of proposed plans includes notification of proposals to conduct field work, onsite evaluation or onsite testing.

(3) Disseminate or arrange with the United States Department of Energy or other federal agency to disseminate the information received under subsection (2) of this section to appropriate state agencies, local governments, regional planning commissions, American Indian tribal governing bodies, the general public and interested citizen groups who have requested in writing to receive this information.

(4) Recommend to the Governor and Legislative Assembly appropriate responses to contacts under subsection (1) of

entered or adopted under ORS 466.605 to 466.680, may incur a civil penalty not to exceed $10,000. Each day of violation shall be considered a separate offense.

(4) The civil penalty authorized by subsection (3) of this section shall be established, imposed, collected and appealed in the same manner as civil penalties are established, imposed, collected and appealed under ORS 468.090 to 468.130, except that a penalty collected under this section shall be deposited to the fund established in ORS 466.670. [Formerly 459.995; (3) and (4) enacted by 1985 c.733 §17; 1987 c.266 §1]

466.890 Civil penalties for damage to wildlife resulting from contamination of food or water supply. (1) Any person who has care, custody or control of a hazardous waste or a substance which would be a hazardous waste except for the fact that it is not discarded, useless or unwanted shall incur a civil penalty according to the schedule set forth in subsection (2) of this section for the destruction, due to contamination of food or water supply by such waste or substance, of any of the wildlife referred to in subsection (2) of this section that are the property of the state.

(2) The penalties referred to in subsection (1) of this section shall be as follows:

(a) Each game mammal other than mountain sheep, mountain goat, elk or silver gray squirrel, $400.

(b) Each mountain sheep or mountain goat, $3,500.

(c) Each elk, $750.

(d) Each silver gray squirrel, $10.

(e) Each game bird other than wild turkey, $10.

(f) Each wild turkey, $50.

(g) Each game fish other than salmon or steelhead trout, $5.

(h) Each salmon or steelhead trout, $125.

(i) Each fur-bearing mammal other than bobcat or fisher, $50.

(j) Each bobcat or fisher, $350.

(k) Each specimen of any wildlife species whose survival is specified by the wildlife laws or the laws of the United States as threatened or endangered, $500.

(L) Each specimen of any wildlife species otherwise protected by the wildlife laws or the laws of the United States, but not otherwise referred to in this subsection, $25.

(3) The civil penalty imposed under this section shall be in addition to other penalties prescribed by law. [1985 c.685 §2]

466.895 Civil penalties for violations of underground storage tank regulations. (1) Any person who violates any provision of ORS 466.705 to 466.835 and 466.895, a rule adopted under ORS 466.705 to 466.835 and 466.895 or the terms or conditions of any order or permit issued by the department under ORS 466.705 to 466.835 and 466.895 shall be subject to a civil penalty not to exceed $10,000 per violation per day of violation.

(2) Each violation may be a separate and distinct offense and in the case of a continuing violation, each day's continuance thereof may be deemed a separate and distinct offense.

(3) The department may levy a civil penalty up to $100 for each day a fee due and owing under ORS 466.785 and 466.795 is unpaid. A penalty collected under this subsection shall be placed in the State Treasury to the credit of an account of the department.

(4) The civil penalties authorized under this section shall be established, imposed, collected and appealed in the same manner as civil penalties are established, imposed, collected and appealed under ORS 468.090 to 468.125 and 468.135 except that a penalty collected under this section shall be deposited to the fund established in ORS 466.790. [1987 c.539 §39]

466.900 Civil penalties for violation of removal or remedial actions. (1) In addition to any other penalty provided by law, any person who violates a provision of ORS 466.540 to 466.590, or any rule or order entered or adopted under ORS 466.540 to 466.590, shall incur a civil penalty not to exceed $10,000 a day for each day that such violation occurs or that failure to comply continues.

(2) The civil penalty authorized by subsection (1) of this section shall be established, imposed, collected and appealed in the same manner as civil penalties are established, imposed, collected and appealed under ORS 468.090 to 468.125, except that a penalty collected under this section shall be deposited in the Hazardous Substance Remedial Action Fund established under ORS 466.590, if the penalty pertains to a release at any facility. [1987 c.735 §23]

CRIMINAL PENALTIES

466.995 Criminal penalties. (1) Penalties provided in this section are in addition to and not in lieu of any other remedy specified in ORS

However, upon adequate availability of reasonable performance standards stability, the commission after public hearing by rule may modify these exclusions in whole or in part by requiring the phasing in of the substitute or substitutes.

(2) An item, product or material containing PCB may be manufactured for sale, sold for use or used in this state pursuant to an exemption certificate issued by the department under ORS 466.520. [Formerly 468.906]

466.520 Exemption certificates; applications; conditions. (1) A person may make written application to the department for an exemption certificate on forms provided by the department. The department may require additional information or materials to accompany the application as it considers necessary for an accurate evaluation of the application.

(2) The department shall grant an exemption for residual amounts of PCB remaining in electric transformer cores after the PCB in a transformer is drained and the transformer is filled with a substitute approved under ORS 466.515.

(3) The department may grant an exemption for an item, product or material manufactured for sale, sold for use, or used by the person if the item, product or material contains incidental concentrations of PCB.

(4) In granting a certificate of exemption, the department shall impose conditions on the exemption in order that the exemption covers only incidental concentrations of PCB.

(5) As used in this section, "incidental concentrations of PCB" means concentrations of PCB which are beyond the control of the person and which are not the result of the person having:

(a) Exposed the item, product or material to concentrations of PCB.

(b) Failed to take reasonable measures to rid the item, product or material of concentrations of PCB.

(c) Failed to use a reasonable substitute for the item, product or material for which the exemption is sought. [Formerly 468.909]

466.525 Additional PCB compounds may be prohibited. The commission after hearing by rule may include as a PCB and regulate accordingly any chlorinated biphenyls, terphenyls, higher polyphenyls, or mixtures of these compounds that have functional groups attached other than chlorine if that functional group on the chlorinated biphenyls, terphenyls, higher polyphenyls, or mixtures of these compounds is found to constitute a danger to public health. [Formerly 468.912]

466.530 Prohibited disposal of waste containing PCB. After October 4, 1977, a person shall not dispose of solid or liquid waste resulting from the use of PCB or an item, product or material containing or which has contained a concentration equal to or greater than 100 ppm of PCB except in conformity with rules of the commission adopted pursuant to ORS 466.005 to 466.385 and 466.890. [Formerly 468.921]

REMOVAL ON REMEDIAL ACTION TO ABATE HEALTH HAZARDS

466.540 Definitions for ORS 466.540 to 466.590. As used in ORS 466.540 to 466.590 and 466.900:

(1) "Claim" means a demand in writing for a sum certain.

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

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

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

(5) "Environment" includes the waters of the state, any drinking water supply, any land surface and subsurface strata and ambient air.

(6) "Facility" means any building, structure, installation, equipment, pipe or pipeline including any pipe into a sewer or publicly owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, above ground tank, underground storage tank, motor vehicle, rolling stock, aircraft, or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located and where a release has occurred or where there is a threat of a release, but does not include any consumer product in consumer use or any vessel.

(7) "Fund" means the Hazardous Substance Remedial Action Fund established by ORS 466.590.

(8) "Guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under ORS 466.540 to 466.590 and 466.900.

(9) "Hazardous substance" means:

(a) Hazardous waste as defined in ORS 466.005.

(b) Any substance defined as a hazardous substance pursuant to section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act, P.L. 96-510, as amended, P.L. 96-510 and P.L. 99-499.

(c) Oil.

(d) Any substance designated by the commission under ORS 466.553.

(10) "Natural resources" includes but is not limited to land, fish, wildlife, biota, air, surface water, groundwater, drinking water supplies and any other resource owned, managed, held in trust or otherwise controlled by the State of Oregon or a political subdivision of the state.

(11) "Oil" includes gasoline, crude oil, fuel oil, diesel oil, lubricating oil, oil sludge or refuse and any other petroleum-related product, or waste or fraction thereof that is liquid at a temperature of 60 degrees Fahrenheit and pressure of 14.7 pounds per square inch absolute.

(12) "Owner or operator" means any person who owned, leased, operated, controlled or exercised significant control over the operation of a facility. "Owner or operator" does not include a person, who, without participating in the management of a facility, holds indicia of ownership primarily to protect a security interest in the facility.

(13) "Person" means an individual, trust, firm, joint stock company, joint venture, consortium, commercial entity, partnership, association, corporation, commission, state and any agency thereof, political subdivision of the state, interstate body or the Federal Government including any agency thereof.

(14) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment including the abandonment or discarding of barrels, containers and other closed receptacles containing any hazardous substance, or threat thereof, but excludes:

(a) Any release which results in exposure to a person solely within a workplace, with respect to a claim that the person may assert against the person's employer under ORS chapter 656;

(b) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel or pipeline pumping station engine;

(c) Any release of source, by-product or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, as amended, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of the Atomic Energy Act of 1954, as amended, or, for the purposes of ORS 466.570 or any other removal or remedial action any release of source by-product or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978; and

(d) The normal application of fertilizer.

(15) "Remedial action" means those actions consistent with a permanent remedial action taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance into the environment. To prevent or minimize the release of a hazardous substance so that they do not migrate to cause substantial danger to present or future public health, safety, welfare or the environment. "Remedial action" includes, but is not limited to:

(a) Such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches or ditches, clay cover, neutralization, cleanup of released hazardous substances and associated contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, onsite treatment or incineration, provision of alternative drinking and household water supplies, and any monitoring reasonably required to assure that such actions protect the public health, safety, welfare and the environment.

(b) Offsite transport and offsite storage, treatment, destruction or secure disposition of hazardous substances and associated, contaminated materials.

(c) Such actions as may be necessary to monitor, assess, evaluate or investigate a release or threat of release.

(16) "Remedial action costs" means reasonable costs which are attributable to or associated with a removal or remedial action at a facility, including but not limited to the costs of administration, investigation, legal or enforcement activities, contracts and health studies.

(17) "Removal" means the cleanup or removal of a released hazardous substance from the environment, such actions as may be necessary taken in the event of the threat of release of a hazardous substance into the environment, such actions as may be necessary to monitor, assess and evaluate the release or threat of release of a hazardous substance, the disposal of removed

material, or the taking of such other actions as may be necessary to prevent, minimize or mitigate damage to the public health, safety, welfare or to the environment, which may otherwise result from a release or threat of release. "Removal" also includes but is not limited to security fencing or other measures to limit access, provision of alternative drinking and household water supplies, temporary evacuation and housing of threatened individuals and action taken under ORS 466.570.

(18) "Transport" means the movement of a hazardous substance by any mode, including pipeline and in the case of a hazardous substance which has been accepted for transportation by a common or contract carrier, the term "transport" shall include any stoppage in transit which is temporary, incidental to the transportation movement, and at the ordinary operating convenience of a common or contract carrier, and any such stoppage shall be considered as a continuity of movement and not as the storage of a hazardous substance.

(19) "Underground storage tank" has the meaning given that term in ORS 466.705.

(20) "Waters of the state" has the meaning given that term in ORS 468.700. [1987 c.539 §52; 1987 c.735 §1]

466.547 Legislative findings. (1) The Legislative Assembly finds that:

(a) The release of a hazardous substance into the environment may present an imminent and substantial threat to the public health, safety, welfare and the environment; and

(b) The threats posed by the release of a hazardous substance can be minimized by prompt identification of facilities and implementation of removal or remedial action.

(2) Therefore, the Legislative Assembly declares that:

(a) It is in the interest of the public health, safety, welfare and the environment to provide the means to minimize the hazards of and damages from facilities.

(b) It is the purpose of ORS 466.540 to 466.590 and 466.900 to:

(A) Protect the public health, safety, welfare and the environment; and

(B) Provide sufficient and reliable funding for the department to expediently and effectively authorize, require or undertake removal or remedial action to abate hazards to the public health, safety, welfare and the environment. [1987 c.735 §2]

466.550 Authority of department for removal or remedial action. (1) In addition to any other authority granted by law, the department may:

(a) Undertake independently, in cooperation with others or by contract, investigations, studies, sampling, monitoring, assessments, surveying, testing, analyzing, planning, inspecting, training, engineering, design, construction, operation, maintenance and any other activity necessary to conduct removal or remedial action and to carry out the provisions of ORS 466.540 to 466.590 and 466.900; and

(b) Recover the state's remedial action costs.

(2) The commission and the department may participate in or conduct activities pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act, as amended, P.L. 96-510 and P.L. 99-499, and the corrective action provisions of Subtitle I of the federal Solid Waste Disposal Act, as amended, P.L. 96-482 and P.L. 98-616. Such participation may include, but need not be limited to, entering into a cooperative agreement with the United States Environmental Protection Agency.

(3) Nothing in ORS 466.540 to 466.590 and 466.900 shall restrict the State of Oregon from participating in or conducting activities pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act, as amended, P.L. 96-510 and P.L. 99-499. [1987 c.735 §3]

466.553 Rules; designation of hazardous substance. (1) In accordance with the applicable provisions of ORS 183.310 to 183.550, the commission may adopt rules necessary to carry out the provisions of ORS 466.540 to 466.590 and 466.900.

(2)(a) Within one year after the effective date of this Act, the commission shall adopt rules establishing the levels, factors, criteria or other provisions for the degree of cleanup including the control of further releases of a hazardous substance, and the selection of remedial actions necessary to assure protection of the public health, safety, welfare and the environment.

(b) In developing rules pertaining to the degree of cleanup and the selection of remedial actions under paragraph (a) of this subsection, the commission may, as appropriate, take into account:

(A) The long-term uncertainties associated with land disposal;

(B) The goals, objectives and requirements of ORS 466.005 to 466.385;

(C) The persistence, toxicity, mobility and propensity to bioaccumulate of such hazardous substances and their constituents;

(D) The short-term and long-term potential for adverse health effects from human exposure to the hazardous substance;

(E) Long-term maintenance costs;

(F) The potential for future remedial action costs if the alternative remedial action in question were to fail;

(G) The potential threat to human health and the environment associated with excavation, transport and redisposal or containment; and

(H) The cost effectiveness.

(3)(a) By rule, the commission may designate as a hazardous substance any element, compound, mixture, solution or substance or any class of substances that, should a release occur, may present a substantial danger to the public health, safety, welfare or the environment.

(b) Before designating a substance or class of substances as a hazardous substance, the commission must find that the substance, because of its quantity, concentration, or physical, chemical or toxic characteristics, may pose a present or future hazard to human health, safety, welfare or the environment should a release occur. [1987 c.735 §4]

466.555 Remedial Action Advisory Committee. The director shall appoint a Remedial Action Advisory Committee in order to advise the department in the development of rules for the implementation of ORS 466.540 to 466.590 and 466.900. The committee shall be comprised of members representing at least the following interests:

(1) Citizens;

(2) Local governments;

(3) Environmental organizations; and

(4) Industry. [1987 c.735 §5]

466.557 Inventory of facilities where release confirmed. (1) For the purposes of providing public information, the director shall develop and maintain an inventory of all facilities where a release is confirmed by the department.

(2) The director shall make the inventory available for the public at the department's offices.

(3) The inventory shall include but need not be limited to the following items, if known:

(a) A general description of the facility;

(b) Address or location;

(c) Time period during which a relea occurred;

(d) Name of the current owner and operat and names of any past owners and operat during the time period of a release of a hazardo substance;

(e) Type and quantity of a hazardous su stance released at the facility;

(f) Manner of release of the hazardous su stance;

(g) Levels of a hazardous substance, if any, ground water, surface water, air and soils at t facility;

(h) Status of removal or remedial actions the facility; and

(i) Other items the director determines n essary.

(4) Thirty days before a facility is added the inventory the director shall notify by certif mail the owner of all or any part of the facil that is to be included in the inventory. T decision of the director to add a facility may appealed in writing to the commission within days after the owner receives notice. The app shall be conducted in accordance with provisi of ORS 183.310 to 183.550 governing contes cases.

(5) The department shall, on or before Ja ary 15, 1989, and annually thereafter, submit inventory and a report to the Governor, Legislative Assembly and the Environmer Quality Commission.

(6) Nothing in this section, including list of a facility in the inventory or commiss review of the listing shall be construed to h prerequisite to or otherwise affect the autho of the director to undertake, order or authori removal or remedial action under ORS 466.54 466.590 and 466.900. [1987 c.735 §6]

466.560 Comprehensive state-w identification program; notice. (1) department shall develop and implement a c prehensive state-wide program to identify release or threat of release from a facility may require remedial action.

(2) The department shall notify all daily weekly newspapers of general circulation in state and all broadcast media of the prog developed under subsection (1) of this sect The notice shall include information about the public may provide information on a rel or threat of release from a facility.

(3) In developing the program under sub tion (1) of this section, the department

examine, at a minimum, any industrial or commercial activity that historically has been a major source in this state of releases of hazardous substances.

(4) The department shall include information about the implementation and progress of the program developed under subsection (1) of this section in the report required under ORS 466.557 (5). [1987 c.735 §7]

466.563 Preliminary assessment of potential facility. (1) If the department receives information about a release or a threat of release from a potential facility, the department shall conduct a preliminary assessment of the potential facility. The preliminary assessment shall be conducted as expeditiously as possible within the budgetary constraints of the department.

(2) A preliminary assessment conducted under subsection (1) of this section shall include a review of existing data, a good faith effort to discover additional data and a site inspection to determine whether there is a need for further investigation. [1987 c.735 §8]

466.565 Accessibility of information about hazardous substances. (1) Any person who has or may have information, documents or records relevant to the identification, nature and volume of a hazardous substance generated, treated, stored, transported to, disposed of or released at a facility and the dates thereof, or to the identity or financial resources of a potentially responsible person, shall, upon request by the department or its authorized representative, disclose or make available for inspection and copying such information, documents or records.

(2) Upon reasonable basis to believe that there may be a release of a hazardous substance at or upon any property or facility, the department or its authorized representative may enter any property or facility at any reasonable time to:

(a) Sample, inspect, examine and investigate;

(b) Examine and copy records and other information; or

(c) Carry out removal or remedial action or any other action authorized by ORS 466.540 to 466.590 and 466.900.

(3) If any person refuses to provide information, documents, records or to allow entry under subsections (1) and (2) of this section, the department may request the Attorney General to seek from a court of competent jurisdiction an order requiring the person to provide such information, documents, records or to allow entry.

(4)(a) Except as provided in paragraphs (b) and (c) of this subsection, the department or its authorized representative shall, upon request by the current owner or operator of the facility or property, provide a portion of any sample obtained from the property or facility to the owner or operator.

(b) The department may decline to give a portion of any sample to the owner or operator if, in the judgment of the department or its authorized representative, apportioning a sample:

(A) May alter the physical or chemical properties of the sample such that the portion of the sample retained by the department would not be representative of the material sampled; or

(B) Would not provide adequate volume to perform the laboratory analysis.

(c) Nothing in this subsection shall prevent or unreasonably hinder or delay the department or its authorized representative in obtaining a sample at any facility or property.

(5) Persons subject to the requirements of this section may make a claim of confidentiality regarding any information, documents or records, in accordance with ORS 466.090. [1987 c.735 §9]

466.567 Strict liability for remedial action costs for injury or destruction of natural resource; limited exclusions. (1) The following persons shall be strictly liable for those remedial action costs incurred by the state or any other person that are attributable to or associated with a facility and for damages for injury to or destruction of any natural resources caused by a release:

(a) Any owner or operator at or during the time of the acts or omissions that resulted in the release.

(b) Any owner or operator who became the owner or operator after the time of the acts or omissions that resulted in the release, and who knew or reasonably should have known of the release when the person first became the owner or operator.

(c) Any owner or operator who obtained actual knowledge of the release at the facility during the time the person was the owner or operator of the facility and then subsequently transferred ownership or operation of the facility to another person without disclosing such knowledge.

(d) Any person who, by any acts or omissions, caused, contributed to or exacerbated the release, unless the acts or omissions were in material compliance with applicable laws, standards, regulations, licenses or permits.

(e) Any person who unlawfully hinders or delays entry to, investigation of or removal or remedial action at a facility.

(2) Except as provided in paragraphs (b) to (e) of subsection (1) of this section and subsection (4) of this section, the following persons shall not be liable for remedial action costs incurred by the state or any other person that are attributable to or associated with a facility, or for damages for injury to or destruction of any natural resources caused by a release:

(a) Any owner or operator who became the owner or operator after the time of the acts or omissions that resulted in a release, and who did not know and reasonably should not have known of the release when the person first became the owner or operator.

(b) Any owner or operator if the facility was contaminated by the migration of a hazardous substance from real property not owned or operated by the person.

(c) Any owner or operator at or during the time of the acts or omissions that resulted in the release, if the release at the facility was caused solely by one or a combination of the following:

(A) An act of God. "Act of God" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(B) An act of war.

(C) Acts or omissions of a third party, other than an employe or agent of the person asserting this defense, or other than a person whose acts or omissions occur in connection with a contractual relationship, existing directly or indirectly, with the person asserting this defense. As used in this subparagraph, "contractual relationship" includes but is not limited to land contracts, deeds or other instruments transferring title or possession.

(3) Except as provided in paragraphs (c) to (e) of subsection (1) of this section or subsection (4) of this section, the following persons shall not be liable for remedial action costs incurred by the state or any other person that are attributable to or associated with a facility, or for damages for injury to or destruction of any natural resources caused by a release:

(a) A unit of state or local government that acquired ownership or control of a facility in the following ways:

(A) Involuntarily by virtue of its function as sovereign, including but not limited to escheat, bankruptcy, tax delinquency or abandonment; or

(B) Through the exercise of eminent domai authority by purchase or condemnation.

(b) A person who acquired a facility by inhe itance or bequest.

(4) Notwithstanding the exclusions from li bility provided for specified persons in subsec tions (2) and (3) of this section such persons sha be liable for remedial action costs incurred by th state or any other person that are attributable t or associated with a facility, and for damages fo injury to or destruction of any natural resource caused by a release, to the extent that the person acts or omissions contribute to such costs o damages, if the person:

(a) Obtained actual knowledge of the releas and then failed to promptly notify the depar ment and exercise due care with respect to th hazardous substance concerned, taking into con sideration the characteristics of the hazardou substance in light of all relevant facts and circum stances; or

(b) Failed to take reasonable precaution against the reasonably foreseeable acts or omi sions of a third party and the reasonably foresee ble consequences of such acts or omissions.

(5)(a) No indemnification, hold harmless, similar agreement or conveyance shall be effe tive to transfer from any person who may liable under this section, to any other person, t liability imposed under this section. Nothing this section shall bar any agreement to insu hold harmless or indemnify a party to such agr ment for any liability under this section.

(b) A person who is liable under this sect shall not be barred from seeking contribut from any other person for liability under O 466.540 to 466.590 and 466.900.

(c) Nothing in ORS 466.540 to 466.590 a 466.900 shall bar a cause of action that a per liable under this section or a guarantor has would have by reason of subrogation or otherw against any person.

(d) Nothing in this section shall restrict right that the state or any person might h under federal statute, common law or other s statute to recover remedial action costs or to s any other relief related to a release.

(6) To establish, for purposes of paragr (b) of subsection (1) of this section or paragr (a) of subsection (2) of this section, that person did or did not have reason to know, person must have undertaken, at the time acquisition, all appropriate inquiry into the vious ownership and uses of the property con tent with good commercial or customary prac in an effort to minimize liability.

(7)(a) Except as provided in paragraph (b) of this subsection, no person shall be liable under ORS 466.540 to 466.590 and 466.900 for costs or damages as a result of actions taken or omitted in the course of rendering care, assistance or advice in accordance with rules adopted under ORS 466.553 or at the direction of the department or its authorized representative, with respect to an incident creating a danger to public health, safety, welfare or the environment as a result of any release of a hazardous substance. This paragraph shall not preclude liability for costs or damages as the result of negligence on the part of such person.

(b) No state or local government shall be liable under ORS 466.540 to 466.590 and 466.900 for costs or damages as a result of actions taken in response to an emergency created by the release of a hazardous substance generated by or from a facility owned by another person. This paragraph shall not preclude liability for costs or damages as a result of gross negligence or intentional misconduct by the state or local government. For the purpose of this paragraph, reckless, wilful or wanton misconduct shall constitute gross negligence.

(c) This subsection shall not alter the liability of any person covered by subsection (1) of this section. [1987 c.735 §10]

466.570 Removal or remedial action; reimbursement of costs. (1) The director may undertake any removal or remedial action necessary to protect the public health, safety, welfare and the environment.

(2) The director may authorize any person to carry out any removal or remedial action in accordance with any requirements of or directions from the director, if the director determines that the person will commence and complete removal or remedial action properly and in a timely manner.

(3) Nothing in ORS 466.540 to 466.590 and 466.900 shall prevent the director from taking any emergency removal or remedial action necessary to protect public health, safety, welfare or the environment.

(4) The director may require a person liable under ORS 466.567 to conduct any removal or remedial action or related actions necessary to protect the public health, safety, welfare and the environment. The director's action under this subsection may include but need not be limited to issuing an order specifying the removal or remedial action the person must take.

(5) The director may request the Attorney General to bring an action or proceeding for legal or equitable relief, in the circuit court of the county in which the facility is located or in Marion County, as may be necessary:

(a) To enforce an order issued under subsection (4) of this section; or

(b) To abate any imminent and substantial danger to the public health, safety, welfare or the environment related to a release.

(6) Notwithstanding any provision of ORS 183.310 to 183.550, and except as provided in subsection (7) of this section, any order issued by the director under subsection (4) of this section shall not be appealable to the commission or subject to judicial review.

(7)(a) Any person who receives and complies with the terms of an order issued under subsection (4) of this section may, within 60 days after completion of the required action, petition the director for reimbursement from the fund for the reasonable costs of such action.

(b) If the director refuses to grant all or part of the reimbursement, the petitioner may, within 30 days of receipt of the director's refusal, file an action against the director seeking reimbursement from the fund in the circuit court of the county in which the facility is located or in the Circuit Court of Marion County. To obtain reimbursement, the petitioner must establish by a preponderance of the evidence that the petitioner is not liable under ORS 466.567 and that costs for which the petitioner seeks reimbursement are reasonable in light of the action required by the relevant order. A petitioner who is liable under ORS 466.567 may also recover reasonable remedial action costs to the extent that the petitioner can demonstrate that the director's decision in selecting the removal or remedial action ordered was arbitrary and capricious or otherwise not in accordance with law.

(8) If any person who is liable under ORS 466.567 fails without sufficient cause to conduct a removal or remedial action as required by an order of the director, the person shall be liable to the department for the state's remedial action costs and for punitive damages not to exceed three times the amount of the state's remedial action costs.

(9) Nothing in this section is intended to interfere with, limit or abridge the authority of the State Fire Marshal or any other state agency or local unit of government relating to an emergency that presents a combustion or explosion hazard. [1987 c.735 §11]

466.573 Standards for degree of cleanup required; exemption. (1)(a) Any

removal or remedial action performed under the provisions of ORS 466.540 to 466.590 and 466.900 shall attain a degree of cleanup of the hazardous substance and control of further release of the hazardous substance that assure protection of present and future public health, safety, welfare and of the environment.

(b) To the maximum extent practicable, the director shall select a remedial action that is protective of human health and the environment, that is cost effective, and that uses permanent solutions and alternative treatment technologies or resource recovery technologies.

(2) Except as provided in subsection (3) of this section, the director may exempt the onsite portion of any removal or remedial action conducted under ORS 466.540 to 466.590 and 466.900 from any requirement of ORS 466.005 to 466.385 and ORS chapter 459 or 468.

(3) Notwithstanding any provision of subsection (2) of this section, any onsite treatment, storage or disposal of a hazardous substance shall comply with the standard established under subsection (1) of this section. [1987 c.735 §12]

466.575 Notice of cleanup action; receipt and consideration of comment; notice of approval. Except as provided in ORS 466.570 (3), before approval of any remedial action to be undertaken by the department or any other person, or adoption of a certification decision under ORS 466.577, the department shall:

(1) Publish a notice and brief description of the proposed action in a local paper of general circulation and in the Secretary of State's Bulletin, and make copies of the proposal available to the public.

(2) Provide at least 30 days for submission of written comments regarding the proposed action, and, upon written request by 10 or more persons or by a group having 10 or more members, conduct a public meeting at or near the facility for the purpose of receiving verbal comment regarding the proposed action.

(3) Consider any written or verbal comments before approving the removal or remedial action.

(4) Upon final approval of the remedial action, publish notice, as provided under subsection (1) of this section, and make copies of the approved action available to the public. [1987 c.735 §13]

466.577 Agreement to perform removal or remedial action; reimbursement; agreement as order and consent decree; effect on liability. (1) The director, in the director's discretion, may enter into an agreement with any person including the owner operator of the facility from which a relea emanates, or any other potentially responsib person to perform any removal or remedial acti if the director determines that the actions will properly done by the person. Whenever practic ble and in the public interest, as determined the director, the director, in order to expedi effective removal or remedial actions and min mize litigation, shall act to facilitate agreemen under this section that are in the public intere and consistent with the rules adopted under OR 466.553. If the director decides not to use t procedures in this section, the director sha notify in writing potentially responsible parti at the facility of such decision. Notwithstandi ORS 183.310 to 183.550, a decision of the direct to use or not to use the procedures described this section shall not be appealable to the com mission or subject to judicial review.

(2)(a) An agreement under this section ma provide that the director will reimburse the pa ties to the agreement from the fund, with interes for certain costs of actions under the agreeme that the parties have agreed to perform and t director has agreed to finance. In any case which the director provides such reimburseme and, in the judgment of the director, cost recove is in the public interest, the director shall ma reasonable efforts to recover the amount of su reimbursement under ORS 466.540 to 466.5 and 466.900 or under other relevant authority.

(b) Notwithstanding ORS 183.310 183.550, the director's decision regarding fu financing under this subsection shall not appealable to the commission or subject to ju cial review.

(c) When a remedial action is comple under an agreement described in paragraph (a this subsection, the fund shall be subject to obligation for any subsequent remedial action the same facility but only to the extent that su subsequent remedial action is necessary by r son of the failure of the original remedial acti Such obligation shall be in a proportion equal but not exceeding, the proportion contributed the fund for the original remedial action. T fund's obligation for such future remedial act may be met through fund expenditures through payment, following settlement enforcement action, by persons who were signatories to the original agreement.

(3) If an agreement has been entered under this section, the director may take action under ORS 466.570 against any per who is not a party to the agreement, once

period for submitting a proposal under paragraph (c) of subsection (5) of this section has expired. Nothing in this section shall be construed to affect either of the following:

(a) The liability of any person under ORS 466.567 or 466.570 with respect to any costs or damages which are not included in the agreement.

(b) The authority of the director to maintain an action under ORS 466.540 to 466.590 and 466.900 against any person who is not a party to the agreement.

(4)(a) Whenever the director enters into an agreement under this section with any potentially responsible person with respect to remedial action, following approval of the agreement by the Attorney General and except as otherwise provided in the case of certain administrative settlements referred to in subsection (8) of this section, the agreement shall be entered in the appropriate circuit court as a consent decree. The director need not make any finding regarding an imminent and substantial endangerment to the public health, safety, welfare or the environment in connection with any such agreement or consent decree.

(b) The entry of any consent decree under this subsection shall not be construed to be an acknowledgment by the parties that the release concerned constitutes an imminent and substantial endangerment to the public health, safety, welfare or the environment. Except as otherwise provided in the Oregon Evidence Code, the participation by any party in the process under this section shall not be considered an admission of liability for any purpose, and the fact of such participation shall not be admissible in any judicial or administrative proceeding, including a subsequent proceeding under this section.

(c) The director may fashion a consent decree so that the entering of the decree and compliance with the decree or with any determination or agreement made under this section shall not be considered an admission of liability for any purpose.

(d) The director shall provide notice and opportunity to the public and to persons not named as parties to the agreement to comment on the proposed agreement before its submittal to the court as a proposed consent decree, as provided under ORS 466.575. The director shall consider any written comments, views or allegations relating to the proposed agreement. The director or any party may withdraw, withhold or modify its consent to the proposed agreement if the comments, views and allegations concerning the agreement disclose facts or considerations which indicate that the proposed agreement is inappropriate, improper or inadequate.

(5)(a) If the director determines that a period of negotiation under this subsection would facilitate an agreement with potentially responsible persons for taking removal or remedial action and would expedite removal or remedial action, the director shall so notify all such parties and shall provide them with the following information to the extent the information is available:

(A) The names and addresses of potentially responsible persons including owners and operators and other persons referred to in ORS 466.567.

(B) The volume and nature of substances contributed by each potentially responsible person identified at the facility.

(C) A ranking by volume of the substances at the facility.

(b) The director shall make the information referred to in paragraph (a) of this subsection available in advance of notice under this subsection upon the request of a potentially responsible person in accordance with procedures provided by the director. The provisions of ORS 466.565 (5) regarding confidential information apply to information provided under paragraph (a) of this subsection.

(c) Any person receiving notice under paragraph (a) of this subsection shall have 60 days from the date of receipt of the notice to submit to the director a proposal for undertaking or financing the action under ORS 466.570. The director may grant extensions for up to an additional 60 days.

(6)(a) Any person may seek contribution from any other person who is liable or potentially liable under ORS 466.567. In resolving contribution claims, the court may allocate remedial action costs among liable parties using such equitable factors as the court determines are appropriate.

(b) A person who has resolved its liability to the state in an administrative or judicially approved settlement shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially responsible persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

(c)(A) If the state has obtained less than complete relief from a person who has resolved its liability to the state in an administrative or

judicially approved settlement, the director may bring an action against any person who has not so resolved its liability.

(B) A person who has resolved its liability to the state for some or all of a removal or remedial action or for some or all of the costs of such action in an administrative or judicially approved settlement may seek contribution from any person who is not party to a settlement referred to in paragraph (b) of this subsection.

(C) In any action under this paragraph, the rights of any person who has resolved its liability to the state shall be subordinate to the rights of the state.

(7)(a) In entering an agreement under this section, the director may provide any person subject to the agreement with a covenant not to sue concerning any liability to the State of Oregon under ORS 466.540 to 466.590 and 466.900, including future liability, resulting from a release of a hazardous substance addressed by the agreement if each of the following conditions is met:

(A) The covenant not to sue is in the public interest.

(B) The covenant not to sue would expedite removal or remedial action consistent with rules adopted by the commission under ORS 466.553 (2).

(C) The person is in full compliance with a consent decree under paragraph (a) of subsection (4) of this section for response to the release concerned.

(D) The removal or remedial action has been approved by the director.

(b) The director shall provide a person with a covenant not to sue with respect to future liability to the State of Oregon under ORS 466.540 to 466.590 and 466.900 for a future release of a hazardous substance from a facility, and a person provided such covenant not to sue shall not be liable to the State of Oregon under ORS 466.567 with respect to such release at a future time, for the portion of the remedial action:

(A) That involves the transport and secure disposition offsite of a hazardous substance in a treatment, storage or disposal facility meeting the requirements of section 3004(c) to (g), (m), (o), (p), (u) and (v) and 3005(c) of the federal Solid Waste Disposal Act, as amended, P.L. 96-482 and P.L. 98-616, if the director has rejected a proposed remedial action that is consistent with rules adopted by the commission under ORS 466.553 that does not include such offsite disposition and has thereafter required offsite disposition; or

(B) That involves the treatment of a ardous substance so as to destroy, eliminat permanently immobilize the hazardous cons ents of the substance, so that, in the judgme the director, the substance no longer presents current or currently foreseeable future signifi risk to public health, safety, welfare or environment, no by-product of the treatme destruction process presents any significant ard to public health, safety, welfare or environment, and all by-products are themse treated, destroyed or contained in a manner assures that the by-products do not present current or currently foreseeable future signifi risk to public health, safety, welfare or environment.

(c) A covenant not to sue concerning fu liability to the State of Oregon shall not effect until the director certifies that the rem or remedial action has been completed in ac ance with the requirements of subsection (1 this section at the facility that is the subje the covenant.

(d) In assessing the appropriateness covenant not to sue under paragraph (a) o subsection and any condition to be include covenant not to sue under paragraph (a) or this subsection, the director shall con whether the covenant or conditions are i public interest on the basis of factors such a following:

(A) The effectiveness and reliability o remedial action, in light of the other altern remedial actions considered for the facility cerned.

(B) The nature of the risks remaining facility.

(C) The extent to which performance dards are included in the order or decree.

(D) The extent to which the remov remedial action provides a complete reme the facility, including a reduction in the ardous nature of the substances at the facil

(E) The extent to which the technolog in the removal or remedial action is demons to be effective.

(F) Whether the fund or other sour funding would be available for any addi removal or remedial action that might even be necessary at the facility.

(G) Whether the removal or remedial will be carried out, in whole or in significan by the responsible parties themselves.

(e) Any covenant not to sue under thi section shall be subject to the satisfactor

formance by such party of its obligations under the agreement concerned.

(f)(A) Except for the portion of the removal or remedial action that is subject to a covenant not to sue under paragraph (b) of this subsection or de minimis settlement under subsection (8) of this section, a covenant not to sue a person concerning future liability to the State of Oregon:

(i) Shall include an exception to the covenant that allows the director to sue the person concerning future liability resulting from the release or threatened release that is the subject of the covenant if the liability arises out of conditions unknown at the time the director certifies under subsection (10) of this section that the removal or remedial action has been completed at the facility concerned; and

(ii) May include an exception to the covenant that allows the director to sue the person concerning future liability resulting from failure of the remedial action.

(B) In extraordinary circumstances, the director may determine, after assessment of relevant factors such as those referred to in paragraph (d) of this subsection and volume, toxicity, mobility, strength of evidence, ability to pay, litigative risks, public interest considerations, precedential value and the inequities and aggravating factors, not to include the exception referred to in subparagraph (A) of paragraph (f) of this subsection if other terms, conditions or requirements of the agreement containing the covenant not to sue are sufficient to provide all reasonable assurances that public health, safety, welfare and the environment will be protected from any future release at or from the facility.

(C) The director may include any provisions allowing future enforcement action under ORS 466.570 that in the discretion of the director are necessary and appropriate to assure protection of public health, safety, welfare and the environment.

(8)(a) Whenever practicable and in the public interest, as determined by the director, the director shall as promptly as possible reach a final settlement with a potentially responsible person in an administrative or civil action under ORS 466.567 if such settlement involves only a minor portion of the remedial action costs at the facility concerned and, in the judgment of the director, both of the following are minimal in comparison to any other hazardous substance at the facility:

(A) The amount of the hazardous substance contributed by that person to the facility; and

(B) The toxic or other hazardous effects of the substance contributed by that person to the facility.

(b) The director may provide a covenant not to sue with respect to the facility concerned to any party who has entered into a settlement under this subsection unless such a covenant would be inconsistent with the public interest as determined under subsection (7) of this section.

(c) The director shall reach any such settlement or grant a covenant not to sue as soon as possible after the director has available the information necessary to reach a settlement or grant a covenant not to sue.

(d) A settlement under this subsection shall be entered as a consent decree or embodied in an administrative order setting forth the terms of the settlement. The circuit court for the county in which the release or threatened release occurs or the Circuit Court of Marion County may enforce any such administrative order.

(e) A party who has resolved its liability to the state under this subsection shall not be liable for claims for contribution regarding matters addressed in the settlement. The settlement does not discharge any of the other potentially responsible persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

(f) Nothing in this subsection shall be construed to affect the authority of the director to reach settlements with other potentially responsible persons under ORS 466.540 to 466.590 and 466.900.

(9)(a) Notwithstanding ORS 183.310 to 183.550, except for those covenants required under subparagraphs (A) and (B) of paragraph (b) of subsection (7) of this section, a decision by the director to agree or not to agree to inclusion of any covenant not to sue in an agreement under this section shall not be appealable to the commission or subject to judicial review.

(b) Nothing in this section shall limit or otherwise affect the authority of any court to review, in the consent decree process under subsection (4) of this section, any covenant not to sue contained in an agreement under this section.

(10)(a) Upon completion of any removal or remedial action under an agreement under this section, or pursuant to an order under ORS 466.570, the party undertaking the removal or remedial action shall notify the department and request certification of completion. Within 90 days after receiving notice, the director shall determine by certification whether the removal or remedial action is completed in accordance with the applicable agreement or order.

(b) Before submitting a final certification decision to the court that approved the consent

decree, or before entering a final administrative order, the director shall provide to the public and to persons not named as parties to the agreement or order notice and opportunity to comment on the director's proposed certification decision, as provided under ORS 466.575.

(c) Any person aggrieved by the director's certification decision may seek judicial review of the certification decision by the court that approved the relevant consent decree or, in the case of an administrative order, in the circuit court for the county in which the facility is located or in Marion County. The decision of the director shall be upheld unless the person challenging the certification decision demonstrates that the decision was arbitrary and capricious, contrary to the provisions of ORS 466.540 to 466.590 and 466.900 or not supported by substantial evidence. The court shall apply a presumption in favor of the director's decision. The court may award attorney fees and costs to the prevailing party if the court finds the challenge or defense of the director's decision to have been frivolous. The court may assess against a party and award to the state, in addition to attorney fees and costs, an amount equal to the economic gain realized by the party if the court finds the only purpose of the party's challenge to the director's decision was delay for economic gain. [1987 c.735 §14]

466.580 State costs; payment; effect of failure to pay. (1) The department shall keep a record of the state's remedial action costs.

(2) Based on the record compiled by the department under subsection (1) of this section, the department *shall* require any person liable under ORS 466.567 or 466.570 to pay the amount of the state's remedial action costs and, if applicable, punitive damages.

(3) If the state's remedial action costs and punitive damages are not paid by the liable person to the department within 45 days after receipt of notice that such costs and damages are due and owing, the Attorney General, at the request of the director, *shall* bring an action in the name of the State of Oregon in a court of competent jurisdiction to recover the amount owed, plus reasonable legal expenses.

(4) All moneys received by the department under this section shall be deposited in the Hazardous Substance Remedial Action Fund established under ORS 466.590 if the moneys received pertain to a removal or remedial action taken at any facility. [1987 c.735 §15]

466.583 Costs as lien; enforcement of lien. (1) All of the state's remedial action costs, penalties and punitive damages for which a person is liable to the state under ORS 466.567, 466.570 or 466.900 shall constitute a lien upon any real and personal property owned by the person.

(2) At the department's discretion, the department may file a claim of lien on real property or a claim of lien on personal property. The department shall file a claim of lien on real property to be charged with a lien under this section with the recording officer of each county in which the real property is located and shall file a claim of lien on personal property to be charged with a lien under this section with the Secretary of State. The lien shall attach and become enforceable on the day of such filing. The lien claim shall contain:

(a) A statement of the demand;

(b) The name of the person against whose property the lien attaches;

(c) A description of the property charged with the lien sufficient for identification; and

(d) A statement of the failure of the person to conduct removal or remedial action and pay penalties and damages as required.

(3) The lien created by this section may be foreclosed by a suit on real and personal property in the circuit court in the manner provided by law for the foreclosure of other liens.

(4) Nothing in this section shall affect the right of the state to bring an action against any person to recover all costs and damages for which the person is liable under ORS 466.567, 466.570 or 466.900. [1987 c.735 §16]

466.585 Contractor liability. (1)(a) A person who is a contractor with respect to any release of a hazardous substance from a facility *shall* not be liable under ORS 466.540 to 466.590 and 466.900 or under any other state law to any person for injuries, costs, damages, expenses or other liability including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness or loss of or damage to property or economic loss that result from such release.

(b) Paragraph (a) of this subsection shall not apply if the release is caused by conduct of the contractor that is negligent, reckless, wilful or wanton misconduct or that constitutes intentional misconduct.

(c) Nothing in this subsection shall affect the liability of any other person under any warranty under federal, state or common law. Nothing in this subsection shall affect the liability of a

employer who is a contractor to any employe of such employer under any provision of law, including any provision of any law relating to workers' compensation.

(d) A state employe or an employe of a political subdivision who provides services relating to a removal or remedial action while acting within the scope of the person's authority as a governmental employe shall have the same exemption from liability subject to the other provisions of this section, as is provided to the contractor under this section.

(2)(a) The exclusion provided by ORS 466.567 (2)(c)(C) shall not be available to any potentially responsible party with respect to any costs or damages caused by any act or omission of a contractor.

(b) Except as provided in paragraph (d) of subsection (1) of this section and paragraph (a) of this subsection, nothing in this section shall affect the liability under ORS 466.540 to 466.590 and 466.900 or under any other federal or state law of any person, other than a contractor.

(c) Nothing in this section shall affect the plaintiff's burden of establishing liability under ORS 466.540 to 466.590 and 466.900.

(3)(a) The director may agree to hold harmless and indemnify any contractor meeting the requirements of this subsection against any liability, including the expenses of litigation or settlement, for negligence arising out of the contractor's performance in carrying out removal or remedial action activities under ORS 466.540 to 466.590 and 466.900, unless such liability was caused by conduct of the contractor which was grossly negligent, reckless, wilful or wanton misconduct, or which constituted intentional misconduct.

(b) This subsection shall apply only to a removal or remedial action carried out under written agreement with:

(A) The director;

(B) Any state agency; or

(C) Any potentially responsible party carrying out any agreement under ORS 466.570 or 466.577.

(c) For purposes of ORS 466.540 to 466.590 and 466.900, amounts expended from the fund for indemnification of any contractor shall be considered remedial action costs.

(d) An indemnification agreement may be provided under this subsection only if the director determines that each of the following requirements are met:

(A) The liability covered by the indemnification agreement exceeds or is not covered by insurance available, at a fair and reasonable price, to the contractor at the time the contractor enters into the contract to provide removal or remedial action, and adequate insurance to cover such liability is not generally available at the time the contract is entered into.

(B) The contractor has made diligent efforts to obtain insurance coverage.

(C) In the case of a contract covering more than one facility, the contractor agrees to continue to make diligent efforts to obtain insurance coverage each time the contractor begins work under the contract at a new facility.

(4)(a) Indemnification under this subsection shall apply only to a contractor liability which results from a release of any hazardous substance if the release arises out of removal or remedial action activities.

(b) An indemnification agreement under this subsection shall include deductibles and shall place limits on the amount of indemnification to be made available.

(c)(A) In deciding whether to enter into an indemnification agreement with a contractor carrying out a written contract or agreement with any potentially responsible party, the director shall determine an amount which the potentially responsible party is able to indemnify the contractor. The director may enter into an indemnification agreement only if the director determines that the amount of indemnification available from the potentially responsible party is inadequate to cover any reasonable potential liability of the contractor arising out of the contractor's negligence in performing the contract or agreement with the party. In making the determinations required under this subparagraph related to the amount and the adequacy of the amount, the director shall take into account the total net assets and resources of the potentially responsible party with respect to the facility at the time the director makes the determinations.

(B) The director may pay a claim under an indemnification agreement referred to in subparagraph (A) of this paragraph for the amount determined under subparagraph (A) of this paragraph only if the contractor has exhausted all administrative, judicial and common law claims for indemnification against all potentially responsible parties participating in the cleanup of the facility with respect to the liability of the contractor arising out of the contractor's negligence in performing the contract or agreement with the parties. The indemnification agreement

shall require the contractor to pay any deductible established under paragraph (b) of this subsection before the contractor may recover any amount from the potentially responsible party or under the indemnification agreement.

(d) No owner or operator of a facility regulated under the federal Solid Waste Disposal Act, as amended, P.L. 96-482 and P.L. 98-616, may be indemnified under this subsection with respect to such facility.

(e) For the purposes of ORS 466.567, any amounts expended under this section for indemnification of any person who is a contractor with respect to any release shall be considered a remedial action cost incurred by the state with respect to the release.

(5) The exemption provided under subsection (1) of this section and the authority of the director to offer indemnification under subsection (3) of this section shall not apply to any person liable under ORS 466.567 with respect to the release or threatened release concerned if the person would be covered by the provisions even if the person had not carried out any actions referred to in subsection (6) of this section.

(6) As used in this section:

(a) "Contract" means any written contract or agreement to provide any removal or remedial action under ORS 466.540 to 466.590 and 466.900 at a facility, or any removal under ORS 466.540 to 466.590 and 466.900, with respect to any release of a hazardous substance from the facility or to provide any evaluation, planning, engineering, surveying and mapping, design, construction, equipment or any ancillary services thereto for such facility, that is entered into by a contractor as defined in subparagraph (A) of paragraph (b) of this subsection with:

(A) The director;

(B) Any state agency; or

(C) Any potentially responsible party carrying out an agreement under ORS 466.570 or 466.577.

(b) "Contractor" means:

(A) Any person who enters into a removal or remedial action contract with respect to any release of a hazardous substance from a facility and is carrying out such contract; and

(B) Any person who is retained or hired by a person described in subparagraph (A) of this paragraph to provide any services relating to a removal or remedial action.

(c) "Insurance" means liability insurance that is fair and reasonably priced, as determined by the director, and that is made available at th time the contractor enters into the removal remedial action contract to provide removal remedial action. [1987 c.735 §17]

466.587 Monthly fee of operator Beginning on July 1, 1987, every person wh operates a facility for the purpose of disposing hazardous waste or PCB that is subject to interi status or a license issued under ORS 466.005 466.385 and 466.890 shall pay a monthly haz ardous waste management fee by the 45th da after the last day of each month in the amount $20 per ton of hazardous waste or PCB brough into the facility for treatment by incinerator for disposal by landfill at the facility. [1987 c.7 §18]

466.590 Hazardous Substanc Remedial Action Fund; sources; uses. (The Hazardous Substance Remedial Action Fun is established separate and distinct from th General Fund in the State Treasury.

(2) The following shall be deposited into th State Treasury and credited to the Hazardo Substance Remedial Action Fund:

(a) Fees received by the department und ORS 466.587.

(b) Moneys recovered or otherwise receiv from responsible parties for remedial acti costs.

(c) Any penalty, fine or punitive dama recovered under ORS 466.567, 466.570, 466.5 or 466.900.

(3) The State Treasurer may invest and re vest moneys in the Hazardous Substan Remedial Action Fund in the manner provided law.

(4) The moneys in the Hazardous Substa Remedial Action Fund are appropriated conti ously to the department to be used as provided subsection (5) of this section.

(5) Moneys in the Hazardous Substa Remedial Action Fund may be used for the lowing purposes:

(a) Payment of the state's remedial act costs;

(b) Funding any action or activity author by ORS 466.540 to 466.590 and 466.900; and

(c) Providing the state cost share fo removal or remedial action, as required by sec 104(c)(3) of the federal Comprehensive Envi mental Response, Compensation and Liab Act, P.L. 96-510 and as amended by P.L. 99- [1987 c.735 §19]

Attachment VIII
EQC Agenda Item I
November 4, 1988

Subpart F -- Release Response and Corrective Action for UST Systems Containing Petroleum or Hazardous Substances

§ 280.60 General.

Owners and operators of petroleum or hazardous substance UST systems must, in response to a confirmed release from the UST system, comply with the requirements of this subpart except for USTs excluded under § 280.10(b) and UST systems subject to RCRA Subtitle C corrective action requirements under section 3004(u) of the Resource Conservation and Recovery Act, as amended.

§ 280.61 Initial response.

Upon confirmation of a release in accordance with § 280.52 or after a release from the UST system is identified in any other manner, owners and operators must perform the following initial response actions within 24 hours of a release or within another reasonable period of time determined by the implementing agency:

(a) Report the release to the implementing agency (e.g., by telephone or electronic mail);

(b) Take immediate action to prevent any further release of the regulated substance into the environment; and

(c) Identify and mitigate fire, explosion, and vapor hazards.

§ 280.62 Initial abatement measures and site check.

(a) Unless directed to do otherwise by the implementing agency, owners and operators must perform the following abatement measures:

(1) Remove as much of the regulated substance from the UST system as is necessary to prevent further release to the environment;

(2) Visually inspect any aboveground releases or exposed belowground releases and prevent further migration of the released substance into surrounding soils and ground water;

(3) Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the UST excavation zone and entered into subsurface structures (such as sewers or basements);

(4) Remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement, or corrective action activities. If these remedies include treatment or disposal of soils, the owner and operator must comply with applicable state and local requirements;

(5) Measure for the presence of a release where contamination is most likely to be present at the UST site, unless the presence and source of the release have been confirmed in accordance with the site check required by § 280.52(b) or the closure site assessment of § 280.72(a). In selecting sample types, sample locations, and measurement methods, the owner and operator must consider the nature of the stored substance, the type of backfill, depth to ground water and other factors as appropriate for identifying the presence and source of the release; and

(6) Investigate to determine the possible presence of free product, and begin free product removal as soon as practicable and in accordance with § 280.64.

(b) Within 20 days after release confirmation, or within another reasonable period of time determined by the implementing agency, owners and operators must submit a report to the implementing agency summarizing the initial abatement steps taken under paragraph (a) and any resulting information or data.

§ 280.63 Initial site characterization.

(a) Unless directed to do otherwise by the implementing agency, owners and operators must assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures in § 280.60 and § 280.61. This information must include, but is not necessarily limited to the following:

(1) Data on the nature and estimated quantity of release;

(2) Data from available sources and/or site investigations concerning the following factors: surrounding populations, water quality, use and approximate locations of wells potentially affected by the release, subsurface soil conditions, locations of subsurface sewers, climatological conditions, and land use;

(3) Results of the site check required under § 280.62(a)(5); and

(4) Results of the free product investigations required under § 280.62(a)(6), to be used by owners and operators to determine whether free product must be recovered under § 280.64.

(b) Within 45 days of release confirmation or another reasonable period of time determined by the implementing agency, owners and operators must submit the information collected in compliance with paragraph (a) of this section to the implementing agency in a manner that demonstrates its applicability and technical adequacy, or in a format and according to the schedule required by the implementing agency.

§ 280.64 Free product removal.

At sites where investigations under § 280.62(a)(6) indicate the presence of free product, owners and operators must remove free product to the maximum extent practicable as determined by the implementing agency while continuing, as necessary, any actions initiated under §§ 280.61 through 280.63, or preparing for actions required under §§ 280.65 through 280.66. In meeting the requirements of this section, owners and operators must:

(a) Conduct free product removal in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site, and that properly treats, discharges or disposes of recovery byproducts in compliance with applicable local, state and federal regulations;

(b) Use abatement of free product migration as a minimum objective for the design of the free product removal system;

(c) Handle any flammable products in a safe and competent manner to prevent fires or explosions; and

(d) Unless directed to do otherwise by the implementing agency, prepare and submit to the implementing agency, within 45 days after confirming a release, a free product removal report that provides at least the following information:

(1) The name of the person(s) responsible for implementing the free product removal measures;

(2) The estimated quantity, type, and thickness of free product observed or measured in wells, boreholes, and excavations;

(3) The type of free product recovery system used;

(4) Whether any discharge will take place on-site or off-site during the recovery operation and where this discharge will be located;

(5) The type of treatment applied to, and the effluent quality expected from, any discharge;

(6) The steps that have been or are being taken to obtain necessary permits for any discharge; and

(7) The disposition of the recovered free product.

§ 280.65 Investigations for soil and ground-water cleanup.

(a) In order to determine the full extent and location of soils contaminated by the release and the presence and concentrations of dissolved product contamination in the ground water, owners and operators must conduct investigations of the release, the release site, and the surrounding area possibly affected by the release if any of the following conditions exist:

(1) There is evidence that ground-water wells have been affected by the release (e.g., as found during release confirmation or previous corrective action measures);

(2) Free product is found to need recovery in compliance with § 280.64;

(3) There is evidence that contaminated soils may be in contact with ground water (e.g., as found during conduct of the initial response measures or investigations required under §§ 280.60 through 280.64); and

(4) The implementing agency requests an investigation, based on the potential effects of contaminated soil or ground water on nearby surface water and ground-water resources.

(b) Owners and operators must submit the information collected under paragraph (a) of this section as soon as practicable or in accordance with a schedule established by the implementing agency.

§ 280.66 Corrective action plan.

(a) At any point after reviewing the information submitted in compliance with § 280.61 through § 280.63, the implementing agency may require owners and operators to submit additional information or to develop and submit a corrective action plan for responding to contaminated soils and ground water. If a plan is required, owners and operators must submit the plan according to a schedule and format established by the implementing agency. Alternatively, owners and operators may, after fulfilling the requirements of § 280.61 through § 280.63, choose to submit a corrective action plan for responding to contaminated soil and ground water. In either case, owners and operators are responsible for submitting a plan that provides for adequate protection of human health and the environment as determined by the implementing agency, and must modify their plan as necessary to meet this standard.

(b) The implementing agency will approve the corrective action plan only after ensuring that implementation of the plan will adequately protect human health, safety, and the environment. In making this determination, the implementing agency should consider the following factors as appropriate:

(1) The physical and chemical characteristics of the regulated substance, including its toxicity, persistence, and potential for migration;

(2) The hydrogeologic characteristics of the facility and the surrounding area;

(3) The proximity, quality, and current and future uses of nearby surface water and ground water;

(4) The potential effects of residual contamination on nearby surface water and ground water;

(5) An exposure assessment; and

(6) Any information assembled in compliance with this subpart.

(c) Upon approval of the corrective action plan or as directed by the implementing agency, owners and operators must implement the plan, including modifications to the plan made by the implementing agency. They must monitor, evaluate, and report the results of implementing the plan in accordance with a schedule and in a format established by the implementing agency.

(d) Owners and operators may, in the interest of minimizing environmental contamination and promoting more effective cleanup, begin cleanup of soil and ground water before the corrective action plan is approved provided that they:

(1) Notify the implementing agency of their intention to begin cleanup;

(2) Comply with any conditions imposed by the implementing agency, including halting cleanup or mitigating adverse consequences from cleanup activities; and

(3) Incorporate these self-initiated cleanup measures in the corrective action plan that is submitted to the implementing agency for approval.

§ 280.67 Public participation.

(a) For each confirmed release that requires a corrective action plan, the implementing agency must provide notice to the public by means designed to reach those members of the public directly affected by the release and the planned corrective action. This notice may include, but is not limited to, public notice in local newspapers, block advertisements, public service announcements, publication in a state register, letters to individual households, or personal contacts by field staff.

(b) The implementing agency must ensure that site release information and decisions concerning the corrective action plan are made available to the public for inspection upon request.

(c) Before approving a corrective action plan, the implementing agency may hold a public meeting to consider comments on the proposed corrective action plan if there is sufficient public interest, or for any other reason.

(d) The implementing agency must give public notice that complies with paragraph (a) above if implementation of an approved corrective action plan does not achieve the established cleanup levels in the plan and termination of that plan is under consideration by the implementing agency.

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR COMMISSION ACTION

Agenda Item K, November 4, 1988 EQC Meeting

Request for Approval of Changes in LRAPA Title 43, "Emission Standards for Hazardous Air Pollutants" and Adoption of LRAPA Title 34, "Air Contaminant Discharge Permits", as a Revision to the State Implementation Plan, OAR 340-20-047 (Asbestos Regulations)

SUMMATION

This agenda item proposes adoption of the Lane Regional Air Pollution Authority's (LRAPA) recently adopted asbestos regulations.

Following Commission delegation, the Department authorized LRAPA to conduct joint EQC/LRAPA hearings on the proposed changes to LRAPA titles 43 and 34 to bring LRAPA's rules into conformity with state and federal rules on asbestos.

These regulations have been found by the Department to be at least as stringent as, and consistent with corresponding Department regulations.

After holding hearings, the LRAPA Board of Directors adopted the new asbestos regulations, and LRAPA requested that the Commission approve the revisions to Title 43 and adopt the revisions to Title 34 as a revision to the State Implementation Plan (SIP).

LRAPA has requested approval of the Title 43 changes because they are not a part of the SIP, but contain standards that under ORS 468.535(2) must be approved by the Commission prior to LRAPA enforcement. LRAPA has requested adoption of the Title 34 changes because LRAPA Title 34 is a part of the SIP (OAR 340-20-047), and changes to the SIP must be adopted by the Commission as administrative rules.

The most reasonable alternative to be considered is that of approving the changes in LRAPA Title 43 and adopting the changes to LRAPA Title 34.

DIRECTOR'S RECOMMENDATION

It is recommended that the Commission approve the amendments to LRAPA Title 43 and adopt the amendments to LRAPA Title 34 as a revision to the SIP.

AP1632

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, November 4, 1988, EQC Meeting
Request for Approval of Changes in LRAPA Title 43, "Emission Standards for Hazardous Air Pollutants" and Adoption of LRAPA Title 34 "Air Contaminant Discharge Permits", as a Revision to the State Implementation Plan, OAR 340-20-047 (Asbestos Regulations)

BACKGROUND

The Lane Regional Air Pollution Authority (LRAPA) is responsible for regulating most air pollution sources in Lane County. Most, but not all of LRAPA's regulations are part of the State Implementation Plan (SIP). LRAPA is the only remaining regional air pollution authority in Oregon, and exercises the same air quality control functions that are vested in the Commission and Department, subject to Commission and Department overview. (ORS 468.535) At its October 24, 1986 meeting, the Commission authorized the Director to designate LRAPA to act as hearings officer for the EQC under the condition that the Department find the proposed LRAPA rules or plans to be at least as stringent as comparable State rules and plans. After receiving authorization from the Department to conduct a joint EQC/LRAPA rulemaking hearing, LRAPA adopts rule revisions, and submits them to the Department for presentation to the Commission.

At its November 1987 meeting, the Lane Regional Air Pollution Authority Board of Directors adopted Title 43, "Emission Standards for Hazardous Air Pollutants," which made substantive changes in the rules for asbestos abatement projects. At that time, the Commission was in the process of revising the state asbestos rules, including developing a fee schedule for asbestos abatement projects, and establishing legal authority for local agency fees. LRAPA elected to delay action on local fee amendments in Titles 43 and 34 until the state's rulemaking process was completed. At its April 29, 1988 meeting, the Commission adopted asbestos rules, including contractor certification and worker training, federal processing, demolition and disposal requirements and fee schedules.

A summary of LRAPA's title 34 and 43 rule changes are included in the staff report to LRAPA's Board of Directors (attachment 3). The changes in Titles 43 and 34 make LRAPA's rules equivalent to the most recent federal and state rules. These amendments are included as attachments 1 and 2. Highlighting

indicates new sections, and a line passing through the middle of the text indicates deleted sections. The most substantive change is adoption of the state fee schedule in Section 43-015-5. This schedule has been reviewed and approved by the LRAPA Advisory Committee. Other title 43 changes include new and clarified definitions, and addition of requirements for abatement projects. LRAPA has requested approval of the Title 43 changes because they are not a part of the SIP, but contain standards that under ORS 468.535(2) must be approved by the Commission prior to LRAPA enforcement.

The Title 34 amendments add National Emissions Standards for Hazardous Air Pollutants (NESHAPS) to the list of sources which require permits and fees. This change is identical to Department regulations in OAR 340-20-155, Table 1. Since LRAPA's Title 34 and OAR 340-20-155 are part of the SIP, this proposed adoption would revise the State Implementation Plan (SIP). LRAPA has requested adoption of the Title 34 changes because the SIP is an administrative rule (OAR 340-20-047) and can be amended only by commission adoption.

Rulemaking Process

Prior to authorizing a hearing, the Department reviewed the LRAPA rules for stringency and consistency with State rules. The Department recommended that the proposed LRAPA definition of "small scale asbestos abatement project" be broadened to include projects covered by corresponding DEQ regulations. LRAPA concurred with the Department's comments, made responsive changes in their rules, and was authorized to act as the EQC's hearings officer. On September 13, 1988, at its Board of Directors' meeting, LRAPA held a joint LRAPA/EQC rulemaking hearing and adopted its new asbestos regulations. The rulemaking statements are attachment 4, and the minutes of the Board of Director's meeting are included as attachment 5.

ALTERNATIVES AND EVALUATION

LRAPA has adopted new asbestos regulations as required by federal regulations. LRAPA has conformed its rules to corresponding Department rules to the Department's satisfaction, no substantive differences remain. Therefore, the most reasonable alternative available to the Commission would be to approve LRAPA's Title 43 amendments, and adopt LRAPA's Title 34 amendments as a revision to the SIP. Failure to approve Title 43 would prevent LRAPA from enforcing their new asbestos rules. Failure to adopt Title 34 could result in a deficiency in Oregon's SIP.

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

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From: Director

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DIRECTOR'S RECOMMENDATION

It is recommended that the Commission approve the LRAPA-adopted changes in Title 43 and adopt the changes in Title 34 as a revision to the SIP, OAR 340-20-047.

Fred Hansen

Attachments
1. LRAPA Rule: Title 43, "Emissions Standards for Hazardous Air Pollutants"
2. LRAPA Rule: Title 34, page 11 of Table A,"Air Contaminant Sources & Associated Fee Schedule"
3. LRAPA Staff Report
4. Rulemaking Statements
5. Minutes of Board Meeting, September 13, 1988

Sarah Armitage
229-5581
October 19, 1988
AP1632.1

PROPOSED AMENDMENTS
TITLE 43
September 13, 1988

LANE REGIONAL AIR POLLUTION AUTHORITY

TITLE 43

Emission Standards for Hazardous Air Pollutants

Section 43-001 Policy

The board finds and declares that certain air contaminants for which there is no ambient air standard may cause or contribute to an identifiable and significant increase in mortality or to an increase in serious irreversible or incapacitating reversible illness, and are therefore considered to be hazardous air contaminants.

Section 43-002 Hazardous Air Contaminants Listing and Applicability

1. Pursuant to Section 112 of the Federal Clean Air Act, the following air contaminants have been declared by the federal EPA to be hazardous:

   A. Asbestos

   B. Benzene

   C. Beryllium

   D. Coke Oven Emissions

   E. Inorganic Arsenic

   F. Mercury

   G. Radionuclides

   H. Vinyl Chloride

2. The Lane Regional Air Pollution Authority has been delegated responsibility by the federal EPA for administering standards for the following hazardous air contaminants:

   A. Asbestos

   B. Beryllium

   C. Mercury

   D. Radon from Underground Uranium Mines

Section 43-005 Definitions

The following definitions are relevant to this title. Additional general definitions can be found in Title 14.

1. "Asbestos" means the asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cumingtonite-grunerite (amosite), anthophyllite, actinolite and trimolite [~~actinolite, amosite, anthrophyllite, crysotile, crocidolite, or tremolite~~].

2. "Asbestos-containing waste material" means any waste which contains commercial asbestos and is generated by a source subject to the provisions of this subsection, including but not limited to asbestos mill tailings, control device asbestos waste, friable asbestos waste material, asbestos abatement project waste and bags or containers that previously contained commercial asbestos.

3. "Asbestos abatement project" means any demolition, renovation, repair, construction or maintenance activity of any public or private facility that involves the repair, enclosure, encapsulation, removal, salvage, handling or disposal of any material with the potential of releasing asbestos fibers from asbestos-containing material into the air. This does not include emergency fire fighting.

4. "Asbestos manufacturing operation" means the combining of commercial asbestos, or in the case of woven friction products, the combining of textiles containing commercial asbestos with any other material(s) including commercial asbestos, and the processing of this combination into a product as specified in Section 43-015.

5. "Asbestos-containing material" means asbestos or any material containing at least 1% asbestos by weight, including particulate asbestos material.

6. "Asbestos mill" means any facility engaged in the conversion or any intermediate step in the conversion of asbestos ore into commercial asbestos.

7. "Asbestos tailings" means any solid waste product of asbestos mining or milling operations which contains asbestos.

8. "Authority" means the Lane Regional Air Pollution Authority.

9. "Commercial asbestos" means any variety of asbestos which is produced by extracting asbestos from asbestos ore.

10. "Demolish" or "Demolition" means the wrecking or removal of any [~~boiler, duct, pipe, turbine, furnace, tank, reactor, decorative panel or~~] structural member of a facility, or any component thereof, [~~insulated, fireproofed, covered or coated with asbestos material or of any other thing containing friable asbestos~~] together with related handling operations.

11. "Department" means the Oregon Department of Environmental Quality.

12. "Director" means the Director of the Lane Regional Air Pollution Authority and authorized deputies or officers.

13. "Facility" means all or part of any public or private building, structure, installation, equipment, or vehicle or vessel including but not limited to ships.

14. "Friable asbestos material" means any asbestos-containing material that hand pressure can crumble, pulverize or reduce to powder when dry [~~easily crumbled or pulverized by hand, resulting in the release of particulate asbestos material. This definition shall include any friable asbestos debris~~].

15. "Full-scale asbestos abatement project" means any asbestos abatement project which is intended to prevent the release of asbestos fibers into the air and which is not classified as "small-scale asbestos abatement project" 43-005-20.

16. "Hazardous air contaminant" means any air contaminant considered by the Authority to cause or contribute to an identifiable and significant increase in mortality or to an increase in serious irreversible or incapacitating irreversible illness and for which no ambient air standard exists.

17. "HEPA filter" means a high-efficiency particulate air filter capable of filtering 0.3 micrometer particles with 99.97 percent efficiency.

18. "Particulate asbestos material" means any finely divided particles of asbestos material.

19. "Renovate" or "Renovation" means altering in any way one or more facility components. Operations in which load-supporting structural members are wrecked or removed are excluded. [~~the removing or stripping of friable asbestos material used to insulate, fireproof, cover or coat any pipe, duct, boiler, tank, reactor, turbine, furnace, decorative panel, structural member or any component thereof, or any other thing.~~

20. "Small-scale asbestos abatement project" means any short-duration asbestos abatement project as defined in 21, below, or other proceedings which are intended to prevent the release of asbestos fibers into the air and which:

    A. Remove, encapsulate, repair or maintain less than 40 linear feet or 80 square feet of asbestos-containing material;

    B. Does not subdivide an otherwise full-scale asbestos abatement project into smaller-sized units in order to avoid the requirements of these rules;

C. Utilize all practical worker isolation techniques and other control measures; and

D. Do not result in worker exposure to an airborne concentration of asbestos in excess of 0.1 fibers per cubic centimeter of air calculated as an eight (8) hour time-weighted average.

21. "Small-scale, short-duration renovating and maintenance activity" means a task for which the removal of asbestos is not the primary objective of the job, including, but not limited to:

A. Removal of asbestos-containing insulation on pipes;

B. Removal of asbestos-containing insulation on beams or above ceilings;

C. Replacement of an asbestos-containing gasket on a valve;

D. Installation or removal of a small section of drywall; or

E. Installation of electrical conduits through or proximate to asbestos-containing materials.

These activities shall be limited to no more than forth (40) linear feet or eighty (80) square feet of asbestos-containing materials. An activity that would otherwise qualify as a full-scale abatement project shall not be subdivided into smaller units in order to avoid the requirements of these rules.

22. "Startup" means commencement of operation of a new or modified source resulting in release of contaminants to the ambient air.

23. "Structural member" means any load-supporting member, such as beams and load-supporting walls, or any non-supporting member, such as ceilings and non-load-supporting walls.

Section 43-010 General Provisions

1. The provisions of these rules shall apply to any source which emits air contaminants for which a hazardous air contaminant standard is prescribed. Compliance with the provisions of these rules shall not relieve the source from compliance with other applicable rules of the Authority or with applicable provisions of the Oregon Clean Air Act Implementation Plan.

2. The following are requirements:

A. No [~~Any~~] person shall construct, install, establish, develop or operate [~~operating~~] any source of emissions subject to these rules without [~~shall~~] first obtaining an air contaminant discharge permit from the Authority. [~~register such source with the Authority following procedures established by ORS 468.320 and Title 34 of the Lane~~

~~Regional Air Pollution Authority Rules and Regulations. Such registration shall be accomplished within ninety (90) days following the effective date of those rules.~~]

B. After the effective date of these rules, no [~~any~~] person shall [~~constructing a new source or~~] modify[~~ing~~] any existing source so as to cause or increase emissions of contaminants subject to these rules without [~~shall~~] first obtaining a modified permit [~~written approval~~] from the Authority.

C. Any person subject to the provisions of these emission standards shall provide reports or report revisions as required in these rules.

3. All applications for construction or modification shall comply with the requirements of Titles 34 and 38 and the requirements of the standards set forth in these rules.

4. Notwithstanding the requirements of Title 34, any person owning or operating a new source of emissions subject to these emission standards shall furnish the Authority written notification as follows:

A. Notification of the anticipated date of startup of the source not more than sixty (60) days nor fewer than thirty (30) days prior to the anticipated date.

B. Notification of the actual startup date of the source within fifteen (15) days after the actual date.

5. Any person operating any existing source, or any new source for which a standard is prescribed in these rules which had an initial startup which preceded the effective date of these rules shall provide the following information to the Authority within ninety (90) days of the effective date of these rules:

A. Name and address of the owner or operator;

B. Location of the source.

C. A brief description of the source, including nature, size, design, method of operations, design capacity, and identification of emission points of hazardous contaminants.

D. The average weight per month of materials being processed by the source and percentage by weight of hazardous contaminant contained in the processed materials, including yearly information as available.

E. A description of existing control equipment for each emission point, including primary and secondary control devices and estimated control efficiency of each control device.

6. The following are requirements for source emission tests and ambient air monitoring:

   A. Emission tests and monitoring shall be conducted using methods set forth in 40 CFR, Part 61, Appendix B, as published in the Code of Federal Regulations last amended by the Federal Register June 1, 1987 [~~November 7, 1985~~]. The methods described in 40 CFR, Part 61, Appendix B are adopted by reference and made a part of these rules. Copies of these methods are on file at the Lane Regional Air Pollution Authority.

   B. At the request of the Authority, any source subject to standards set forth in these rules may be required to provide emission testing facilities as follows:

      (1) Sampling ports, safe sampling platforms, and access to sampling platforms adequate for test methods applicable to such source.

      (2) Utilities for sampling and testing equipment.

   C. Emission tests may be deferred if the Authority determines that the source is meeting the standard as proposed in these rules. If such a deferral of emission tests is requested, information supporting the request shall be submitted with the request for written approval of operation. Approval of a deferral of emission tests shall not in any way prohibit the Authority from canceling the deferral if further information indicates that such testing may be necessary to insure compliance with these rules.

Section 43-015 Emission Standards for Asbestos

1. There shall be no visible emissions to the outside air from any asbestos milling operations except as provided under subsection 7 of this section. For purposes of these rules, the presence of uncombined water in the emission plume shall not be cause for failure to meet the visible emission requirement. Outside storage of asbestos materials is not considered a part of an asbestos mill.

2. The surfacing of roadways or parking lots with asbestos tailings is prohibited, except for temporary roadways on an area of asbestos ore deposits. For purposes of these rules, the deposition of asbestos tailings on roadways or parking lots covered by snow or ice is considered surfacing.

3. There shall be no visible emissions to the outside air, except as provided in subsection 7 of this section, from any building or structure in which manufacturing operations utilizing asbestos are conducted, or directly from any such manufacturing operations if they are conducted outside buildings or structures. Visible emissions from boilers or other points not producing emissions directly from the manufacturing operation and

having no possible asbestos material in the exhaust gases shall not be considered for purposes of this rule. The presence of uncombined water in the exhaust plume shall not be cause for failure to meet the visible emission requirements. Manufacturing operations considered for purposes of these rules are as follows:

A. The manufacture of cloth, cord, wicks, tubing, tape, twine, rope, thread, yarn, roving, lap, or other textile materials;

B. The manufacture of fireproofing and insulating materials;

C. The manufacture of cement products;

D. The manufacture of friction products;

E. The manufacture of paper, millboard, and felt;

F. The manufacture of floor tile;

G. The manufacture of paints, coatings, caulks, adhesives, or sealants;

H. The manufacture of plastics and rubber materials;

I. The manufacture of chlorine;

J. The manufacture of shotgun shells;

K. The manufacture of asphaltic concrete;

L. Any other manufacturing operation which results or may result in the release of asbestos material to the ambient air.

4. All persons intending to conduct or provide for the conduct of an asbestos abatement project shall comply with the requirements set forth in 43-015-5, 6, 7. The following asbestos abatement projects are exempt from these requirements:

A. Asbestos abatement conducted in a private residence which is occupied by the owner and the owner-occupant performs the asbestos abatement.

B. Removal of vinyl asbestos floor tile that is not attached by asbestos-containing cement, exterior asbestos roofing shingles, exterior asbestos siding, asbestos-containing cement pipes and sheets, and other materials approved by the Authority, provided that the materials are not caused to become friable or to release asbestos fibers. Precautions taken to ensure that this exemption is maintained may include but are not limited to:

(1) Asbestos-containing materials are not sanded, or power sawn or drilled;

(2) Asbestos-containing materials are removed in the largest sections practicable and carefully lowered to the ground;

(3) Asbestos-containing materials are handled carefully to minimize breakage throughout removal, handling and transport to an authorized disposal site;

(4) Asbestos-containing materials are wetted prior to removal and during subsequent handling, to the extent practicable.

C. Removal of less than 0.5 square feet of friable asbestos-containing materials, provided that the removal of asbestos is not the primary objective and the following conditions are met:

(1) The generation of particulate asbestos material is minimized;

(2) No vacuuming or local exhaust ventilation and collection is conducted with equipment having a collection efficiency lower than that of a HEPA filter;

(3) All asbestos-containing waste materials shall be cleaned up using HEPA filters or wet methods;

(4) Asbestos-containing materials are wetted prior to removal and during subsequent handling, to the extent practicable;

(5) An asbestos abatement project shall not be subdivided into smaller-sized units in order to qualify for this exemption.

D. Removal of asbestos-containing materials which are sealed from the atmosphere by a rigid casing, provided that the casing is not broken or otherwise altered such that asbestos fibers could be released during removal, handling and transport to an authorized disposal site.

(Note: The requirements and jurisdiction of the State of Oregon Department of Insurance and Finance, Accident Prevention Division and any other state agency are not affected by these rules.)

5. Written notification of any asbestos abatement project shall be provided to the Authority on an Authority form. The notification must be submitted by the facility owner or operator or by the contractor, in accordance with one of the procedures specified in subsection A, B or C below, except as provided in subsections D, F and G below.

A. Submit the notifications as specified in subsection D below, and the project notification fee to the Authority at least ten days before beginning any asbestos abatement project.

(1) The project notification fee shall be:

(a) Twenty-five dollars ($25) for each small-scale asbestos abatement project.

(b) Fifty dollars ($50) for each project greater than a small-scale asbestos abatement project and less than 260 linear feet or 160 square feet.

(c) Two-hundred dollars ($200) for each project greater than 260 linear feet or 160 square feet, and less than 2600 linear feet or 1600 square feet.

(d) Five hundred dollars ($500) for each project greater than 2600 linear feet or 1600 square feet.

(2) Project notification fees shall be payable with the completed project notification form. No notification will be considered to have occurred until the notification fee is submitted.

(3) Notification of less than ten days is permitted in case of an emergency involving protection of life, health or property. Notification shall include the information contained in subsection D below and the date of the contract, if applicable. If original notification is provided by phone, written notification and the project notification fee shall be submitted within three (3) days after the start of the emergency abatement.

(4) The Authority must be notified prior to any changes in the scheduled starting or completion dates or other substantial changes, or the notification will be void.

B. For small-scale asbestos abatement projects conducted at one facility, the notification may be submitted as follows:

(1) Establish eligibility for use of this notification procedure with the Authority prior to use.

(2) Maintain on file with the Authority a general asbestos abatement plan. The plan shall contain the information specified in subsections D (1) through D (9) below, to the extent possible.

(3) Provide to the Authority a summary report of all small-scale asbestos abatement projects conducted at the facility in the previous three months, by the 15th day of the month following the end of each calendar quarter. The summary report shall include the information specified in subsections D (10) through D (13) below for each project, a description of any significant variations from the general asbestos abatement plan, and a description of asbestos abatement projects anticipated for the next quarter.

(4) Submit a project notification fee of two-hundred dollars per year ($200/year) prior to use of this notification procedure and annually thereafter while this procedure is in use.

(5) Failure to provide payment for use of this notification procedure shall void the general asbestos abatement plan, and each subsequent abatement project shall be individually assessed a project notification fee.

C. For small-scale asbestos abatement projects conducted by a contractor at one or more facilities, the notification may be submitted as follows:

(1) Establish eligibility for use of this procedure with the Authority prior to use.

(2) Maintain on file with the Authority a general asbestos abatement plan containing the information specified in subsections D (1) through D (7) to the extent possible.

(3) Provide to the Authority a monthly summary of all small-scale projects performed, by the 15th day of the following month, including the information specified in subsections D (8) through D (13) below and a description of any significant variations from the general asbestos abatement plan for each project.

(4) Provide to the Authority, upon request, a list of asbestos abatement projects which are scheduled or are being conducted at the time of the request; and

(5) Submit a notification fee of $25 per monthly summary prior to the use of this notification procedure.

(6) Failure to provide payment for use of this notification procedure shall void the general asbestos abatement plan, and each subsequent abatement project shall be individually assessed a project notification fee.

D. The following information shall be provided for each notification:

(1) Name and address of person intending to engage in asbestos abatement.

(2) Contractor's Oregon asbestos abatement license number, if applicable, and certification number of the supervisor for full-scale asbestos abatement or certification number of the trained worker for a project which does not have a certified supervisor.

(3) Method of asbestos abatement to be employed.

(4) Procedures to be employed to insure compliance with 43-015.

(5) Names, addresses and phone numbers of waste transporters.

(6) Name and address or location of the waste disposal site where the asbestos-containing waste material will be deposited.

(7) Description of asbestos disposal procedure.

(8) Description of building, structure, facility, installation, vehicle or vessel to be demolished or renovated, including address or location where the asbestos abatement project is to be accomplished.

(9) Facility owner's or operator's name, address and phone number.

(10) Scheduled starting and completion dates of asbestos abatement work.

(11) Description of the asbestos type, approximate asbestos content (percent) and location of the asbestos-containing material.

(12) Amount of asbestos to be abated; linear feet, square feet, thickness.

(13) Any other information requested on the Authority form.

E. No project notification fee shall be assessed for asbestos abatement projects conducted in the following residential buildings: site-built homes, modular homes constructed off site, condominium units, mobile homes, and duplexes or other multi-unit residential buildings consisting of four units or less. Project notification for a full-scale asbestos abatement project, as defined in 43-005-15, in any of these residential buildings shall otherwise be in accordance with subsection 5 A of this section. Project notification for a small-scale asbestos abatement project, as defined in 43-005-20, in any of these residential buildings is not required.

F. In addition to any other legal remedy available, the project notification fees specified in this section shall be increased by 50 percent when an asbestos abatement project is commenced without filing of a project notification and/or submittal of a notification fee.

G. The Director may waive part or all of a project notification fee. Requests for waiver of fees shall be made in writing to the Director, on a case-by-case basis, and be based upon financial hardship. Applicants for waivers must describe the reason for the request and certify financial hardship.

6. The following procedures shall be employed during an asbestos abatement project to prevent emissions of particulate asbestos material into the ambient air:

A. Remove friable asbestos materials before any wrecking or dismantling that would break up the materials or preclude access to the materials for subsequent removal. However, friable asbestos materials need not be removed before demolition if:

(1) They are on a facility component that is encased in concrete or other similar material; and

(2) These materials are adequately wetted whenever exposed during demolition.

B. Adequately wet friable asbestos materials when they are being removed. In renovation, maintenance, repair and construction operations, wetting that would unavoidably damage equipment is not required, if the owner or operator:

(1) Demonstrates to the Authority that wetting would unavoidably damage equipment; and

(2) Uses a local exhaust ventilation and collection system designed and operated to capture the particulate asbestos material produced by the asbestos abatement project.

C. When a facility component covered or coated with friable asbestos materials is being taken out of the facility as units or in sections:

(1) Adequately wet any friable asbestos materials exposed during cutting or disjointing operation; and

(2) Carefully lower the units or sections to ground level, not dropping them or throwing them.

D. For friable asbestos materials being removed or stripped:

(1) Adequately wet the materials to ensure that they remain wet until they are disposed of in accordance with 43-015-13; and

(2) Carefully lower the materials to the floor, not dropping or throwing them; and

(3) Transport the materials to the ground via dust-tight chutes or containers if they have been removed or stripped above ground level and were not removed as units or in sections.

E. The asbestos abatement project area shall be adequately cleaned at the conclusion of the project to assure removal of all asbestos debris.

F. While at the project site, all asbestos-containing waste shall be secured in a posted area or receptacle.

G. Ambient air sampling may be required in proximity to any asbestos removal project.

H. If a facility is being demolished under an order of the state or a local governmental agency, issued because the facility is structurally unsound and in danger of imminent collapse, the requirements of subsections A, B, C, D, E and I of this section shall not apply, provided that the portion of the facility that contains friable asbestos materials is adequately wetted during the wrecking operation.

I. None of the operations in subsections A through D of this section shall cause any visible emissions. Any local exhaust ventilation and collection system or other vacuuming equipment used during an asbestos abatement project shall be equipped with a HEPA filter or other filter of equal or greater collection efficiency.

J. Contractors licensed and workers certified to conduct only small-scale asbestos abatement projects under OAR 340-33 may use only those work practices and engineering controls specified by OAR 437 Appendix 83-G (Asbestos) (9/17/87), unless the Authority authorizes other methods on a case-by-case basis.

K. The Director may approve, on a case-by-case basis, requests to use an alternative to a specific worker or public health protection requirement provided by these rules for an asbestos abatement project. The contractor or facility owner or operator must submit in advance a written description of the alternative procedure which demonstrates, to the Director's satisfaction, that the proposed alternative procedure provides worker and public health protection equivalent to the protection that would be provided by the specific provision, or that such level of protection cannot be obtained for the asbestos abatement project.

7. Work practices and engineering controls employed for asbestos abatement projects by contractors and/or workers who are not otherwise subject to the requirements of the Oregon Department of Insurance and Finance, Accident Prevention Division, shall comply with the subsections of OAR Chapter 437, Division 83, which limit the release of asbestos-containing materials or exposure of other persons. As used in this subsection the term "employer" shall mean the operator of the asbestos abatement project, and the term "employee" shall mean any other person.

~~[4. All persons, including the owner or contractor, intending to demolish or renovate any building, structure, facility or installation, or any vehicle or vessel; or any portion thereof which contains any boiler, pipe, duct, tank, reactor, turbine, furnace or any component thereof~~

~~that is insulated, fireproofed, covered or coated with friable asbestos-containing material shall comply with the requirements set forth in this rule:~~

~~A. Notice of intention to demolish and/or renovate shall be provided to the Authority at least ten (10) days and no more than ninety (90) days prior to commencement of such activity, or at any time prior to commencement of such activity covered under subsection 4 C of this rule. Such notice shall include the following information:~~

~~(1) Name and address of person intending to engage in demolition and/or renovation.~~

~~(2) Description of building, structure, facility, installation, vehicle, or vessel to be demolished or renovated, including address or location where the activity is to be accomplished.~~

~~(3) Scheduled starting and completion dates of demolition and/or renovation.~~

~~(4) Method of demolition and/or renovation to be employed.~~

~~(5) Procedures to be employed to insure compliance with provisions of this rule.~~

~~(6) Name and address or location of the waste disposal site where the friable asbestos waste will be deposited.~~

~~(7) Name and address of owner of facility to be demolished or renovated.~~
~~(8) Volume of asbestos-containing material to be removed.~~

~~B. The following procedures shall be employed to prevent emissions of particulate asbestos-containing material into the ambient air:~~

~~(1) Friable asbestos-containing materials used to insulate, fireproof, cover or coat any boiler, pipe, duct or structural member shall be wetted and removed from any building, structure, facility, installation, or vehicle or vessel before demolition or renovation of structural members is commenced. Boilers, pipe, duct or structural members that are insulated, fireproofed, covered or coated with friable asbestos-containing materials may be removed as units or in sections without stripping or wetting, except that where the boiler, pipe, duct or structural member is cut or disjointed the exposed friable asbestos-containing material shall be wetted. Friable asbestos debris shall be wetted adequately to insure that such debris remains wet during all stages of demolition or renovation and related handling operations.~~

~~(2) No pipe, duct or structural member that is covered with asbestos-containing material shall be dropped or thrown to the ground from any building structure, facility, installation, vehicle, or vessel subject to this section, but shall be carefully lowered or taken to ground level in such a manner as to insure that no particulate asbestos-containing material is released to the ambient air.~~

~~(3) No friable asbestos-containing material shall be dropped or thrown to the ground from any building structure, facility, installation, vehicle, or vessel subject to this rule, or from any floor to any floor below. Any debris generated as a result of demolition occurring fifty (50) feet (15 meters) or greater above ground level shall be transported to the ground via dust-tight chutes or containers.~~

~~(4) For renovation operations, local exhaust ventilation and collection systems may be used, instead of wetting. These systems shall comply with Subsection 7 of this rule.~~

~~C. Any person intending to demolish or renovate a building, structure, facility, or installation subject to the provisions of this section, but which has been declared by proper state or local authorities to be structurally unsound and which is in danger of imminent collapse is exempt from the requirements of this section, other than the reporting requirements specified in subsection 4 A of this rule, and the wetting of friable asbestos debris as specified in paragraph 4 B (1) of this rule.~~

~~D. Sources located in cities or other areas of local jurisdiction having demolition/renovation regulations or ordinances no less stringent than those of this rule may be exempted from the provisions of this section. Such local ordinance or regulation must be filed with and approved by the Authority before an exemption from these rules may be issued. Any authority having such local jurisdiction shall annually submit to the Authority a list of all sources subject to this section operating within the local jurisdictional area and a list of those sources observed by the local authority during demolition operations.~~]

8. The following apply to spraying operations:

A. There shall be no visible emissions to the ambient air from any spray-on application of materials containing more than one (1) percent asbestos on a dry weight basis used to insulate or fireproof equipment or machinery, except as provided in subsection [~~part~~] 10 [~~7~~] of this section. Spray-on materials used to insulate or fireproof buildings, structures, pipes, and conduits shall contain less than one (1) percent asbestos on a dry weight basis. In the case of any city or area of local jurisdiction having ordinances or regulations for spray application materials more stringent than those in this section, the provisions of such ordinances or regulations shall apply.

B. Any person intending to spray asbestos materials to insulate, fireproof, cover or coat buildings, structures, pipes, conduits, equipment, or machinery shall report such intention to the Authority prior to the commencement of the spraying operation. Such report shall contain the following information:

(1) Name and address of person intending to conduct the spraying operation;

(2) Address or location of the spraying operation;

(3) Name and address of the owner of the facility being sprayed.

C. The spray-on application of materials in which the asbestos fibers are encapsulated with a bituminous or resinous binder during spraying and which are not friable after drying is exempted from the requirements of subsections 5, A and B of this rule.

9. Rather than meet the no visible emissions requirements of subsections 1, 2, and 4 of this section, owners and operators may elect to use methods specified in subsection 10 [7] of this section.

10. All persons electing to use air cleaning methods rather than comply with the no visible emission requirements must meet all provisions of this section:

A. Fabric filter collection devices must be used, except as provided in subsections B and C of this section. Such devices must be operated at a pressure drop of no more than four (4) inches (10 cm) water gauge as measured across the filter fabric. The air flow permeability, as determined by ASTM Method D737-69 must not exceed 30 $ft.^3/min./ft.^2$ (9 $m^3/min./m^2$) for woven fabrics or 35 $ft.^3/min./ft.^2$ (11 $m^3/min./m^2$) for felted fabrics with the exception that airflow permeability of 40 $ft.^3/min/ft.^2$ (12 $m^3/min./m^2$) for woven and 45 $ft.^3/min./ft.^2$ (14 $m^3/min./m^2$) for felted fabrics shall be allowed for filtering air emissions from asbestos ore dryers. Each square yard (square meter) of felted fabric must weigh at least 14 ounces (397 grams) and be at least one-sixteenth 1/16 inch (1.6 mm) thick throughout. Any synthetic fabrics used must not contain fill yarn other than that which is spun.

B. The Authority may authorize the use of wet collectors designed to operate with a unit contacting energy of at least forty (40) inches (100 cm) of water gauge pressure when the use of fabric filters creates a fire or explosion hazard, as determined by the local fire department.

C. The Authority may authorize the use of filtering equipment other than that described in subparts 7 A and B of this section if such filtering

equipment is satisfactorily demonstrated to provide filtering of asbestos-containing material equivalent to that of the described equipment.

D. All air cleaning devices authorized by this section must be properly installed, operated, and maintained. Devices to bypass the air cleaning equipment may be used only during upset and emergency conditions, and then only for such time as is necessary to shut down the operation generating the particulate asbestos-containing material.

E. All persons operating any existing source using air cleaning devices shall, within ninety (90) days of the effective date of these rules provide the following information to the Authority:

(1) A description of the emission control equipment used for each process.

(2) If a fabric is utilized, the following information shall be reported:

(a) The pressure drop across the fabric filter in inches water gauge and the airflow permeability in $ft.^3/min./ft.^2$ ($m^3/min./m^2$).

(b) For woven fabrics, indicate whether the fill yarn is spun or not spun.

(c) For felted fabrics, the density in $ounces/yard^3$ (gms/m^3) and the minimum thickness in inches (centimeters).

(3) If a wet collector is used the unit contact energy shall be reported in terms of inches of pressure, water gauge.

(4) All reported information shall accompany the information required in section 43-010.

11. No person using commercial asbestos shall cause to be discharged into the atmosphere any visible emissions except as provided in subsection 10 [~~7~~] of this section, from any fabricating operations including, but not limited to, the following:

A. The fabrication of cement building products.

B. The fabrication of friction products, except those operations that primarily install asbestos friction materials on motor vehicles.

C. The fabrication of cement or silicate board for ventilation hoods; ovens; electrical panels; laboratory furniture; bulkheads, partitions and ceilings for marine construction; and flow control devices for the molten metal industry.

12. Molded insulating materials which are friable and wet-applied insulating materials which are friable after drying, installed after the effective date of these regulations, shall contain no commercial asbestos. The provisions of this subsection do not apply to insulating materials which are spray applied; such materials are regulated under subsection 3 of this section.

13. The owner or operator of any source covered under the provisions of subsections 3, 4, ~~8~~ [5], or 11 [8] of this rule shall meet the following standards for waste disposal:

    A. There shall be no visible emissions to the outside air, except as provided in subsection 13 [~~10~~] C of the section, during the collection, transporting, or deposition of any asbestos-containing waste material which is generated by such source.

    B. All asbestos-containing waste material shall be disposed of at a disposal site authorized by the Oregon Department of Environmental Quality. [~~:~~] Records of disposal shall be maintained by the source for a minimum of three years and shall be made available, upon request, to the Authority. For an asbestos abatement project conducted by a contractor licensed under OAR 340-33-040, the records shall be retained by the licensed contractor. For any other asbestos abatement project, the records shall be retained by the facility owner.

        (1) Persons intending to dispose of asbestos-containing waste material shall notify the landfill operator of the type and volume of the waste material and obtain the approval of the landfill operator prior to bringing the waste to the disposal site.

        (2) All friable asbestos-containing waste material shall be stored and transported to the authorized disposal site in leak-tight containers such as plastic bags with a minimum of thickness of 6 mil. or fiber or metal drums. Vacuum trucks approved by the Authority may deliver asbestos-containing slurries directly to the authorized disposal site. Non-friable asbestos, such as asbestos cement siding, shall be covered when transported.

        (3) The waste transporter shall immediately notify the landfill operator upon arrival of the waste material at the disposal site. Off-loading of asbestos-containing waste shall be done under the direction and supervision of the landfill operator.

        (4) Off-loading of asbestos-containing waste material shall occur at the immediate location where the waste is to be buried. ~~The waste burial site shall be selected in an area of minimal work activity that is not subject to future excavation~~.

(5) Off-loading of asbestos-containing waste material shall be accomplished in a manner that prevents the leak-tight transfer containers from rupturing and prevents visible emissions to the air.

[~~(6) Immediately after asbestos-containing waste is deposited at the disposal site, it shall be covered with at least 2 feet of soil or other waste before compacting equipment runs over it. If other waste is used to cover the asbestos-containing material prior to compaction, the disposal area shall be covered with 1 foot of soil before the end of the operating day.~~]

[~~C. Rather than meet the requirements of this part, an owner or operator may elect to use an alternative disposal method which has received prior approval by the Authority in writing.~~]

C. [~~D.~~] All asbestos-containing waste material, except for exempt projects in 43-015-4-B and for the slurried type in an approved vacuum truck, shall be sealed into containers labeled with a warning label that states:

DANGER

Contains Asbestos Fibers

Avoid Creating Dust

Cancer and Lung Disease Hazard

Avoid Breathing Airborne Asbestos Fibers

[~~CAUTION~~

~~Contains Asbestos~~

~~Avoid Opening or Breaking Container~~

~~Breathing Asbestos is Hazardous~~

~~to Your Health~~]

Alternatively, warning labels specified by the U. S. EPA under 40 CFR 61.152(b)(1)(iv) may be used [~~Occupational Safety and Health Standards of the Department of Labor, Occupational Safety and Health Administration (OSHA) under 29 CFR 1910-93a(g)(2)(ii) may be used, or its Oregon State equivalent OAR 437-115-040(2)(b)~~].

14. The owner or operator of a DEQ-authorized asbestos-containing waste material disposal site shall meet the following requirements:

A. An asbestos-containing waste burial site shall be selected in an area of minimal work activity that is not subject to future excavation.

B. Asbestos-containing waste material deposited at the disposal site shall be covered with at least 2 feet of soil or 1 foot of soil and 1 foot of other waste before compacting equipment runs over it. This should be completed by the end of the operating day.

C. Rather than meet these requirements, an owner or operator may elect to use an alternative disposal method which has received prior approval by the Authority in writing.

15. [14] Open storage or open accumulation of friable asbestos-containing material or asbestos-containing waste material is prohibited.

16. Any waste which contains non-friable asbestos-containing material and which is not subject to subsection 13 of this rule shall be handled and disposed of using methods that will prevent the release of airborne asbestos-containing material.

Section 43-020 Emission Standard for Beryllium

The emission standard for Beryllium, 40 CFR, Part 61, Section 61.30 through 61.34 as last amended on November 7, 1985, is adopted by reference and made a part of these rules. A copy of this emission standard is on file at the Lane Regional Air Pollution Authority.

Section 43-025 Emission Standard for Beryllium Rocket Motor Firing

The emission standard for Beryllium Rocket Motor Firing, 40 CFR, Part 61, Section 61.40 through 61.44 as last amended on November 7, 1985, is adopted by reference and made a part of these rules. A copy of this emission standard is on file at the Lane Regional Air Pollution Authority.

Section 43-030 Emission Standard for Mercury

The emission standard for Mercury, 40 CFR, Part 61, Section 61.50 through 61.55 as last amended on November 7, 1985, is adopted by reference and made a part of these rules. A copy of this emission standard is on file at the Lane Regional Air Pollution Authority.

Section 43-035 Work Practice Standard for Radon 222 Emissions from Underground Uranium Mines

The work practice standard for Radon 222 Emissions from Active Underground Uranium Mines, 40 CFR, Part 61, Sections 61.20 through 61.28 as published in the Federal Register on April 17, 1985, is adopted by reference and made a part of these rules. The standard requires airtight bulkheads to prevent Radon 222 from escaping from abandoned parts of uranium mines that are extracting greater than 10,000 tons of ore per year, or will extract more than 100,000 tons of ore during the life of the mine.

TABLE A

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
70. Surface coating manufacturing			
a) Greater than 1 ton but less than 20 tons VOC per year	2500 & 3300	100	105
b) Greater than 20 tons but less than 100 tons VOC per year	2500 & 3300	120	255
c) Greater than 100 tons VOC per year	2500 & 3300	590	505
71. Flexographic or rotograveure printing over 60 tons VOC per year per plant	2751 & 1754	120	255
72. New sources of VOC not listed herein which have the capacity or are allowed to emit 10 or more tons per year VOC			
a) High cost		2,360	2,350
b) Medium cost		410	410
c) Low cost		180	175
73. Sources subject to federal NESHAPS rules under section 112 of the federal Clean Air Act (except demolition or renovation)		100	150
74. Sources of toxic air pollutants (not elsewhere classified)		250	300

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

Attachment 3
Agenda Item K
November 4, 1988
EQC Meeting

Agenda Item No. 7

LRAPA Board of Directors Meeting

September 13, 1988

TO: Board of Directors

FROM: Donald R. Arkell, Director

SUBJ: Staff Report and Recommendations on Proposed Changes in Title 43, "Emission Standards for Hazardous Air Pollutants" and Title 34, "Air Contaminant Discharge Permits"

BACKGROUND

At the November 1987 meeting, the board adopted Title 43, "Emission Standards for Hazardous Air Pollutants," which made substantive changes in the rules for asbestos abatement projects. At that time, the State of Oregon was in the process of revising the state asbestos rules, including developing a fee schedule for asbestos abatement projects, and establishing legal authority for local agency fees. We elected to delay action on local fees until the state's rulemaking process was completed. The state EQC has now completed rulemaking on its asbestos rules which include contractor certification and worker training, federal processing, demolition and disposal requirements and fee schedules.

DISCUSSION

The proposed changes in Title 43 would make LRAPA's rules equivalent to the most recent federal and state rules. The most substantive change occurs in Section 43-015-5 where a fee schedule is proposed. This schedule has been reviewed by the LRAPA Advisory Committee. In its review process, the committee identified the following goals to be met by a fee schedule:

1. To provide some cost recovery to the agency for the effort expended in the asbestos program;
2. To provide an equitable fee schedule;
3. To allow industries with numerous small projects to "cluster" the projects reducing their financial burden;
4. To not discourage small jobs from being reported.

The committee concluded that this schedule would meet all of these goals.

As part of the review process, the staff evaluated the most recent 6-months of asbestos notifications received by the authority. The results indicate that the program cost for the period was approximately $10,000. If the proposed fees had been in effect, the staff estimates that they would have produced $5,000 in revenue, providing a 50 percent cost recovery. For comparison, LRAPA recovers about 60 percent of the permit and inspection program from the permit fees for industrial operation. The rest of the proposed changes in Title 43 can generally be classified as "housekeeping", requiring only minor wording changes.

The proposed change in Title 34 would add sources of hazardous or toxic air pollutants to the list of air contaminant sources required to have air contaminant discharge permits. This is the first step in dealing with emissions of certain chemicals which are not now regulatled. The associated fees will provide for partial recovery of authority costs involved with these source categories..

These proposed rules have been submitted to the State of Oregon A-95 review process. The Oregon Department of Environmental Quality has reviewed

them, and their comments are attached. The staff concurs with their comments and is proposing to amend the rules to accommodate the changes. No other comments have been received to date. Upon further review of the proposed rules, the staff is proposing some additional minor changes to facilitate their implementation. These are delineated in the following summary of proposed changes.

Notice of the hearing has been published in the Eugene Register-Guard, the Cottage Grove Sentinel and the Springfield News.

SUMMARY OF PROPOSED RULE CHANGES

Title 43, Emission Standards for Hazardous Air Pollutants

43-005-1	Definition of "asbestos" made more complete
43-005-2	Definition of "Asbestos-containing waste materials"--minor clarification
43-005-3	New definition of "asbestos abatement project"
43-005-10	Definition of "demolish or demolition" made more concise
43-005-13	New definition of "facility"
43-005-14	Definition of "friable asbestos material" made more concise
43-005-15	New definition of "full-scale asbestos abatement project"
43-005-17	New definition of "HEPA filter"
43-005-19	Definition of "renovate or renovation" made more concise
43-005-20*	New definition of "small-scale asbestos abatement project" (modified to incorporate DEQ Comments)
43-005-21*	New definition to incorporate DEQ comments
43-005-22*	Numbering change

43-005-23*	Numbering change
43-010-2	Minor changes for clarification
43-010-3	Minor numbering changes
43-010-6	Minor change for update
43-015-4	Major rewrite to achieve conformity with state rules exempting owner-occupant work and very small projects from reporting requirements and fees
43-015-5	Requires written notification and establishes fee schedule
43-015-6	Requires procedures for conducting an abatement project
43-015-6 E, F & G*	Additional requirements needed to facilitate implementation
43-015-7	References applicable state rules for abatement projects
43-015-8	Minor numbering change
43-015-9	Minor numbering change
43-015-11	Minor number and wording change
43-015-13	Requires disposal record keeping, other minor wording and numbering changes
43-015-14*	Separate sub-section created to facilitate implementation
43-015-15*	Numbering change
43-015-16*	Numbering change

Title 34, Permits

Table A	Adds NESHAPS sources and toxic air pollutants to list requiring permit fees, in conformance with state rules

* Proposed additional changes to original rule draft

ALTERNATIVES

1. Do nothing. This would result in LRAPA rules being less stringent than federal and state rules and subject this area to probable federal and state corrective actions. There would continue to be no cost recovery to LRAPA for asbestos demolition/renovation project notifications. Sources of toxic and hazardous air contaminants would not require permits.

2. Adopt regulations without fees. This would also be less stringent than the state rules, since EQC has adopted a fee schedule. There would continue to be no cost recovery to LRAPA. Sources of toxic and hazardous air contaminants would require permits.

3. Adopt proposed rule changes and fee schedule. Rules would be consistent with federal and state rules. LRAPA would recover a portion of the cost of operating the asbestos program. Sources of toxic and hazardous air contaminants would require permits.

RECOMMENDATION

It is recommended that the Board of Directors adopt the proposed changes in Titles 34 and 43.

REJ/mjd

Attachment 4
Agenda Item K
November 4, 1988
EQC Meeting

STATEMENT OF NEED FOR PROPOSED RULE AMENDMENTS

Pursuant to ORS 183.335(2), the following statement provides information on the proposed action to amend Oregon's Revised State Implementation Plan (SIP) for Particulate Matter for the Eugene/Spsringfield Air Quality Maintenance Area.

Legal Authority

OAR 340-25, OAR 340-33, ORS 468.020, ORS 468.505, ORS 468.535, and the Federal Clean Air Act Amendments of 1977 (PL 95-95).

Need for Amendments

LRAPA is proposing to adopt amendments to Title 43, "Emission Standards for Hazardous Air Pollutants", with respect to asbestos, to include rules for contractor certification and worker training, federal requirements for notification, demolition and disposal, and fees. The need for rule amendments is to align LRAPA's srules with recently-adopted state regulations.

Together with the changes proposed for Title 43, it is also proposed to amend Table A of Title 34, "Air Contaminant Discharge Permits", to add NESHAP and other toxic air pollutants to the list of air contaminant sources required to have air contaminant discharge permits. The proposed changes to Title 34 will result in revision to the Oregon State Implementation Plan for the federal Clean Air Act.

Principal Documents Relied Upon

1. State of Oregon State Implementation Plan Revision, Eugene/Springfield AQMA
2. LRAPA Title 34, "Air Contaminant Discharge Permits", Amendment Draft
3. LRAPA Title 43, "Emission Standards for Hazardous Air Pollutants", Amendment Draft
4. LRAPA Staff Report to Board of Directors, July 12, 1988
5. Clean Air Act Amendments of 1977 (PL 95-95)
6. ORS 468, et. seq.
7. OAR 340-25
8. OAR 340-33

DRA/MJD
08/21/88

Attachment 5
Agenda Item K
November 4, 1988
EQC Meeting

MINUTES

LANE REGIONAL AIR POLLUTION AUTHORITY
BOARD OF DIRECTORS MEETING
TUESDAY--AUGUST 9, 1988
SPRINGFIELD CITY COUNCIL CHAMBERS

ATTENDANCE:

Board	Rich Gorman, Chair--City of Springfield; Rob Bennett--City of Eugene; Ellie Dumdi--Lane County; Betty Horvath--City of Cottage Grove; Ben Reed--City of Springfield; Emily Schue--City of Eugene (ABSENT: Debra Ehrman--City of Eugene)
Staff	Don Arkell--Director; Paul Willhite; Ralph Johnston; Marty Douglass; Merrie Dinteman
Advisory Committee	Kathryn Barry
Other	Dick Crabb, Brian Finneran, Jim Herlihy, Al Peroutka, John Replinger, Ron Richardson and Tom Schwetz

OPENING: Gorman called the meeting to order at 12:26 p.m.

MINUTES: MSP (Horvath/Schue)(unanimous) approval of minutes of the August meeting as submitted.

EXPENSE REPORT: MSP (Schue/Dumdi)(unanimous) approval of the expense and appropriations reports for August 1988 as presented.

PUBLIC PARTICIPATION: None

ADVISORY COMMITTEE: Kathryn Barry said there was nothing new to report, but the committee was to meet on Wednesday, September 14.

PUBLIC HEARING, EUGENE-SPRINGFIELD REQUEST FOR CHANGE IN ATTAINMENT STATUS FOR CARBON MONOXIDE: Arkell explained that the Lane Council of Governments developed a plan in 1978 to bring Eugene-Springfield into attainment with CO standards. The attainment deadline was December 1987. Sufficient data has been developed to demonstrate attainment with the standards, and it is now proposed to request a change in attainment status from EPA. Arkell said the area is allowed one exceedance of the standard per year, and Eugene-Springfield has exprienced only two exceedances in the past eight years. The plan to maintain compliance has two components: LRAPA's indirect source permit program to determine whether or not facilities will cause standard violations, including tracking of

maintenance in areas that are being developed; and the City of Eugene's Central Area Transportation Study (CATS) which was accepted by LRAPA as an approved parking and traffic circulation plan. The LCOG board is to consider this request at its meeting of September 22. The request will then be submitted to DEQ for approval by the EQC. This hearing is concurrent LRAPA/LCOG/ DEQ hearing, and the LRAPA board has been designated as hearings officer for both of the other entities. A joint LRAPA/LCOG resolution was submitted for LRAPA signatures if the request were approved.

Gorman opened the public hearing at 12:35 p.m.

Arkell submitted into the record affidavits of publication of hearing notice in Cottage Grove, Eugene and Springfield newspapers. There being no further testimony, Gorman closed the public hearing at 12:38 p.m.

Motion — MSP (Schue/Dumdi) approval of Resolution 88-8 requesting redesignation of Eugene-Springfield as an attainment area for carbon monoxide. Bennett abstained from the vote, since he had arrived late and did not feel he could make an informed decision on this issue.

PUBLIC HEARING, PROPOSED CHANGES IN LRAPA TITLES 34 AND 43 (ASBESTOS): Arkell submitted the proposed changes in LRAPA Titles 34 (Air Contaminant Discharge Permits) and 43 (Emission Standards for Hazardous Air Pollutants), stating that the goal of these and the state's rules and asbestos program is to assure the best possible protection to the public from airborne asbestos fibers. He said this concludes a process begun two years ago when legislation defined rules for asbestos handling and disposal. LRAPA proposed rules are the same as state rules, for now, to avoid confusion among contractors who deal with both DEQ and LRAPA. Arkell estimated cost recovery from the fees contained in the rule changes at 50 to 60 percent of the cost of administering the asbestos program. He added that the program is developing very quickly, and some changes will probably need to be made in the rules at a later date.

Gorman opened the public hearing at 12:46 p.m. Arkell submitted into the record affidavits of publication of hearing notice in Cottage Grove, Eugene and Springfield newspapers. There being no further testimony, the public hearing was closed at 12:47 p.m.

Motion — MSP (Dumdi/Horvath)(unanimous) adoption of amendments to LRAPA Titles 34 and 43.

UPDATE--FIELD BURNING PROGRAM 1988 (Brian Finneran, DEQ): Finneran said this summer has been a poor one for field burning, mostly because of poor burning conditions. He provided comparisons for mid-September of 1986, 1987 and 1988 in several areas:

	1986	1987	1988
Acres burned to date	175,000	160,000	85,000
Smoke impact hours in the Willamette Valley	35	53	35
Smoke impact in Eugene	0	7	0
Smoke impact in Springfield	3	12	5
Citizen complaints received	350	1400	2500

Finneran explained the practice of propaning, as opposed to open burning of fields, stating that DEQ has encouraged use of propaning technology wherever possible because it produces considerably less smoke. There are less restrictions on propaning, although last year regulations were passed allowing DEQ to prohibit propaning under certain conditions. Last year, propaning was prohibited on 3 or 4 days during the entire season. This year, it has already been prohibited ten days during the last month. Two research studies are being done on propaning this year. One is a computer modeling study to point out scenarios under which propaning should not take place, and the other is a survey of farmers to see what their costs are for propaning.

The off season is occupied with research and development. Much of their efforts have gone into looking at production of meadowfoam, which uses the same soils and equipment as grass seed and produces an oil which can be used as an industrial lubricant and in cosmetics. USDA has awarded $350,000 for a three-year project in Peoria, Illinois to determine the properties of meadowfoam oil and its applications to industry. Finneran said more effort must now go into getting production costs down and marketing the oil.

Straw utilization has been researched for a number of years. Possibilities include use in the pulp and paper industry, animal feed, eroson control (road banks along highways) and as a fuel alternative to wood byproducts. One of the problems with straw utilization is the expense of baling and storing it. Tax credits are available for farmers who build straw storage shelters, and there has been a ten-fold increase in the number of applications for these credits in the past year.

Alternatives to current burning practices being studied include: non-burning techniques such as increased pesticides and herbicides (which could create other environmental problems, particularly to water quality); increasing perennial grass varieties which do not require burning every year; better burning and field preparation

techniques to get the best combustion possible for a good, hot burn. Finneran said that DEQ can go only only so far with research. Whatever alternatives the researchers come up with, people within the industry must apply them in order to see any benefits.

Finneran said a study of residual chemicals in smoke from field burning is very near completion, and a report should be available in the next couple of months.

Discussion

There was some discussion of nighttime burning, and Finneran said this is being looked at again as an option. He said the reason it has not been allowed in recent years is that ventilation is poor during those hours and does not clear the smoke away as well as with afternoon burning.

The "big burn" option was also brought up, and Finneran said that 70 percent of the burning is done on just 13 days during an average season. They try to burn as many acres as possible on days with good meteorological conditions. He cited possible major air quality impacts from "big burn", due to inability to control effectively, as reason not to use that method.

Betty Horvath expressed her opposition to the general practice of field burning, citing bad air quality, adverse health effects, reduced visibility and property damage from fallout as her main objections. She said the cost of other disposal methods must be balanced against the cost of health care for people adversely affected by the smoke.

Ellie Dumdi stressed that the practice of field burning is primarily a sanitation process rather than a waste disposal process. She thinks politics should be left out of it, and the farmers and DEQ should be allowed to work together toward the goal of maximizing the number of acres burned while minimizing the smoke impacts on people. Dumdi said other industries, such as sheep, depend on the grass seed industry. Regarding using the land for other crops, she said that the soil used for grass seed is substandard, and food crops such as corn will not grow in it.

Rob Bennett said he was glad to see that some progres is being made regarding alternatives to or reduced burning. He does not want to see the industry shut down because its economic impact is important to the state. He added that almost every area has an industry which creates air quality problems, and that a balance should be struck between the economic interests of the Valley growers and the air quality interests of the communities.

Finneran said other areas grow grass seed and also do field burning; however 70 to 80 percent of the US supply is from the Willamette Valley.

DIRECTOR'S REPORT: In the interests of time, Arkell did not review the written Director's report for August.

OLD BUSINESS:

County Funding

Arkell said the draft service contract with Lane County is still in the works at the county. He expects to be asked for narrow accounting for the use of the road funds. If the money could be used only for projects in rural Lane County, outside of cities, LRAPA could fall short on funds. The more time that passes while the county decides what to do about funding, the more it hurts LRAPA.

Arkell presented a draft letter to the Lane County Board of Commissioners for the LRAPA Board Chair's signature. After brief discussion, consensus was that it is critical that Lane County take care of this matter, and the full board should sign the letter to Lane County. Ellie Dumdi said that, as a county commissioner, she did not think she should sign it. Board members will also proceed with individual contacts with commissioners.

NEW BUSINESS: None.

ADJOURNMENT: There being no further business, the meeting adjourned at 1:56 p.m. The next regular meeting of the LRAPA Board of Directors is scheduled for Tuesday, October 11, 1988, at 12:15 p.m. in the Springfield City Council Chambers.

Respectfully submitted,

Merrie Dinteman

Merrie Dinteman
Recording Secretary

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR COMMISSION ACTION

Agenda Item L, November 4, 1988 EQC Meeting

Proposed Adoption of LRAPA PM_{10} Amendments, Including Changes to Title 14, 31, 38, and 51, and the Oakridge PM_{10} Group II Committal SIP, as a Revision to the State Implementation Plan, OAR 340-20-047

SUMMATION

This agenda item proposes adoption of the Lane Regional Air Pollution Authority's (LRAPA) recently adopted fine particulate (PM_{10}) regulations.

Following Commission delegation, the Department authorized LRAPA to conduct joint EQC/LRAPA hearings on the proposed adoption of PM_{10} amendments and the PM_{10} Group II committal State Implementation Plan (SIP) for the Oakridge area.

These regulations were promulgated pursuant to federal requirements, have been found by the Department to be at least as stringent as state rules, and are necessary for a complete SIP.

After holding hearings, the LRAPA Board of Directors adopted the PM_{10} amendments and Group II committal SIP, and LRAPA requested that the Commission adopt LRAPA's new PM_{10} rules as a revision to the SIP. LRAPA has requested adoption of its new PM_{10} rules because they are a part of the SIP (OAR 340-20-047), and changes to the SIP must be adopted by the Commission as administrative rules.

The most reasonable alternative to be considered is that of adopting LRAPA's new PM_{10} regulations.

DIRECTOR'S RECOMMENDATION

It is recommended that the Commission adopt the new LRAPA PM_{10} regulations as an amendment to the SIP.

AP1632.2

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item L, November 4, 1988 EQC Meeting
Proposed Adoption of LRAPA PM_{10} Amendments, Including Changes to Title 14, 31, 38, and 51, and the Oakridge PM_{10} Group II Committal SIP, as a Revision to the State Implementation Plan, OAR 340-20-047.

BACKGROUND

The Clean Air Act requires the development of a State Implementation Plan (SIP) providing for attainment and maintenance of national ambient air quality standards. The Lane Regional Air Pollution Authority (LRAPA) is responsible for most air pollution sources in Lane County, and most of LRAPA's rules are part of the SIP. LRAPA is the only remaining regional air pollution authority in Oregon, and exercises the same air pollution control functions vested in the Commission and Department, subject to Commission and Department overview. (ORS 468.535) After receiving authorization from the Department as delegated by the Environmental Quality Commission (EQC) to conduct a joint EQC/LRAPA rulemaking hearing, LRAPA adopts rule revisions. These revisions are then submitted with necessary documentation to the Department, to submit to the Commission as a SIP revision. This agenda item is a proposed adoption of new LRAPA rules that amend the State Implementation Plan.

In response to new EPA standards, as explained in the attached reports to LRAPA's Board of Directors, (Attachment 2), LRAPA has adopted new fine particulate (PM_{10}) regulations consisting of changes in definitions, ambient air quality standards, New Source Review regulations, Prevention of Significant Deterioration regulations, and the Emergency Episode Plan. LRAPA has also adopted a plan consisting of commitments to develop and operate a monitoring network to determine the PM_{10} status of the Oakridge area (report to LRAPA Board of Directors in Attachment 2). Oakridge falls under LRAPA's authority, and has been identified by EPA as a Group II area, or potential PM_{10} non-attainment area. LRAPA's new PM_{10} rules and commitments for the Oakridge PM_{10} Group II area amend the SIP, and are included in this report as Attachment 1. Highlighting indicates new sections, and a line passing through the middle of the text indicates deleted sections.

Rulemaking Process

Prior to authorizing a hearing, the Air Quality staff reviewed the LRAPA rules for stringency and consistency with corresponding DEQ rules. In letters dated June 29, 1988 and July 25, 1988, the Department authorized LRAPA to act as its hearings officer contingent on LRAPA making various revisions to assure stringency and consistency with Department regulations.

In its PM_{10} revisions, the Department requested that LRAPA include: (1) a daily standard for suspended particulate matter, (2) air pollution emergency and warning prohibitions on woodstove and fireplace use, and (3) a shut down of coal, wood, or oil fired power generators during air pollution warnings. In its committal SIP for the Oakridge Group II area, the Department requested that LRAPA include: (1) specific durations for planned monitoring, (2) a provision that the Department will be notified of PM_{10} exceedances with adequate time to in turn notify the EPA, (3) a statement of which methods will be used to analyze incomplete data, and (4) a change in the deadline for control strategies.

LRAPA responded by making the recommended revisions, holding joint EQC/LRAPA rulemaking hearings on July 12, 1988 and August 3, 1988, and adopting its new PM_{10} regulations at LRAPA Board of Directors' meetings on July 12, 1988 and August 9, 1988. The minutes of these Board of Directors meetings are included in attachment 3. Attachment 4 contains a summaries of comments received during the public hearings, and attachment 5 contains the Statement of Need for Rulemaking.

After adopting the rules, LRAPA forwarded them the Department for submission to the Commission.

ALTERNATIVES AND EVALUATION

LRAPA has adopted PM_{10} rules required by federal regulations, and a necessary part of the SIP. LRAPA has conformed its rules to corresponding Department rules to the Department's satisfaction, no substantive differences remain. Therefore, the most reasonable alternative available to the Commission would be to adopt LRAPA's new PM_{10} rules as a part of the SIP. Failure to adopt LRAPA's PM_{10} rules could result in EPA finding Oregon's SIP inadequate.

DIRECTOR'S RECOMMENDATION

It is recommended that the Commission adopt the new LRAPA PM_{10} regulations (attachment 1) as an amendment to the State Implementation Plan.

Fred Hansen

Attachments
1. LRAPA Rules: New PM_{10} Amendments, PM_{10} Group II Committal SIP for the Oakridge Area
2. Staff Reports to LRAPA Board of Directors , July 12, 1988 and August 9, 1988
3. Minutes of LRAPA Board of Directors' Meetings, July 12, 1988 and August 9, 1988
4. Summary of comments received on proposed rules
5. Rulemaking Statements

Sarah Armitage
229-5581
October 19, 1988
AP1632.2

LANE REGIONAL AIR POLLUTION AUTHORITY

TITLE 14

Definitions

Section 14-001 Definitions of Words and Terms Used in LRAPA Rules and Regulations

To aid in the understanding of these rules, the following general definitions are provided. Additional title-specific definitions can be found in each title as necessary.

.0005 "Agricultural open burning" means the open burning of "agricultural wastes," which are materials actually generated by an agricultural operation but excluding those materials described in Section 47-015-1.E.

.0010 "Agricultural operation" means an activity on land currently used or intended to be used primarily for the purpose of obtaining a profit in money by raising, harvesting and selling crops or by the raising and sale of livestock or poultry, which activity is necessary to serve that purpose; it does not include the construction and use of dwellings customarily provided in conjunction with the agricultural operation.

.0015 "Air Contaminant" means solid, liquid or gaseous materials suspended in the ambient air. This does not include water vapor.

.0020 "Air Contaminant Discharge Permit" means a written permit issued by the Authority in accordance with duly adopted procedures, which by its conditions authorizes the permittee to construct, install, modify or operate specified facilities, conduct specified activities, or emit, discharge or dispose of air contaminants in accordance with specified practices, limitations, or prohibitions.

.0025 "Air Conveying System" means an air moving device such as a fan or blower, and associated ductwork, and a cyclone or other collection device, the purpose of which is to move material from one point to another by entrainment in a moving airstream. It does not include particle dryers.

.0030 "Air Pollution" means the presence in the outdoor atmosphere of one or more air contaminants, or any combination thereof, in sufficient quantities and of such characteristics and of a duration as are, or are likely to be, injurious to the public welfare, to the health of

human, plant or animal life or to property , or which unreasonably interfere with enjoyment of life and property.

.0035 "Air Pollution Control Equipment" means any equipment which has as its essential purpose a reduction in the emissions of air contaminants, or a reduction in the effect of such emissions.

.0040 "Air Quality Maintenance Area (AQMA)" means any area that has been identified by the Authority or the Department, and approved by the Board or the Commission, as having the potential for exceeding any federal, state or local ambient air quality standard.

.0045 "Air Quality Maintenance Area (AQMA) Analysis" means an analysis of the impact on air quality in an AQMA of emissions from existing air contaminant sources and emissions associated with projected growth and development.

.0050 "Aircraft Operation" means any aircraft landing or takeoff.

.0055 "Airport" means any area of land or water which is used or intended for use for the landing and takeoff of aircraft, or any appurtenant areas, facilities, or rights-of-way, such as terminal facilities, parking lots, roadways, and aircraft maintenance and repair facilities.

.0060 "Ambient Air" means the air that surrounds the earth to which the general public has access, excluding the volume of gases contained within any building or structure.

.0063 "Ambient Air Monitoring Site Criteria" means the general probe siting specifications in Appendix E of 40 CFR 58.

.0065 "Asbestos" means actinolite, amosite, anthophyllite, crysotile, crocidolite, or tremolite.

.0067 "Approved Method" means an analytical method for measuring air contaminant concentrations which are described or referenced in Appendices to 40 CFR 50 and 40 CFR 53. These methods are approved by the Authority.

.0070 "Associated Parking" means a discrete parking facility or facilities owned, operated and/or used in conjunction with an indirect source.

.0075 "ASTM" means the American Society for Testing Materials.

.0080 "Authority" means the Lane Regional Air Pollution Authority.

.0083 "Authority-Approved Method" means any method of sampling and analyzing for an air contaminant approved by the Authority. These methods are kept on file with the Authority.

.0085 "Auxiliary Combustion Equipment" includes, but is not limited to, fans or air curtain incinerators.

.0090 "Average Daily Traffic" means the total traffic volume during a given time period in whole days greater than one day and less than one year, divided by the number of days in that time period, commonly abbreviated as ADT.

.0095 "Beryllium" means the element beryllium. Where weight or concentrations are specified in these Rules, such weights or concentrations apply to beryllium only, excluding any associated elements.

.0100 "Beryllium Alloy" means any metal to which beryllium has been added in order to increase its beryllium content, and which contains more than one-tenth of one percent (0.1 %) beryllium by weight.

.0105 "Board" means the Board of Directors of the Lane Regional Air Pollution Authority.

.0110 "Charcoal Producing Plant" means an industrial operation which uses the destructive distillation of wood to obtain the fixed carbon in the wood.

.0115 "Combustion Promoting Materials" include, but are not limited to, propane, diesel oil, or jellied diesel.

.0120 "Commence Construction" means to begin to engage in a continuous program of on-site construction or on-site modification, including site clearing, grading, dredging, or landfilling in preparation for the fabrication, erection, installation or modification of a source.

.0125 "Commercial Area" means land which is zoned or used for commercial operations including retail sales and services.

.0130 "Commercial Open Burning" means the open burning of "commercial wastes," which are materials actually generated or used by a commercial operation.

.0135 "Commission" means the Environmental Quality Commission.

.0140 "Construction" means any physical change including fabrication, erection, installation, or modification of a facility, building or emission unit.

.0145 "Construction Open Burning" means the open burning of "construction wastes," which are materials actually resulting from or produced by a building or construction project.

.0150 "Contested Case" means a proceeding before the Board or a Hearings Officer:

A. In which the individual legal rights, duties or privileges of specific parties are required by statute or Constitution to be determined only after an agency hearing at which such specific parties are entitled to appear and be heard; or

B. Where the Authority has discretion to suspend or revoke a right or privilege of a person; or

C. For the suspension, revocation or refusal to renew or issue a permit where the licensee or applicant for a license demands such hearing; or

D. Where Authority rule or order provides for hearing substantially of the character required by ORS 183.415, 183.425 and 183.450 to 183.470.

.0155 "Continual Monitoring" means sampling and analysis, in a continuous or timed sequence, using techniques which will adequately reflect actual emission rates or concentrations on a continuous basis.

.0160 "Debris Clearing" means the removal of wood, trees, brush or grass in preparation for a land improvement or construction project.

.0165 "Demolition Open Burning" means the open burning of "Demolition Wastes," which are materials actually resulting from or produced by the complete or partial destruction or tearing down of a man-made structure or the clearing of any site to abate a nuisance, or land clearing for site preparation for development.

.0170 "Department" means the Oregon Department of Environmental Quality.

.0175 "Director" means the Director of the Lane Regional Air Pollution Authority and authorized deputies or officers.

.0185 "Distillate Fuel Oil" means any oil meeting the specifications of ASTM Grade 1 or Grade 2 fuel oils.

.0190 "Dry Material" includes, but is not limited to, dried wood, feed, seed, or other materials.

.0195 "Emission" means a release into the ambient air of air contaminants.

.0198 "Emission Limitation" means a requirement established by LRAPA, local government, the State of Oregon DEQ or the U. S. EPA, which limits the quantity, rate or concentration of emissions of air pollutants on a continuous basis. This includes requirements on opacity limits, equipment prescriptions, fuel specifications, and operation and maintenance procedures.

.0200 "Emission Point" means the location, place in horizontal plane and vertical elevation at which an emission enters the outdoor atmosphere.

.0205 "Emission Reduction Credit Banking" means to reserve emission reductions for future use by the reserver or assignee.

.0207 "Emission Standard" is the same as "Emission Limitation".

.0210 "Emission Unit" means any part of a stationary source (including specific process equipment) which emits or would have the potential to emit any air contaminant subject to regulation under the Clean Air Act, State of Oregon laws, or these regulations.

.0215 "Eugene/Springfield Air Quality Maintenance Area" means that area described in Section 4.6.2.1 and Figure 4.6.2.1--1 of the State of Oregon State Implementation Plan Revision, Eugene/Springfield AQMA, as approved by the Board on November 6, 1980.

.0220 "Existing Source" means any air contaminant source in existence prior to the date of adoption of rules affecting that source.

.0225 "Expressway" means a divided arterial highway for through traffic with full or partial control of access and generally with grade separations at major intersections.

.0230 "Fire Hazard" means the presence or accumulation of combustible material of such nature and in sufficient quantity that its continued existence constitutes an imminent and substantial danger to life, property, public welfare, or to adjacent lands.

.0235 "Fire Permit Issuing Agency" means any governmental fire permit issuing agency, such as city fire department, rural fire protection district, water district, forest protection district or county court or board of county commissioners or their designated representative, as applicable.

.0240 "Freeway" means an expressway with full control of access.

.0245 "Fugitive Emissions" means emissions of any air contaminant which escapes to the ambient air from any point or area that is not identifiable as a stack, vent, duct, or equivalent opening.

.0250 "Garbage" means putrescible animal and vegetable wastes.

.0255 "Gasoline" means any petroleum distillate having a Reid vapor pressure of four (4) pounds per square inch or greater.

.0260 "Growth Increment" means an allocation of some part of an airshed's capacity to accommodate future new minor sources, modifications of minor sources, and area source growth.

.0270 "Hardboard" means a flat panel made from wood that has been reduced to basic wood fibers and bonded by adhesive properties under pressure.

.0275 "Hazardous Air Contaminant" means any air contaminant considered by the Authority to cause or contribute to an identifiable and significant increase in mortality or to an increase in serious irreversible or incapacitating reversible illness and for which no ambient air standard exists.

.0280 "Highway Section" means a highway of substantial length between logical termini (major crossroads, population centers, major traffic generators, or similar major highway control elements) as normally included in a single location study or multi-year highway improvement program.

.0285 "Incineration Operation" means any operation in which combustion is carried on in an incinerator, for the principal purpose or with the principal result, of oxidizing wastes to reduce their bulk and/or facilitate disposal.

.0290 "Incinerator" means a combustion device specifically for destruction, by high temperature burning, of solid, semi-solid, liquid, or gaseous combustible wastes. This does not include devices such as open or screened barrels, drums, or process boilers.

.0295 "Indirect Source" means a facility, building, structure, installation, or any portion or combination thereof, which indirectly causes or may cause mobile source activity that results in emissions of an air contaminant for which there is a federal, state or local standard. Such Indirect Sources shall include, but shall not be limited to:

A. Highways and roads;

B. Parking facilities;

C. Retail, commercial and industrial facilities;

D. Recreation, amusement, sports and entertainment facilities;

E. Airports;

F. Office and government buildings;

G. Apartment and mobile home parks;

H. Educational facilities;

I. Hospital facilities; and

J. Religious facilities.

.0300 "Indirect Source Construction Permit" means a written permit in letter form issued by the Authority, bearing the signature of the Director, which authorizes the permittee to commence construction of an indirect source, under construction and operation conditions and schedules as specified in the permit.

.0305 "Indirect Source Emission Control Program (ISECP)" means a program which reduces mobile source emissions resulting from the use of the Indirect Source.

.0310 "Industrial Area" means land which is zoned or used for industrial operations, including manufacturing.

.0315 "Industrial Open Burning" means the open burning of "industrial wastes," which are materials produced as a direct result of any manufacturing or industrial process.

.0320 "Land Clearing" means the removal of trees, brush, logs, stumps, debris or man-made structures for the purpose of site clean-up or site preparation for construction.

.0325 "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 Title 38).

.0330 "Mercury" means the element mercury, excluding any associated elements and includes mercury in particulates, vapors, aerosols, and compounds.

.0335 "Mercury Ore" means any mineral mined specifically for its mercury content.

.0340 "Mercury Ore Processing Facility" means a facility processing mercury ore to obtain mercury.

.0345 "Mercury Chlor-Alkali Cell" means a device which is basically composed of an electrolyzer section and denuder (decomposer) section, and which utilizes mercury to produce chlorine gas, hydrogen gas, and alkali metal hydroxide.

.0350 "Mobile Source" means self-propelled vehicles, powered by internal combustion engines, including but not limited to automobiles, trucks, motorcycles and aircraft.

.0355 "Motor Vehicle" means any self-propelled vehicle designed for transporting persons or property on a public street or highway.

.0358 "New Source" means any air contaminant source not in existence prior to adoption of rules affecting that source.

.0360 "Nonattainment Area" means a geographical area within the jurisdiction of the Authority which exceeds any federal, state or local primary or secondary ambient air quality standard as designated by the Board and the Environmental Quality Commission and approved by the Environmental Protection Agency.

.0365 "Nuisance to the Public" means an interference with a right or privilege common to members of the public, as determined through a formal process by the Board.

.0370 "Odor" means the property of a substance which allows its detection by the sense of smell.

.0375 "Off-Street Area or Space" means any area or space not located on a public road dedicated for public use.

.0380 "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.

.0385 "Opacity" means the degree to which an emission reduces transmission of light or obscures the view of an object in the background.

.0390 "Opacity Readings" are the individual readings which comprise a visual opacity determination.

.0395 "Open Outdoor Burning" includes burning in open outdoor fires, burn barrels, and incinerators which do not meet emission limitations specified in Section 33-020 of these Rules, and any other outdoor burning which occurs in such a manner that combustion air is not effectively controlled and combustion products are not effectively vented through a stack or chimney.

.0400 "Parking and Traffic Circulation Plan" means a plan developed by a city, county or regional government or regional planning agency, the implementation of which assures the attainment and maintenance of the state and local ambient air quality standards.

.0405 "Parking Facility" means any building, structure, lot or portion thereof, designed and used primarily for the temporary storage of motor vehicles in designated parking spaces.

.0410 "Parking Space" means any off-street area of space below, above or at ground level, open or enclosed, that is used for parking one motor vehicle at a time.

.0415 "Particle Fallout Rate" means the weight of particulate matter which settles out of the air in a given length of time over a given area.

.0420 "Particleboard" means mat-formed flat panels consisting of wood particles bonded together with synthetic resin or other suitable binder.

.0425 "Particulate Matter" means any matter except uncombined water which exists as a liquid or solid at standard conditions.

.0427 "Particulate Matter Emissions" means all solid or liquid matter, other than uncombined water, emitted to the ambient air, as measured by an applicable reference method.

.0430 "Person" means any individual, public or private corporation, political subdivision, agency, board, department, or bureau of the state, municipality, partnership, association, firm, trust, estate, or any other legal entity whatsoever which is recognized by law as the subject of rights and duties.

.0435 "Plant Site Emission Limit" means the total mass emissions per unit time of an individual air pollutant specified in a permit for a source.

.0440 "Plywood" means a flat panel built of a number of thin sheets of veneer of wood.

.0443 "PM10" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by an approved method.

.0444 "PM10 Emissions" means emissions of "PM10" as measured by an applicable reference method.

.0445 "Population" means that population estimate most recently published by the Center for Population Research and Census, Portland State University, or any other population estimate approved by the Authority.

.0450 "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.

.0455 "p.p.m." ~~(parts per million)~~ means parts of air contaminant per million parts of air on a volume basis.

.0460 "Process Unit" includes all equipment and appurtenances for the processing of bulk material which are united physically by conveyor or chute or pipe or hose for the movement of product material provided that no portion or item of the group will operate separately with product material not common to the group operation. Such a grouping is considered encompassing all the equipment used from the point of initial charging or feed to the point or points of discharge of material where such discharge will:

A. Be stored,

B. Proceed to a separate process, or

C. Be physically separated from the equipment comprising the group.

.0465 "Process Weight" means total weight of the materials, including solid fuels but not including liquid and gaseous fuels and combustion air introduced into any process unit which may cause any emission into the atmosphere.

.0470 "Propellant" means a fuel and oxidizer physically or chemically combined containing beryllium or beryllium compounds, which undergoes combustion to provide rocket propulsion.

.0475 "Public nuisance" see "Nuisance to the Public."

.0480 "Reasonable Receptor and Exposure Sites" means locations where people might reasonably be expected to be exposed to air contaminants.

.0483 "Reference Method" means a source testing technique approved by LRAPA. A list of the approved methods is on file with LRAPA.

.0485 "Refuse" means unwanted matter.

.0490 "Refuse Burning Equipment" means a device designed to reduce the volume of refuse by combustion.

.0495 "Regional Planning Agency" means any planning agency which has been recognized as a substate-clearinghouse for the purposes of conducting project review under the United States Office of Management and Budget Circular Number A-95, or other governmental agency having planning authority.

.0500 "Residential Area" means land which is zoned or used for single or multiple family or suburban residential purposes.

.0505 "Residential Open Burning" means the open burning of clean wood, paper products, and yard debris which are actually generated in or around a dwelling for four (4) or fewer family living units. Once this material is removed from the property of origin it becomes commercial waste. Such materials actually generated in or around a dwelling of more than four (4) family living units are commercial wastes.

.0510 "Residual Fuel Oil" means any oil meeting the specifications of ASTM Grade 4, Grade 5 or Grade 6 fuel oils.

.0515 "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 fifty (50) percent or more of the heat input to be considered a resource recovery facility.

.0520 "Ringelmann Chart" means the Ringelmann Smoke Chart with instructions for use as published in May, 1967, by the United Stated Bureau of Mines.

.0525 "Rule" means any agency directive, regulation or statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirement of any agency. The term includes the amendment or repeal of a prior rule, but does not include:

A. Internal management directives, regulations or statements between agencies, or their officers or their employees, or within an agency, between its officers or between employees, unless hearing is required by statute, or action by agencies directed to other agencies or other units of government.

B. Declaratory rulings issued pursuant to ORS 183.410 or 305.105.

.0530 "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.

.0535 "Slash" means forest debris of woody vegetation to be burned under the Oregon Smoke Management Plan administered by the Oregon Department of Forestry pursuant to ORS. 477.515. The burning of such slash is related to the management of forest land and does not include the burning of any other material created by land clearing.

.0540 "Smoke" means small gas-borne particles resulting from incomplete combustion, consisting predominantly of carbon, ash and other combustible materials present in sufficient quantity to be observable.

.0545 "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.

.0550 "Special Problem Area" means the formally designated Eugene/Springfield AQMA and other specifically defined areas that the Board and the Environmental Quality Commission may formally designate in the future.

.0555 "Standard Conditions" means a gas temperature of sixty-eight (68) degrees Fahrenheit and a gas pressure of 29.92 inches of mercury.

.0560 "Standard Cubic Foot (SCF)" means that amount of gas which would occupy a cube having dimensions of one foot on each side, if the gas were free of water vapor at standard conditions.

.0565 "Startup" means commencement of operation of a new or modified source resulting in release of contaminants to the ambient air.

.0570 "Tempering Oven" means any facility used to bake hardboard following an oil treatment process.

.0575 "Threshold Level of Olfactory Detection" means the odor perception threshold for fifty percent (50%) of the odor panel as determined by the ASTM procedure DI 391-57 Standard Method of Measurement of Odor in Atmospheres (Dilution method), or an equivalent method.

.0577 "TSP" means particulate matter as measured by an approved method.

.0580 "Uncombined Water" means water which is not chemically bound to a substance.

.0585 "Vehicle Trip" means a single movement by a motor vehicle which originates or terminates at or uses an Indirect Source.

.0590 "Veneer" means a single flat panel of wood not exceeding one-quarter (1/4) inch in thickness, formed by slicing or peeling from a log.

.0595 "Visual Opacity Determination" consists of a minimum of twenty-four (24) opacity readings recorded every fifteen (15) seconds and taken by a trained observer.

.0600 "Wigwam Waste Burner" means a burner which consists of a single combustion chamber, which has the general features of a truncated cone and is used for incineration of refuse.

.0605 "Yard Debris" means wood, needle, or leaf materials from trees, shrubs, or plants from the property around a dwelling unit.

LANE REGIONAL AIR POLLUTION AUTHORITY

TITLE 38

New Source Review

Section 38-001 General Applicability

Any proposed construction of an air contaminant source (as defined in Section 38-005) or a modification of an air contaminant source must meet the requirements of this title. In addition, the owner or operator of a proposed source or modification must demonstrate that the proposed source or modification can comply with all additional requirements of the Authority, the Department of Environmental Quality and the U. S. EPA. The additional requirements may include, but are not limited to, new source performance standards, emission standards for hazardous air contaminants, and the obtaining of an Air Contaminant Discharge Permit.

Section 38-005 Definitions

The following definitions are relevant to this title. Additional general definitions can be found in Title 14.

1. "Actual Emissions" means the mass rate of emissions of a pollutant from an emission 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 Authority 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 ten percent (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. "Air Contaminant Source" means, for the purposes of this title, any building, structure, or facility, or combination thereof, which emits or

is capable of emitting air contaminants to the atmosphere. This definition does not include fuel-burning equipment used to heat one- or two-family dwellings or internal combustion engines used in motor vehicles, aircraft, and marine vessels.

3. "Baseline concentration" means that ambient concentration level for a particular regulated 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 for any pollutant may be estimated using modeling based on actual emissions for the calendar year 1978. The following emissions 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.

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

5. "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.

6. "Lowest Achievable Emission Rate (LAER)" means that rate of emissions which reflects:

   A. 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

B. The most stringent 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.

7. "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 this section) 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 major source or major modification approval issued for the source pursuant to the rules for that pollutant, whichever time is more recent. If accumulation of emission increases results in a net significant emission rate increase, the modifications causing such increases become subject to the major modification requirements of this title, including the retrofit of required controls. For the purposes of this title, 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.

8. "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 this section). For the purposes of this title, 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.

9. "Modification of an Air Contaminant Source" means any physical change or change in operation of a source which would result in a non-permitted increase in the air contaminant emissions from that source.

10. "Prevention of Significant Deterioration Increments" means maximum allowable ambient air quality impacts over baseline concentrations in areas designated Class I, II or III, as follows:

	Micrograms Per Cubic Meter		
	Class I	Class II	Class III
Particulate Matter--			
TSP Annual Geometric Mean	5	19	37
* TSP 24-Hour Maximum	10	37	75
Sulfur Dioxide--			
Annual Arithmetic Mean	2	20	40
* 24-Hour Maximum	5	91	182
* 3-Hour Maximums	25	512	700

(* For these time periods, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.)

11. "Significant Air Quality Impact" means an 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 PM10	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

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 thirty (30) kilometers of an ozone nonattainment area and is capable of impacting the nonattainment area.

12. "Significant Emission Rate" means emission rates equal to or greater than the following for air pollutants regulated under the Clean Air Act:

Pollutant	Significant Emission Rate	
Carbon Monoxide	100	tons/year
Nitrogen Oxides	40	tons/year
Particulate Matter	25	tons/year
PM10	15	tons/year
Sulfur Dioxide	40	tons/year

Volatile Organic Compounds	40	tons/year
Lead	0.6	ton/year
Mercury	0.1	ton/year
Beryllium	0.0004	ton/year
Asbestos	0.007	ton/year
Vinyl Chloride	1	ton/year
Fluorides	3	tons/year
Sulfuric Acid Mist	7	tons/year
Total Reduced Sulfur (including hydrogen sulfide)	10	tons/year
Reduced Sulfur Compounds (including hydrogen sulfide)	10	tons/year

For pollutants not listed above, the Authority shall determine the rate that constitutes a significant emission rate.

Any emissions increase less than these rates associated with a new source or modification which would construct within ten (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.

Section 38-010 General Requirements for Major Sources and Major Modifications

1. Prior to construction of new major sources or major modifications, the owner or operator must obtain from the Director authority to construct or modify the source, and a permit to discharge air contaminants. These are issued only after review and approval of the application according to the requirements of this title.

2. The owner or operator of a proposed new major source or major modification shall submit an application on forms provided by the Authority, together with 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 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 impacts, and the nature and extent of all commercial, residential, industrial, and other growth which has occurred since January 1, 1978, in the area the source or modification would affect.

3. 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.

4. Approval to construct shall become invalid if construction is not commenced within eighteen (18) months after receipt of such approval, if construction is discontinued for a period of eighteen (18) months or more, or if construction is not completed within eighteen (18) months of the scheduled time. The Authority may extend the eighteen (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 eighteen (18) months of its respective projected and approved commencement date.

5. 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.

6. Within thirty (30) days after receipt of an application to construct, or any addition to such application, the Authority 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 Authority received all required information.

7. Notwithstanding the requirements of Title 34 of these rules, but as expeditiously as possible and at least within six (6) months after receipt of a complete application, the Authority 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 thirty (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 growth 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 jurisdiction 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, the Oregon Department of Environmental Quality, and the U. S. 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 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 ten (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 Authority shall consider the applicant's response in making a final decision. The Authority shall make all comments available for public inspection in the same location where the Authority 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 Authority made available preconstruction information and public comments relating to the source or modification.

Section 38-015 Additional Requirements for Major Sources or Major Modifications Located in Nonattainment Areas

1. New major sources and major modifications which are located in designated nonattainment areas shall meet the following requirements:

A. 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.

B. 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 of 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.

C. The owner or operator of the proposed major source or major modification must demonstrate that the source or modification will provide emission reductions ("offsets") as specified by these Rules.

D. 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 Section 38-035 (Requirements for Net Air Quality Benefit) and that the reductions are consistent with reasonable further progress toward attainment of the air quality standards.

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

Section 38-020 Additional Requirements for Major Sources or Major Modifications in Attainment or Unclassified Areas (Prevention of Significant Deterioration)

1. New major sources or major modifications locating in areas designated attainment or unclassifiable shall meet the following requirements:

   A. 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 (see Section 38-005). 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.

   B. 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, 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:

      (1) Any state or national ambient air quality standards, or

      (2) Any applicable increment established by the prevention of significant deterioration requirements ~~(OAR 340-31-110 through 340-31-130)~~ (see Section 38-005-10). (Note that the area classifications are found in OAR 340-31-120 through 340-31-130.) or

      (3) An impact on a designated nonattainment area greater than the significant air quality impact levels (see Section 38-005).

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

3. 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 Section 38-035 is provided, the Authority may consider the requirements of Section 38-020-1.B. to have been met.

4. All estimates of ambient concentrations required under these Rules shall be based on the applicable air quality models, data bases, and other requirements specified in the "Guidelines ~~on of~~ Air Quality Models (Revised)", EPA 450/2-780-027R U. S. EPA, September 1986, including Supplement A, July, 1987. ~~(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 "Guidelines ~~on of~~ 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 receive approval of the Authority and the Environmental Protection Agency. Methods like those outlined in the "Interim Procedures for Evaluating Air Quality Models (Revised)", U. S. EPA 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 air quality models.

5. The owner or operator of a proposed major source or major modification shall submit with the application, subject to approval of the Authority, an analysis of ambient air quality in the area of 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 levels, the analysis shall include continuous air quality monitoring data for any pollutant potentially emitted by the source or modification except for non-methane 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 increment. A possible exemption to the monitoring requirement is outlined in paragraph "B," below.

   A. 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 Deterioration (PSD) Air Monitoring" and with other methods on file with the Authority.

   B. The Authority 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:

      (1) Carbon monoxide--575 ug/m^3, 8-hour average;

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

      (3) Particulate Matter ~~Total suspended particulate~~--10 ug/m^3, 24-hour average for TSP, 10 ug/m^3, 24-hour average for PM10;

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

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

(6) Lead--0.1 ug/m^3, 24-hour average;

(7) Mercury--0.25 ug/m_3, 24-hour average;

(8) Beryllium--0.0005 ug/m_3, 24-hour average;

(9) Fluorides--0.25 ug/m_3, 24-hour average;

(10) Vinyl Chloride--15 ug/m_3, 24-hour average;

(11) Total reduced sulfur--10 ug/m_3, 1-hour average;

(12) Hydrogen Sulfide--0.04 ug/m_3, 1-hour average;

(13) Reduced sulfur compounds--10 ug/m_3, 1-hour average;

C. When monitoring is required by 5.A, above, PM10 preconstruction monitoring shall be required according to the following transition program:

(1) Complete PSD applications submitted before May 31, 1988 shall not be required to perform new PM10 monitoring.

(2) Complete PSD applications submitted after May 31, 1988, and before November 30, 1988, must use existing PM10 or other representative air quality data or collect PM10 monitoring data. The collected data may come from non-reference sampling methods. At least four months of data must be collected which the Authority judges to include the season(s) of highest PM10 levels.

(3) Complete PSD applications submitted after November 30, 1988, must use reference sampling methods. At least four months of data must be collected which the Authority judges to include the season(s) of highest PM10 levels.)

D. 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 Authority 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. The owner or operator of a proposed major source or major modification shall provide an analysis of the impairment to visibility, 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.

7. 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.

8. Where a proposed major source or major modification impacts or may impact a Class I area, the Authority shall provide notice to the Environmental Protection Agency and to the appropriate Federal Land Manager of the receipt of such permit application and of any preliminary and final actions taken with regard to such application. The Federal Land Manager shall be provided an opportunity in accordance with Section 38-010 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 Authority concurs with such demonstration, the permit shall not be issued.

Section 38-025 Exemptions for Major Sources and Major Modifications

1. Resource recovery facilities burning municipal refuse and sources subject to federally-mandated fuel switches may be exempted by the Authority from requirements of Section 38-015-1.C and 1.D, 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.

   (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 Section 38-015-1.A and 1.B, or Section

38-020-1.A, whichever is applicable, but are exempt from the remaining requirements of Section 38-015 and Section 38-020, provided that the source or modification would impact no Class I area or no area where an applicable increment is 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 Section 38-020-1.A (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.

Section 38-030 Baseline for Determining Credit for Offsets

The baseline for determining credit for emission offsets shall be the Plant Site Emission Limit as established in these Rules 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.

Section 38-035 Requirements for Net Air Quality Benefit for Major Sources and Major Modifications

1. A demonstration must be provided showing that the proposed offsets will improve air quality in the same geographical area affected by the new source or modification. This demonstration may require that air quality modeling be conducted according to the procedures specified in the "Guidelines on Air Quality Models (Revised)," 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.

2. For new sources or modifications having a significant air quality impact within a designated nonattainment area or that will cause or contribute to a violation of the ambient air quality standards or exceed the PSD increments, 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 on the nonattainment areas, the

emissions 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 modifications which emit volatile organic compounds and are located in or within thirty (30) kilometers of an ozone nonattainment area shall provide reductions which are equivalent or greater than the proposed emission increases. An exemption will be granted for those sources located outside the AQMA if 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 PM10 ~~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 Section 38-040 (Emission Reduction Credit Banking). In the case of replacement facilities, the Authority 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.

Section 38-040 Emission Reduction Credit Banking

1. 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 (except any such emission reduction attributable to facilities for which tax credit has been received on or after January 1, 1981, may be banked or used for contemporaneous offsets but may not be sold without reimbursement of the tax credits). Cities, counties or other local jurisdictions may participate in the emissions bank in the same manner as a private firm.

2. Emission reduction credit banking shall be subject to the following conditions:

   A. 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 at the Plant Site Emission Limit established pursuant to these Rules.

   B. Emission reductions may be banked for a specified period not to exceed ten (10) years unless extended by the Authority, after which time such reductions will revert to the Authority for use in attainment and

maintenance of air quality standards or to be allocated as a growth margin.

C. Emission reductions which are required pursuant to an adopted rule shall not be banked.

D. Permanent source shutdowns or curtailments other than those used within one year for contemporaneous offsets, as provided in Section 38-035-4, are not eligible for banking by the owner or operator but will be banked by the Authority for use in attaining and maintaining standards. The Authority may allocate these emission reductions as a growth increment. The one (1) 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 Authority and receive written approval within one (1) 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 Title 34.

E. 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 Authority. 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.

3. Emission reductions must be in the amount of five (5) tons/year or more to be creditable for banking.

4. Requests for emission reduction credit banking must be submitted in writing to the Authority 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.

5. Requests for emission reduction credit banking shall be submitted to the Authority prior to or within the year following the actual emissions reduction. The Authority 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 Authority 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.

6. The Authority 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 transferred, the Authority must be notified in writing. Any use of emission reduction credits must be compatible with local comprehensive plans, statewide planning goals, state laws and these Rules.

7. Operators of existing sources requesting emission reduction credit for banking shall at the time of application pay the following fees:

   A. Request for credit for any air contaminant of five (5) tons/year, but less than the rate equal to the significant emissions rate as defined in Section 38-005:

      (1) A filing fee of $75,

      (2) An application processing fee of $250,

      (3) An annual recordkeeping fee of $100.

   B. Request for credit for any air contaminant of a rate equal to or greater than a significant emission rate as defined in Section 38-005:

      (1) A filing fee of $75,

      (2) An application processing fee of $500,

      (3) An annual recordkeeping fee of $100.

Section 38-045 Requirements for Non-Major Sources and Non-Major Modifications

1. The owner or operator of a proposed non-major source or non-major modification shall submit to the Director all information necessary to perform any analysis or make any determination required by these rules. Such information shall include the following:

   A. Plans and specifications for any proposed new equipment or proposed modifications to existing equipment drawn in accordance with acceptable engineering practices;

B. A description of the process and a related flow chart;

C. An estimation of the amount and type of air contaminants to be emitted by the proposed new source or modification;

D. Any additional information which may be required by the Authority.

2. Within sixty (60) days of receipt of all required information, the Authority shall make a determination as to whether the proposed new source of modification is in accordance with the provisions of these rules.

A. If the proposed construction is found to be in accordance with the provisions of these rules, the Authority shall issue a "Notice to Proceed" with construction. This issuance shall not relieve the owner or operator of the obligation of complying with all other titles of these rules.

B. If the proposed construction is found not to be in accordance with the provisions of these rules, the Director may issue an order prohibiting construction. Failure to issue the order within the sixty (60) day period shall be considered a determination that the construction may proceed in accordance with the information provided in the application.

C. Any person against whom an order prohibiting construction is issued may, within twenty (20) days from the date of mailing of the order, demand a hearing. The demand shall be in writing, shall state the grounds for a hearing, and shall be submitted to the Director. The hearing shall be conducted in accordance with these rules.

D. Deviation from approved plans or specifications, without the written permission of the Director, shall constitute a violation of these rules.

E. The Authority may require any order or other notice to be displayed on the premises designated. No person shall mutilate, alter, or remove such order or notice unless authorized to do so by the Authority.

3. Notice shall be provided in writing to the Authority of the completion of construction and the date when operation will commence. The Authority, following receipt of the notice of completion, shall inspect the premises.

Section 38-050 Stack Height and Dispersion Techniques

1. Title 40, Code of Federal Regulation, Parts 51.100(ff) through (kk), 51.118(a) and (b), and 51.164, as amended on November 7, 1986 in the Federal Register (51 FR 40656), is by this reference adopted and incorporated herein, concerning stack heights and dispersion techniques.

2. In general, the rule prohibits the use of excessive stack height and certain dispersion techniques when calculating compliance with ambient air quality standards. The rule does not forbid the construction and actual use of excessively tall stacks, nor use of dispersion techniques; it only forbids their use in compliance calculations.

3. The rule has the following general applicability. With respect to the use of excessive stack height, stacks 65 meters high or higher, constructed after December 31, 1970, and major modifications to existing plants after December 31, 1970 with stacks 65 meters high or higher which were constructed before that date, are subject to this rule, with the exception that certain stacks at federally-owned, coal-fired steam electric generating units constructed under a contract awarded before February 8, 1974, are exempt. With respect to the use of dispersion techniques, any technique implemented after December 31, 1970, at any plant, is subject to this rule. However, if the plant's total allowable emissions of sulfur dioxide are less than 5,000 tons per year, then certain dispersion techniques to increase final exhaust gas plume rise are permitted to be used when calculating compliance with ambient air quality standards for sulfur dioxide.

   A. Where found in the federal rule, the term "reviewing agency" means the Lane Regional Air Pollution Authority (LRAPA), the Oregon Department of Environmental Quality (DEQ), or the U. S. Environmental Protection Agency (EPA), as applicable.

   B. Where found in the federal rule, the term "authority administering the State Implementation Plan" means LRAPA, DEQ or EPA.

   C. The "procedures" referred to in 40 CFR 51.164 are the New Source Review procedures at LRAPA (Title 38), and the review procedures for new, or modifications to, minor sources at LRAPA (Title 34 and rule 38-045).

   D. Where "the State" or "State, or local control agency" is referred to in 40 CFR 51.118(a), it means DEQ or LRAPA.

   E. Where 40 CFR 51.100 refers to the Prevention of Significant Deterioration program and cites 40 CFR 51.166, it means the EPA-approved new source review rules of LRAPA (see 40 CFR 52.1987), where they cover Prevention of Significant Deterioration.

4. Where found in the federal rule, the terms "applicable state implementation plan" and "plan" refer to the programs and rules of LRAPA, as approved by the Oregon Environmental Quality Commission (EQC) or EPA, or any EPA-promulgated regulations (see 40 CFR Part 52, Subpart MM).

5. Publications incorporated by reference in this rule are available from the office of the Lane Regional Air Pollution Authority.

LANE REGIONAL AIR POLLUTION AUTHORITY

TITLE 50 ~~31~~

Ambient Air Standards

Section ~~31~~ 50-005 General

~~No person shall cause, let, permit, suffer or allow any emission which emission by itself or with other emissions which are present in the ambient air, are in excess of the standards enumerated in this section; provided that the ambient air standards shall not be enforceable on the property surrounding the emission point, if such property is contiguous to that on which the emission point is located and is in the exclusive possession and control of the person responsible for the emission.~~

These ambient air standards are established to ensure the health and welfare of the citizens of Lane County. It is the policy of the Authority to take whatever legally available reasonable measures may be required to attain and maintain these standards.

Section ~~31~~ 50-010 Particle Fallout

~~The particle fallout rate at a primary air mass station, primary ground level station, or special station, shall not exceed:~~

~~A. 10 grams per square meter per month in an industrial area, or~~

~~B. 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 per cent (70%).~~

~~C. 5 grams per square meter per month in residential and commercial areas, or~~

~~D. 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 per cent (70%).~~

~~E. Concentrations of calcium oxide present as particle fallout at a primary air mass station, primary ground level station, or special station, shall not exceed 0.35 grams per square meter per month in residential and commercial areas.~~

The particle fallout rate as measured by an Authority-approved method at a location approved by the Authority, shall not exceed 3.5 grams per square meter per month, of which the concentration of calcium oxide shall not exceed 0.35 grams per square meter per month.

Section ~~31~~ 50-015 Suspended Particulate Matter

~~Concentrations of suspended particulate matter at a primary air mass station shall not exceed:~~

~~A. 60 micrograms per cubic meter of air as an annual geometric mean for any calendar year.~~

~~B. 100 micrograms per cubic meter of air, 24 hour concentration for more than 15 percent of the samples collected in any calendar month.~~

~~C. 150 micrograms of PM10 per cubic meter of air, 24 hour concentration, more than once per year.~~

~~D. Concentrations of calcium oxide present as suspended particulate at a primary air mass station shall not exceed 20 micrograms per cubic meter in residential and commercial areas at any time.~~

1. Concentrations of suspended particulate matter at a location meeting ambient air monitoring site criteria, and as measured by an approved method, shall not exceed:

   A. 60 micrograms of TSP per cubic meter (ug/m^3) of air as an annual geometric mean for any calendar year.

   B. 150 ug/m^3 of TSP as a 24-hour average concentration more than once per year.

   C. 50 ug/m^3 of PM10 as an annual arithmetic mean. This standard is attained when the expected mean concentration, as determined in accordance with appendix K of 40 CFR 50 is less than or equal to 50 ug/m^3.

   D. 150 ug/m^3 of PM10 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, rounded to the nearest 10 ug/m^3, above 150 ug/m^3, as determined in Appendix K of 40 CFR 50 is equal to or less than one.

2. Concentrations of calcium oxide present as total suspended particulate (TSP), as measured at an Authority-approved site by an approved method shall not exceed 20 ug/m^3.

Section ~~31~~ 50-020 Odors

~~A. No person shall cause or permit the emission of odorous matter~~

~~1. in such manner as to cause a public nuisance or contribute to a condition or air pollution, or~~

~~2. that occurs for sufficient duration or frequency so that two measurements made within a period of one (1) hour, separated by not less than 15 minutes, are equal to or greater than a Scentometer No. 0 or equivalent dilution, in areas used for residential, commercial, industrial park or other similar purposes.~~

~~B. In other industrial areas, the release of odorous matter shall be prohibited if equal to or greater than a Scentometer No. 2 odor strength or equivalent dilution.~~

No person shall cause or permit the emission of odorous matter in such a manner as to cause a public nuisance.

Section ~~31~~ 50-025 Sulfur Dioxide

~~Concentrations of sulfur dioxide at a primary air-mass station, primary ground level station, or special station, shall not exceed:~~

~~A. 60 micrograms per cubic meter of air (0.02 ppm), annual arithmetic mean.~~

~~B. 260 micrograms per cubic meter of air (0.10 ppm), maximum 24 hour average more than once per year.~~

~~C. 1300 micrograms per cubic meter of air (0.50 ppm) maximum 3 hour average, more than once per year.~~

1. Concentrations of sulfur dioxide at a location meeting ambient air monitoring site criteria, and as measured by an approved method, shall not exceed:

A. 0.02 ppm as an annual arithmetic mean for any calendar year;

B. 0.10 ppm as a 24-hour average concentration more than once per year;

C. 0.50 ppm as a 3-hour average concentration more than once per year.

Section ~~31~~ 50-030 Carbon Monoxide

~~Concentrations of carbon monoxide at a primary air-mass station or primary ground level stations shall not exceed:~~

~~A. 10 Miligrams per cubic meter of air (8.7 ppm), maximum 8-hour average, more than once per year.~~

~~B. 40 miligrams per cubic meter of air (35 ppm), maximum 1-hour average, more than once per year.~~

1. For comparison to the standard, averaged ambient concentrations of carbon monoxide shall be rounded to the nearest integer in parts per million (ppm). Fractional parts of 0.5 or greater shall be rounded up.

2. Concentrations of carbon monoxide at a location meeting ambient air monitoring site criteria, and as measured by an approved method, shall not exceed:

A. 9 ppm as an 8-hour average concentration more than once per year;

B. 35 ppm as a 1-hour average concentration more than once per year.

Section ~~31~~ 50-035 Ozone

~~Concentrations of ozone at a primary air mass station, as measured by a method approved by and on file with the Lane Regional Air Pollution Authority, or by an equivalent method, shall not exceed 235 micrograms per cubic meter (0.12 ppm), maximum 1-hour average. This standard is attained when the expected number of days per calendar year with maximum hourly concentrations greater than 235 micrograms per cubic meter is equal to or less than one as determined by Appendix H, CFR 40, Part 50.9 (page 8220) Federal Register 44 No. 28, February 8, 1979.~~

Concentrations of ozone at a location meeting ambient air monitoring site criteria, and as measured by an approved method, shall not exceed 0.12 ppm 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 0.12 ppm is equal to or less than one as determined by Appendix H, 40 CFR 50.9.

~~Section 31-040 Hydrocarbons~~

~~Concentrations of hydrocarbons at a primary air mass station, as measured and corrected for methane, shall not exceed 160 micrograms per cubic meter of air (0.24 ppm), maximum 3-hour concentration measured from 0600 to 0900, not to be exceeded more than once per year.~~

Section ~~31~~ 50-040 Nitrogen Dioxide

~~Concentrations of nitrogen dioxide at a primary air mass station shall not exceed 100 micrograms per cubic meter of air (0.05 ppm) annual arithmetric mean.~~

Concentrations of nitrogen dioxide at a location meeting ambient air monitoring site criteria, and as measured by an approved method, shall not exceed 0.053 ppm as an annual arithmetic mean.

Section 50.045 Lead

The lead concentration at a location meeting ambient air monitoring site criteria, and as measured by an approved method, shall not exceed 1.5 ug/m^3 as an arithmetic average concentration of all samples collected at that location during any one calendar quarter.

LANE REGIONAL AIR POLLUTION AUTHORITY

TITLE 51

Air Pollution Emergencies

Section 51-005 Introduction

1. Notwithstanding any other rule or standard, these emergency rules are designed to prevent the excessive accumulation of air contaminants, thereby preventing the occurrence of an emergency due to the effects of these contaminants on the public health.

2. These rules establish criteria for identifying and declaring air pollution episodes at levels below the level of Significant Harm. They are adopted according to the requirements of the federal Clean Air Act as amended and 40 CFR, Part 51, Subpart H.

3. The levels of Significant Harm are:

   A. For sulfur dioxide (SO_2)--1.0 ppm, 24-hour average;

   B. For particulate matter (PM10)--600 ug/m^3, 24-hour average;

   C. For carbon monoxide (CO)

      (1) 50 ppm, 8-hour average

      (2) 75 ppm, 4-hour average

      (3) 125 ppm, 1-hour average;

   D. For ozone (O_3)--0.6 ppm, 1-hour average; and

   E. For nitrogen dioxide (NO_2)

      (1) 2.0 ppm, 1-hour average

      (2) 0.5 ppm, 24-hour average

Section 51-010 Episode Criteria

The determination of an Air Pollution Episode Stage shall be made by the Director. In making this determination, the Director will be guided by the following criteria:

1. "Pre-Episode Standby"--In this condition ambient levels of air pollutants have reached levels at the ambient standard. Atmospheric ventilation is poor, and the forecast is for continued poor ventilation. Under these conditions, monitoring may be increased, and some formal public notification warning sensitive individuals of poor air quality may be made.

2. "Air Pollution Alert"--In this condition, ambient levels of air pollutants have reached levels significantly above the standards, but there is no immediate danger of reaching the level of significant harm. Monitoring may be intensified, and a review of possible abatement actions should be made. A formal public notification should be made, warning sensitive individuals of poor air quality. If the conditions of A and B, below are both met, an Air Pollution Alert is declared, and the actions in Table I shall be implemented.

   A. Meteorological dispersion conditions are not expected to improve during the next 24 hours.

   B. Monitored pollutant levels at any monitoring site exceed any of the following:

      (1) Sulfur dioxide--0.3 ppm, 24-hour average;

      (2) Particulate matter (PM10)--350 ug/m^3;

      (3) Carbon monoxide--15 ppm, 8-hour average;

      (4) Ozone--0.2 ppm, 1-hour average;

      (5) Nitrogen dioxide--0.6 ppm, 1-hour average; or 0.15 ppm, 24-hour average.

3. "Air Pollution Warning"--In this condition, air pollutants reach ambient levels well above those of an Air Pollution Alert. Substantial restrictions of activities may be required. The public should be frequently informed of current pollution levels and of the hazards. If the conditions in both A and B, below, are met, an Air Pollution Warning will be declared, and the actions in Table II shall be implemented.

   A. Meteorological dispersion conditions are not expected to improve during the next 24 hours.

   B. Monitored pollutant levels at any monitoring site exceed any of the following:

      (1) Sulfur dioxide--0.6 ppm, 24-hour average;

      (2) Particulate matter (PM10)--420 ug/m^3, 24-hour average;

(3 Carbon monoxide--30 ppm, 8-hour average;

(4) Ozone--0.4 ppm, 1-hour average;

(5) Nitrogen dioxide--1.2 ppm, 1-hour average; or 0.3 ppm, 24-hour average.

4. "Air Pollution Emergency"--In this condition, ambient levels of air pollutants are approaching the Significant Harm levels, and stringent abatement actions may be necessary. The public should be frequently informed of current pollution levels and of the hazards. If the conditions in both A and B, below, are met, an Air Pollution Emergency will be declared, and the actions in Table III shall be implemented.

   A. Meteorological conditions are not expected to improve during the next 24 hours.

   B. Monitored pollutant levels at any monitoring site exceed any of the following:

      (1) Sulfur dioxide--0.8 ppm, 24-hour average;

      (2) Particulate matter (PM10)--500 ug/m^3, 24-hour average;

      (3) Carbon monoxide--40 ppm, 8-hour average;

      (4) Ozone--0.5 ppm, 1-hour average;

      (5) Nitrogen dioxide--1.6 ppm, 1-hour average; or 0.4 ppm, 24-hour average.

5. "Termination"--Any air pollution episode stage established by these criteria may be reduced to a lower stage or terminated, when the required conditions are no longer met.

Section 51-015 Emission Reduction Plans

Tables I, II and III of this regulation set forth specific emission reduction measures that shall be taken upon the declaration of an Air Pollution Episode. Any person responsible for a source of air contamination shall, upon declaration of an episode, take all actions specified in the applicable Table and shall particularly put into effect the Authority-approved preplanned abatement strategy for such condition.

Section 51-020 Preplanned Abatement Strategies

1. Any person responsible for the operation or control of a source of air contamination shall, when requested by the Authority in writing, prepare preplanned strategies consistent with good industrial practice and safe

operating procedures, for reducing the emission of air contaminants during Air Pollution Episodes.

2. Preplanned strategies as required by this section shall be in writing and describe the source of air contamination, contaminants and a brief description of the manner and amount in which the reduction will be achieved during each Episode stage.

3. During an Air Pollution Episode, preplanned strategies required by this section shall be made available on the premises to any person authorized to enforce the provisions of these rules.

4. Preplanned strategies required by this section shall be submitted to the Authority upon request within thirty days of the receipt of such request; such preplanned strategies shall be subject to review and approval by the Authority. Matters of dispute in developing preplanned strategies shall, if necessary, be brought before the Board of Directors.

5. Municipal and county governments, or other appropriate governmental bodies, shall, when requested by the Authority in writing, prepare preplanned strategies consistent with good traffic management practice and public safety, for reducing the use of motor vehicles or aircraft within designated areas during Air Pollution Episodes. These plans shall be designed to reduce or eliminate emissions of air contaminants from motor vehicles in accordance with the objectives set forth in Tables I - III and shall be prepared and submitted for review and approval by the Authority in accordance with subsections 1, 2 and 3 of this section.

Section 51-025 Implementation

1. The Authority and the Department of Environmental Quality shall cooperate to the fullest extent possible to insure uniformity of enforcement and administrative action necessary to implement these regulations. With the exception of sources of air contamination retained by the Department of Environmental Quality, all persons within the territorial jurisdiction of the Authority shall submit the preplanned abatement strategies prescribed in Section 51-020 to the Authority. The Authority shall submit summaries of the abatement strategies to the Department of Environmental Quality.

2. Declarations of Air Pollution Alert, Air Pollution Warning and Air Pollution Emergency shall be made by the Authority. In the event conditions warrent and such declaration is not made by the Authority, the Department of Environmental Quality shall issue the declaration and the Authority shall take appropriate remedial actions as set forth in these rules.

3. Additional responsibilities of the Authority shall include, but are not limited to:

   A. Securing acceptable preplanned abatement strategies.

B. Measurement and reporting of air quality data to the Department of Environmental Quality.

C. Informing the public, news media and persons responsible for air contaminant sources of the various levels set forth in these rules and required actions to be taken to maintain air quality and the public health.

D. Surveillance and enforcement of emergency emission reductions plans.

TABLE I

AIR POLLUTION EPISODE, ALERT CONDITION

EMISSION REDUCTION PLAN

Part A--Pollution Episode Conditions for Carbon Monoxide or Ozone

For Alert conditions due to excessive levels of carbon monoxide or ozone, persons operating motor vehicles shall be requested to voluntarily curtail or eliminate all unnecessary operations within the designated Alert area, and public transportation systems shall be requested to provide additional services in accordance with a preplanned strategy.

Part B--Pollution Episode Conditions for Particulate Matter

For Alert conditions resulting from excessive levels of particulate matter, the following measures shall be taken in the designated area:

1. There shall be no open burning by any person of any material.

2. Persons operating fuel burning equipment which requires boiler lancing or soot blowing shall perform such operations only between the hours of 12 noon and 4 p.m.

3. Persons responsible for the operation of any source of air contaminants listed below shall take all required actions for the Alert level, in accordance with the preplanned strategy:

Sources	Control Actions - Alert Level
(A) Coal, Oil or wood-fired facilities	(A) Utilization of electric generating fuels having low ash and sulfur content.
	(B) Utilization of mid-day (12:00 noon to 4:00 p.m.) atmospheric turbulence for boiler lancing and soot blowing.
	(C) Diverting electric power generation to facilities outside of Alert Area.
(B) Coal, oil or wood-fired process steam generating facilities.	(A) Utilization of fuel having low ash and sulfur content.

	(B) Uilization of mid-day (12:00 noon to 4:00 p.m.) atmospheric turbulence for boiler lancing and soot blowing.
	(C) Substantial reduction of steam load demands consistent with continuing plant operations.
(C) Manufacturing industries of the following classifications:	(A) Reduction of air contaminants from manufacturing operations by curtailing, postponing, or deferring production and all operations.
Primary Metals Industries Petroleum Refining Chemical Industries Mineral Processing Ind. Grain Industries Paper and Allied Products Wood Processing Industry	(B) Reduction by deferring trade waste disposal operations which emit solid particle gas vapors or malodorous substance.
	(C) Reduction of heat load demands for processing.
	(D) Utilization of mid-day (12:00 noon to 4:00 p.m.) atmospheric turbulence for boiler lancing or soot blowing.

TABLE II

AIR POLLUTION EPISODE, WARNING CONDITIONS

EMISSION REDUCTION PLAN

Part A--Pollution Episode Conditions for Carbon Monoxide or Ozone

For Warning conditions, resulting from excessive levels or carbon monoxide or ozone, the following measures shall be taken:

1. Operating of motor vehicles carrying fewer than three (3) persons shall be prohibited within designated areas during specified hours. Exceptions from this provision are:

   A. Public transportation and emergency vehicles

   B. Commercial vehicles

   C. Through traffic remaining on Interstate or primary highways.

2. At the discretion of the Authority, operations of all private vehicles within designated areas or entry of vehicles into designated areas, may be prohibited for specified periods of time.

3. Public transportation operators shall, in accordance with a pre-planned strategy, provide the maximum possible additional service to minimize the public's inconvenience as a result of (1) or (2) above.

4. For ozone episodes the following additional measures shall be taken:

   A. No bulk transfer of gasoline without vapor recovery from 2:00 a.m. to 2:00 p.m.

   B. No service station pumping of gasoline from 2:00 a.m. to 2:00 p.m.

   C. No operation of paper coating plants from 2:00 a.m. to 2:00 p.m.

   D. No architectural painting or auto finishing;

   E. No venting of dry cleaning solvents from 2:00 a.m. to 2:00 p.m. (except perchlorethylene).

5. Where appropriate for carbon monoxide episodes 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 devices provide the sole source of heat.

Part B--Pollution Episode Conditions for Particulate Matter

For Warning conditions resulting from excessive levels of particulate matter, the following measures shall be taken:

1. There shall be no open burning by any person of any material.

2. The use of incinerators for the disposal of solid or liquid wastes shall be prohibited.

3. Persons operating fuel-burning equipment which requires boiler lancing or soot blowing shall perform such operations only between the hours of 12 noon and 4 p.m.

4. Where legal authority exists, governmental agencies shall prohibit all use of woodstoves and fireplaces for domestic space heating, except where such devices provide the sole source of heat.

5. Persons responsible for the operation of any source of air contaminants listed below shall take all required actions for the Warning level, in accordance with a preplanned strategy:

Source of Air Contamination	Air Pollution Warning
(A) Coal, oil or wood-fired electric power generating facilities.	(A) Maximum utilization of fuels having lowest ash and sulfur content.
	(B) Utilization of mid-day (12:00 noon to 4:00 p.m.) atmospheric turbulence for boiler lancing and soot blowing.
	(C) Diverting electric power generation to facilities outside of Warning Area.
	(D) Prepare to use a plan of action if an Emergency Condition develops.
	(E) Cease operation of facilities not related to safety or protection of equipment or delivery of priority power.
(B) Coal, oil or wood-fired process steam generating facilities	(A) Maximum utilization of fuels having the lowest ash and sulfur content.

	(B) Utilization of mid-day (12:00 noon to 4:00 p.m.) atmospheric turbulence for boiler lancing and soot blowing.
	(C) Prepare to use a plan of action if an Emergency Condition develops.
	(D) Cease operation of facilities not related to safety or protection of equipment or delivery of priority power.
(C) Manufacturing industries which require considerable lead time for shut-down including the following classifications: Petroleum Refining Chemical Industries Primary Metals Industries Glass Industries Paper and Allied Products	(A) Reduction of air contaminants from manufacturing operations by, if necessary, assuming reasonable economic hardships by postponing production and allied operations.
	(B) Reduction by deferring trade waste disposal operations which emit solid particles, gases, vapors or malodorous substances.
	(C) Maximum reduction of heat load demands for processing.
	(D) Utilization of mid-day (12:00 noon to 4:00 p.m.) atmospheric turbulence of boiler lancing or soot blowing.
(D) Manufacturing industries which require relatively short time for shut-down	(A) Elimination of air contaminants from manufacturing operations by ceasing, postponing, or deferring production and allied operations to the extent possible without causing injury to persons or damage to equipment.
	(B) Elimination of air contaminants from trade waste disposal processes which emit solid particles, gases, vapors, or malodorous substances.
	(C) Reduction of heat load demands for processing.

(D) Utilization of mid-day (12 noon to 4 p.m.) atmospheric turbulence for boiler lancing or soot blowing.

TABLE III

AIR POLLUTION EPISODE, EMERGENCY CONDITIONS

EMISSION REDUCTION PLAN

1. There shall be no open burning by any person of any material.

2. The use of incinerators for the disposal of solid or liquid wastes shall be prohibited.

3. All places of employment, commerce, trade, public gatherings, government, industry, business, or manufacture shall immediately cease operation, except the following:

   A. Police, fire, medical and other emergency services;

   B. Utility and communication services;

   C. Governmental functions necessary for civil control and safety;

   D. Operations necessary to prevent injury to persons or serious damage to equipment or property;

   E. Food stores, drug stores and operations necessary for their supply;

   F. Operations necessary for evacuation of persons leaving the area;

   G. Operations conducted in accordance with an approved preplanned emission reduction plan on file with the Authority.

4. All commercial and manufacturing establishments not included in these rules shall institute such actions as will result in maximum reduction of air contaminants from their operations which emit air contaminants, to the extent possible without causing injury or damage to equipment.

5. The use of motor vehicles is prohibited except for the exempted functions in 3, above.

6. Airports shall be closed to all except emergency air traffic.

7. Where legal authority exists, governmental agencies shall prohibit all use of woodstoves and fireplaces.

8. Any person responsible for the operation of a source of atmospheric contamination listed below shall take all required control actions for this Emergency Level.

Source	Air Pollution Emergency
(A) Coal, oil or wood-fired electric power generating facilities	(A) Maximum utilization of fuels having lowest ash and sulfur content.
	(B) Utilization of mid-day (12:00 noon to 4:00 p.m.) atmospheric turbulence for boiler lancing or soot blowing.
	(C) Diverting electric power generation to facilities outside of Emergency area.
	(D) Cease operation of facilities not related to safety or protection of equipment or delivery of priority power.
(B) Coal, oil or wood-fired process steam generating facilities	(A) Reducing heat and steam demands to absolute necessities consistent with preventing equipment damage.
	(B) Utilization of mid-day (12:00 noon to 4:00 p.m.) atmospheric turbulence for boiler lancing and soot blowing.
	(C) Taking the action called for in the emergency plan.
	(D) Cease operation of facilities not related to safety or protection of equipment or delivery of priority power.
(C) Manufacturing industries following classifications:	(A) The elimination of air of contaminants from manufacturing operations by

Primary Metals Industry
Petroleum Refining Operations
Chemical Industries
Mineral Processing Industries
Paper and Allied Products
Grain Industry
Wood Processing Industry

ceasing, curtailing, postponing or deferring production and allied operations to the extent possible without causing injury to persons or damage to equipment.

(B) Elimination of air contaminants from trade waste disposal processes which emit solid particles, gases, vapors, or malodorous substances.

(C) Maximum reduction of heat load demands for processing.

(D) Utilization of mid-day (12:00 noon to 4:00 p.m.) atmospheric turbulence for boiler lancing or soot blowing.

Section 5.4

OREGON STATE IMPLEMENTATION PLAN

COMMITMENTS FOR PM10 GROUP II AREAS

(Oakridge)

LANE REGIONAL AIR POLLUTION AUTHORITY

August 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 (TSP) and established annual and daily health standards for particles less than 10 microns in aerodynamic diameter (PM10). The new daily standard for PM10 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 has adopted a PM10 standard equivalent to the federal standard and has referenced 40 CFR 50 Appendix K in its rules as the method for determining compliance with the new standard. The Lane Regional Air Pollution Authority (LRAPA) has adopted the same rule for Lane County.

All areas of the country are classified into one of three groups depending on their probability to meet the new standards. The probability calculations were made using the EPA-developed methodology based on available data. If only TSP air quality data was available, standard assumptions were used to estimate probable PM10 levels. Any available PM10 data was also used in estimating the probability. Those areas showing a 95% or greater probability of exceeding either the daily or annual PM10 standard were classified as Group I; those areas having 20%-95% probability of exceeding one of the standards were classified as Group II; all other areas below 20% probability were classified 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 PM10 data sufficient to determine the actual status of the area with respect to the standards, report any standard exceedances to the EPA regional office, and, should a sufficient number of 24-hour standard exceedances be observed

to constitute a violation of the standard (that is, one expected exceedance per year) or if the annual standard is exceeded, 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 the 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. Bend
3. La Grande
4. Oakridge

The Department of Environmental Quality (DEQ) has responsibility for air monitoring in all areas of Oregon with the exception of Lane County, and has monitored TSP and PM10 levels in Portland, Bend, and La Grande.

LRAPA has monitored for TSP in Oakridge since 1983. An examination of the data record indicates that the area may have difficulty meeting the daily PM10 standard at the historical monitoring site located at the Willamette Activity Center Building, in a residential area just south of Highway 58 in the southwestern corner of the community. The annual averages for TSP are below the annual PM10 standard; thus, there is low probability that the annual standard will be exceeded.

5.4.3 MONITORING PM10 LEVELS

With the promulgation of the new PM10 standards, and recognizing the historical exceedances of the former 24-hour TSP standards recorded at the Willamette Activity Center Building, LRAPA has conducted a survey of Oakridge to determine a suitable location for a second monitoring site, to evaluate the representativeness of the TSP data collected at the Activity Center Building.

A second site was identified at the Oakridge City Shops, adjacent to a residential area southeast of the downtown district and northeast of Highway 58 (see map attached). Since the Willamette Activity Center Building monitoring site has been considered a Special Purpose Monitoring Site (SPMS), an EPA site number has not been assigned. Both sites meet the 40 CFR 58 criteria for maximum impact. Either one or both sites will become a State/Local Air Monitoring Site (SLAMS) and an EPA site number(s) will be assigned. Daily sampling will be conducted for at least a 3-year period at either one or both sites with monitoring equipment that meets EPA-equivalency requirements.

5.4.4 REPORTING EXCEEDANCES TO EPA

When ambient concentrations at any monitoring site in a Group II area exceed the daily or the annual PM10 standard, the EPA Region X office will be notified of the event in writing within 45 days of the exceedance. In the event that ambient concentrations exceed the daily standard at either of the Oakridge monitoring sites, LRAPA will notify the DEQ, allowing a reasonable amount of time for the Department to, in turn, notify the EPA Region X Air and Toxics Divison and Environmental Services Division in writing, within the 45 day deadline. If an exceedance of the

daily standard is observed, daily sampling at the site will continue.

5.4.5 NOTIFICATION OF VIOLATIONS TO EPA

Since the PM10 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 will be followed as described in Appendix K to 40 CFR 50.

When a number of exceedances sufficient to constitute a violation of the standard is observed, the EPA Region X office will be notified that a new PM10 problem area 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. If less than daily sampling is conducted at one of the two Oakridge monitoring sites, and if an exceedance is noted at that site, 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. Since LRAPA will initiate daily sampling at one or both sites immediately, 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 PM10 standard.

Violations of the standard, either annual or daily, will be reported to EPA Region X as soon as the verified data becomes available. Reporting the violation to EPA will constitute acknowledgement that a problem exists and will trigger an examination of any existing control strategies to determine if they are sufficient to assure timely attainment and maintenance

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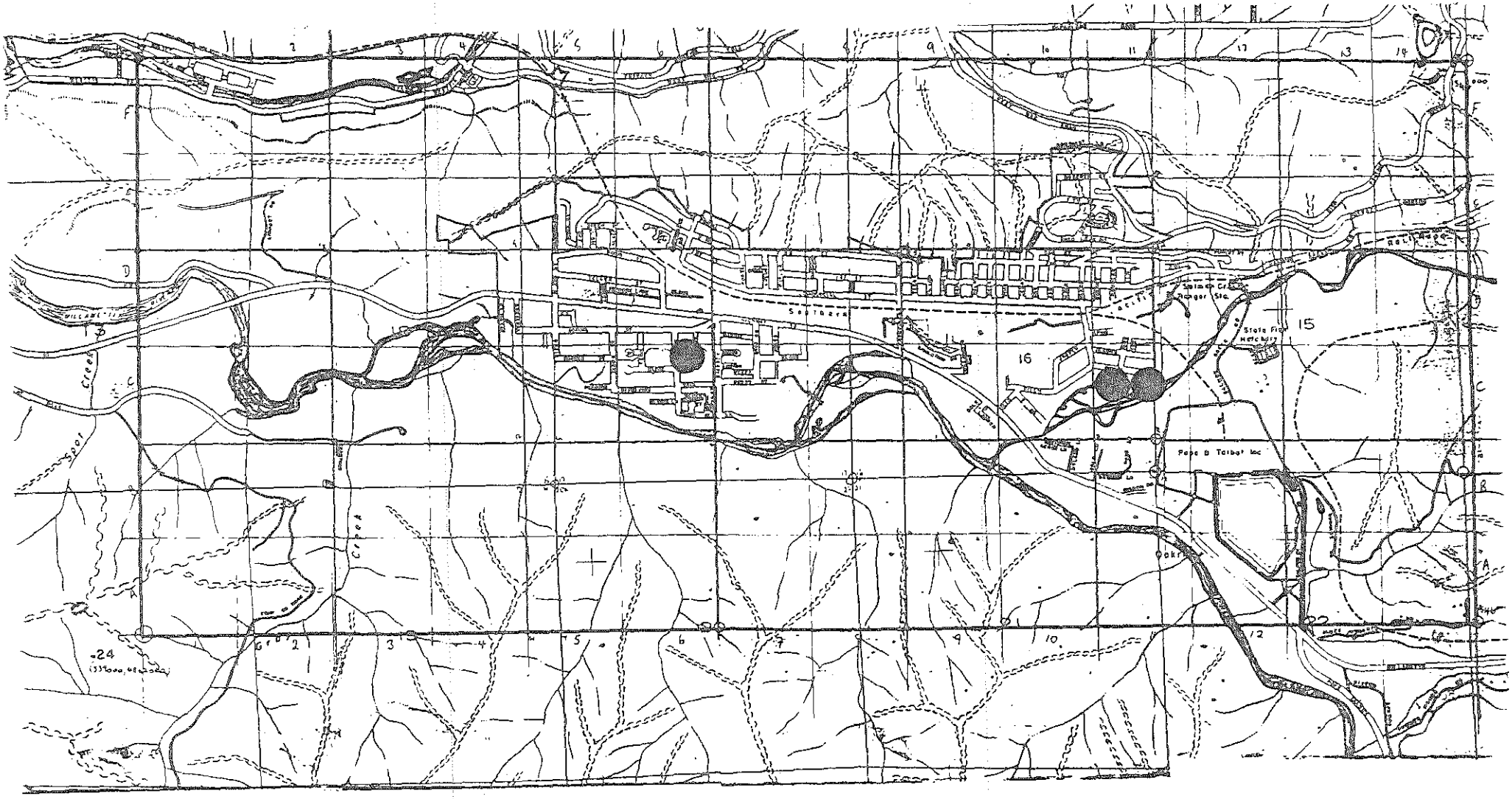
after a total of three years of monitoring data has been collected, LRAPA will evaluate the status of the Oakridge Group II area to determine if there will be any problem maintaining the PM10 standards. A report on the final status evaluation of the Oakridge Group II area will be made to EPA by no later than August 31, 1990.

5.4.9 EMISSION INVENTORY

As part of the evaluation process, accroding to EPA requirements for Group II areas, LRAPA is to prepare a PM10 Emission Inventory for Oakridge and submit to EPA by no later than August 31, 1990. The Emission Inventory is to 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 the year through at least 1990.



WILLAMETTE ACTIVITY CENTER BLDG. (historical site)

OAKRIDGE CITY SHOPS (new site)

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Agenda Item No. 5

LRAPA Board of Directors Meeting

July 12, 1988

TO: Board of Directors

FROM: Donald R. Arkell

SUBJ: Recommendation for Adoption of Proposed Changes in Definitions, Ambient Air Quality Standards, New Source Review, Prevention of Significant Deterioration and Emergency Episode Plan in LRAPA Rules, Titles 14, 31, 38, 50 and 51, to Accommodate the New Federal Particulate Matter Standards (PM10) and Newly-Adopted State Rules

BACKGROUND

In July, 1987, the U. S. Environmental Protection Agency (EPA) promulgated new National Ambient Air Quality Standards for Particulate Matter. They removed reference to Total Suspended Particulate (TSP) and replaced it with a standard for particles less than or equal to 10 μm in aerodynamic diameter (PM10). This new standard is designed to be more protective of public health since it more directly controls those particles that are capable of penetrating far enough into the respiratory system to cause significant harm. These standards are also expected to provide adequate protection from welfare effects such as soiling.

Subsequent to promulgation, the EPA proceeded to identify those areas of the country with high probability of exceeding the standards. Areas with a greater than 95 percent probability of exceeding the standard were classified as Group I and required to develop a plan containing control measures that will ensure attainment of the standards within three years of EPA approval of the plan. The Eugene-Springfield area has been classified as a Group 1 Area, and a control plan is being developed. The LRAPA Advisory Committee is

directly involved in this process and will be making a recommendation for a control plan to the board in a couple of months.

The Oakridge area has been classified as a Group II Area, which means that the probability of exceeding the new standards is between 25 and 95 percent. Areas with this designation are required to make formal commitments to the EPA which will require monitoring for PM10 and the development of a PM10 emission inventory. In addition, there must be a commitment to develop the necessary control measures, should the monitoring show that the area exceeds the standards. A public hearing on the proposed SIP for the Oakridge Area is scheduled for August.

The rest of Lane County is classified as Group III, which means that there is a high probability that the new standards are being attained, or that no data is available.

In addition to the separate actions that must take place for the problem areas, there are some general new requirements that apply uniformly in all areas. In addition to these required changes, it is also being proposed that other minor amendments be made that will conform the titles being modified to the format of other recent rule changes.

SUMMARY OF ORIGINAL PROPOSED CHANGES

Title 14, Definitions

14-001.0060	Revise definition of "Ambient Air"
14-001.0063	Replace definition of "Ambient Air Monitoring Site" with a definition of "Ambient Air Monitoring Site Criteria"

14-001.0067	Add definition of "Approved Method"
14-001.0083	Add definition of "Authority-Approved Method"
14-001.0198	Add definition of "Emission Limit"
14-001.0207	Add definition of "Emission Standard"
14-001.0213	Delete definition of "Equivalent Method"
14-001.0427	Add definition of "Particulate Matter Emissions"
14-001.0443	Add definition of "PM10"
14-001.0444	Add definition of "PM10 Emissions"

Title 38, New Source Review

38-005-10	Revise definition of "Significant Air Quality Impact" to include PM10
38-005-11	Revise definition of "Significant Emission Rate" to include PM10
38-020-4	Add reference to latest EPA modeling guidelines and supplements
38-020-5.C	Add subsection to provide transition for PSD program
38-020-5.D	Change designation from 38-020-5.C
38-035-1	Add reference to latest EPA modeling guidelines and supplements
38-035-3	Change to include PM10 in Net Air Quality Benefit requirements for offsets

Title 50, Ambient Air Standards (Replaces Title 31)

50-005	Replaces 31-005 with new general statement
50-010	Replaces 31-010, simplifies particle fallout standard
50-015	Replaces 31-015, removes all but annual TSP standard and adds PM10 standard
50-020	Replaces 31-020, simplifies odor standard
50-025	Replaces 31-015, changes SO2 standard units from mg/m^3 to ppm

50-030	Replaces 31-030, changes CO standard units from $\mu g/m^3$ to ppm
50-035	Replaces 31-035, changes ozone standard units from $\mu g/m^3$ to ppm
31-040	Delete standard for hydrocarbons (also deleted from state and federal rules)
50-040	Replaces 31-045, changes nitrogen dioxide standard units from $\mu g/m^3$ to ppm
50-045	Adds a standard for lead

Title 51, Air Pollution Emergencies

51-005-1	Revise introduction for clarification
51-005-2	Revise introduction for clarification
51-005-3	Add references to "Significant Harm Levels" to include PM10
51-010-1	Define "Pre-Episode Standby", replaces "Air Pollution Forecast"
51-010-2	Revise "Air Pollution Alert" levels to incorporate PM10 and unit changes
51-010-3	Revise "Air Pollution Warning" levels to incorporate PM10 and unit changes
51-010-4	Revise "Air Pollution Emergency" levels to incorporate PM10 and unit changes
51-010-5	Revise "Termination" for clarification
51-015	Revise "Emission Reduction Plans" for clarification
51-020	Revise "Preplanned Abatement Strategies" for clarification
51-025	Revise "Implementation" for clarification
51-026	Remove old effective date
Tables I, II and III	Revise Emission reduction plans for episode stages for clarification and add restrictions for ozone episodes

DISCUSSION

The programs impacted by the above changes include New Source Review (NSR), Prevention of Significant Deterioration (PSD), Air Pollution Emergencies, and the setting of ambient air standards. For the most part, the proposed changes incorporate the new PM10 standards into the existing rules. This occurs, for example, in the NSR rules, where Significant Air Quality Impact and Significant Emission Rates are defined, and in Title 51, which defines under what conditions Air Pollution Emergencies are declared and what actions must be taken to abate the emergency. In addition, a number of definitions must be added or modified. Significant changes are also proposed for Title 50 (replacing Title 31), which defines ambient air standards. Other changes of less significance include:

1. Change in units of standards for gaseous pollutants from mass per unit volume to parts per million (ppm) (parts of air contaminant per million parts of air).
2. Eliminate the standard for hydrocarbons. This has already been eliminated by the EPA and EQC, since required control measures for ozone non-attainment areas are more restrictive than these standards.
3. Add a standard for lead. This already exists in the EPA and EQC rules but was awaiting an update of this Title for addition to the local rules.
4. Retain part of the particle fallout standard to maintain stringency with the EQC.
5. Several other minor changes that will add clarity and conformity to the rules.

State and federal requirements are that the local rules must be at least as stringent as those of the federal and state governments. In this regard, the May 10, 1988 proposal was reviewed by the State Oregon DEQ and the federal EPA (see attached comments). Both agencies found that most of the proposed changes were acceptable. However, they each had a few comments regarding changes that should be made to maintain stringency.

The DEQ found that the Emergency Episode rules (Title 51) needed restrictions added for ceasing operation of non-essential electric power and steam generating facilities. They commented that the same title should also have language restricting the operation of home woodheating devices, where legal authority exists. Finally, they found that the proposed rules in Title 50 (Ambient Air Quality Standards) should have the daily TSP standard added. The staff concurs with the DEQ comments and proposes appropriate additional modifications.

The EPA in their comments noted that the proposed revisions ". . . are an excellent integration of the EPA requirements. However, there are two provisions which still need to be added, and a number of the proposed revisions and other sections of the rules which need additional work before EPA requirements for PM10 are met." The first provision they want to add is a requirement for emissions reporting. After subsequent discussions with EPA staff, it was determined that the provisions contained in Title 34-040 (see attached) would be adequate for this purpose. The second provision to be added was a definition of "TSP". The LRAPA staff concurs with the need for

this and has drafted a definition. Although the remaining list of comments is lengthy, there is considerable redundancy, shortening the list significantly. The LRAPA staff has discussed these with the EPA staff and developed a set of proposed changes in the draft rules which should meet the stringency requirement.

Notice of this hearing was published June 8 in the Cottage Grove Sentinel, the Eugene Register-Guard and The Springfield News, and the rules have been available for review and comment since that time. In addition, the rules underwent A-95 review by both L-COG and the state A-95 coordinator.

Based upon the DEQ and EPA comments, the staff is proposing the following amendments to the May 10, 1988 draft rule changes:

Title 14, Definitions

14-001.0067	Add additional reference to federal rule
14-001.0198	Add minor clarification to definition of "Emission Limitation"
14-001.0483	Add new definition of "Reference Method"
14-001.0577	Add new definition of "TSP"

Title 38, New Source Review

38-005-10	Add PSD increments
38-005-12	Remove reference to TSP
38-020-1.B(2)	Minor wording change for PSD increments
38-035-2	minor wording change for clarification

Title 50, Ambient Air Standards

50-015-1.B	Add 24-hour TSP standard

Title 51, Air Pollution Episodes

51-005-2	Update federal reference
Tables II and III	Add requirements for home woodheating devices and non-essential electricity and steam generating facilities

ALTERNATIVES

1. Take no action. This will result in LRAPA rules being less stringent than federal and state rules and subject this area to probable federal and state corrective actions. The PM10 SIP would not be approvable.
2. Adopt rules as proposed. This will result in LRAPA rules being as stringent as federal and state rules. The PM10 SIP would be approvable.

RECOMMENDATION

Based on the staff report, the attached comments and the proposed amendments to Titles 14, 31, 38, 50 and 51, it is the director's recommendation that the board adopt these proposed rules.

REJ/mjd

Agenda Item No. 9
LRAPA Board of Directors Meeting
June 14, 1988

To: Board of Directors

From: Donald R. Arkell

Subj: Request for Authorization to Hold a Public Hearing on Commitments for Oakridge PM10 Group II Area as a Revision to Oregon's State Implementation Plan.

BACKGROUND

In July, 1987, the U.S. Environmental Protection Agency (EPA) adopted new ambient air quality standards for particulate matter, as well as new regulations for implementing the new standards. In adopting the new standards, EPA removed reference to Total Suspended Particulate (TSP) and replaced it with a standard for particles less than 10 micrometers in aerodynamic diameter (PM10). This new standard is designed to be more protective of public health since it more directly controls those particles capable of penetrating far enough into the respiratory system to cause significant harm.

All areas of the country are classified into three categories based on their probability of meeting the new PM10 standards. Those areas with strong liklihood (greater than 95% probability) of violating the new standards are considered to be Group I, with immediate control strategies for attaining and maintaining the new standards required. Areas with a moderate probability (20%-95%) of violating the standard are classified as Group II, in which commitments must be made to continue monitoring and report future standard exceedances. All other areas are included with Group III, which means there is low probability (less than 20%) that the new standards will be exceeded and only rules covering monitoring, preconstruction review and emergency episodes need be adopted. In each Group,

changes in the existing State Implementation Plan (SIP) are reflected in the appropriate requirements

In Lane County, Eugene-Springfield has been classified as a Group I area, and Oakridge has been classified as a Group II area.

This agenda item discusses the Group II area requirements for Oakridge.

A Group II "Committal SIP", to meet specific activities with enforceable milestones, is required by EPA. The specific milestones are:

1. Monitor PM10 at least to an extent consistent with minimum EPA requirements.
2. Report exceedances of the PM10 standards to EPA within 45 days of occurrance.
3. Report any violations of the PM10 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 PM10 standard within 30 days of reporting a violation or in any case by September 1, 1990. A PM10 emission inventory will also be prepared as part of this determination. (LRAPA has already calculated an emission inventory for Oakridge, attached with the proposed SIP.)
5. Submit a full control strategy within 6 months of determining the inadequacy of the SIP which demonstrates attainment within 3-5 years of the date EPA approves the "Committal SIP."

DISCUSSION

Oakridge is one of four areas in Oregon that have been identified as being

Group II for PM10 after examination of the available air quality data. The other three areas are Portland, Bend, and La Grande. Following Department of Environmental Quality (DEQ) public hearings in those communities, the Environmental Quality Commission (EQC) recently adopted "Committal SIPs" for those three areas.

Oakridge, likewise, has the potential for exceeding the 24-hour PM10 standard with impacts primarily from wood space heating. EPA requirements for dealing with Group II areas are described in the Federal Register of July 1, 1987.

LRAPA is the agency designated to fulfill federal air quality planning requirements in Lane County. The primary required LRAPA activity, aside from development of the "Committal SIP", involves expansion of the air quality monitoring network to include monitoring for PM10 at a high enough frequency to be able to determine whether or not air quality in the Oakridge area attains the PM10 standards. LRAPA has developed a proposed monitoring plan for Oakridge that will fulfill the monitoring requirements and expects to obtain EPA approval.

A revision to the State Implementation Plan for Oakridge, that meets EPA requirements, is attached to this report. Following public hearing and adoption by the LRAPA board, this "Committal SIP" will be submitted to the EQC for approval, then forwarded to EPA as a formal SIP revision.

Due to the inherent uncertainty about the final status of Group II areas such as Oakridge, and to keep options open should problems meeting the standard become apparent near the September 1, 1990 deadline for determining the status of the area, LRAPA is requesting at this time a two-year extension to attain standards. This request is included in the "Committal SIP." Should Oakridge be determined to violate the PM10 standard and control strategy devel-

opment is required, the extension period for attainment will be necessary for proper evaluation, strategy development and implementation.

SUMMARY

1. The EPA adopted new air quality standards and accompanying regulations for particulate matter referred to as PM10 on July 1, 1987.
2. All areas of the country are currently grouped into three categories depending on the probability of meeting the new PM10 standards. Areas with a moderate probability of violating the standard are classified Group II and include Oakridge in Lane County, as well as Portland, Bend, and La Grande in the State of Oregon.
3. The EPA requires that commitments be made in the State Implementation Plan to perform additional sampling to determine the status of Group II areas, to promptly report exceedances of the standards, and to provide an evaluation of the status of each Group II area to EPA by no later than September 1, 1990. Within 6 months of determining that a Group II area is in nonattainment, a control strategy must be developed.
4. The Lane Regional Air Pollution Authority has prepared a revision to the State Implementation Plan for Oakridge to make the commitments required by EPA, including a 2-year extension of the deadline to reach attainment if nonattainment is declared. The EQC has already adopted "Committal SIPs" for Portland, Bend, and La Grande.

RECOMMENDATION

Based on the summary of this staff report, it is the recommendation of the director that the board authorize a public hearing to take testimony on

revision of the State Implementation Plan to provide for the required monitoring and evaluation of Oakridge, as a PM10 Group II area, against the new PM10 standards. The hearing, to be conducted by LRAPA staff, is to be held in Oakridge on August 3 , 1988.

Attachments:
1. Statement of Need for rulemaking
2. Hearings Notice
3. Proposed Committal SIP for Oakridge PM10 Group II Area

DRA:md
June 7, 1988

cc: Nick Nikkila, DEQ
Sarah Armitage, DEQ
James Herlihy, EPA
Ann Williamson, EPA

M I N U T E S

LANE REGIONAL AIR POLLUTION AUTHORITY
BOARD OF DIRECTORS MEETING
TUESDAY--AUGUST 9, 1988
SPRINGFIELD CITY COUNCIL CHAMBERS

ATTENDANCE:

Board	Rich Gorman, Chair--City of Springfield; Debra Ehrman--City of Eugene; Betty Horvath--City of Cottage Grove; Ben Reed--City of Springfield; Emily Schue--City of Eugene (ABSENT: Rob Bennett--City of Eugene; Ellie Dumdi--Lane County)
Staff	Don Arkell--Director; Paul Willhite; Ralph Johnston; Marty Douglass; Tim Mixon; Merrie Dinteman
Advisory Committee	Kathryn Barry
Other	Dick Crabb, Al Peroutka

OPENING: Gorman called the meeting to order at 12:25 p.m.

MINUTES: MSP (Schue/Reed) approval of minutes of the July meeting as submitted. Horvath abstained due to absence from the July meeting.

EXPENSE REPORT: MSP (Horvath/Ehrman)(unanimous) approval of the expense and appropriations reports for July 1988 as presented.

PUBLIC PARTICIPATION: None

BOARD ACTION--OAKRIDGE PM10 SIP: Marty Douglass presented the PM10 SIP document for Oakridge, a "committal SIP" containing certain commitments required of Group II areas throughout the country. Douglass said that monitoring data collected by LRAPA indicates a potential in Oakridge for exceeding the 24-hour PM10 standard with impacts primarily in the wintertime from residential woodburning.

The five commitments contained in the SIP were:

1. LRAPA will monitor PM10 at least to an extent consistent with EPA requirements;

2. LRAPA will report standard exceedances to the state DEQ, allowing enough time for DEQ to report the exceedances to EPA within the required 45-day-from-occurrence time-frame;

3. LRAPA will report any violations (more than three exceedances in a 3-year period) immediately, in the same manner as described in (2) above;

4. LRAPA will evaluate the Oakridge plan, in terms of adequacy in attaining or maintaining the standard, within 30 days of reporting a violation, or in any case by August 31, 1990;

5. LRAPA will submit a full control strategy plan within six months of determining inadequacy of the existing plan, with the final attainment deadline to be three to five years after EPA accepts the plan. (LRAPA is requesting a two-year extension of the attainment deadline to allow for proper evaluation, strategy development and implementation of a control plan, should that become necessary.)

Douglass explained that the request for extension is necessary because the main source of the PM10 problem in Oakridge is thought to be woodstove emissions, which is a very difficult source to deal with. The people of Oakridge understand that there is a problem and that something needs to be done about it. A voluntary curtailment program, similar to the one used in Eugene/Springfield for the past two heating seasons, will be initiated this winter in Oakridge. Depending on the effectiveness of this voluntary program, further steps may need to be taken. The problem with this as a control strategy is that Oregon law does not allow direct control of home heating as a source of pollution. A mandatory program would have to be enacted as a city or county ordinance or through state legislation. The extension is being requested at this time, because the SIP process does not allow such requests to be made later.

Douglass reported that public hearing on the proposed SIP had been held in Oakridge on August 3, with Ellie Dumdi of LRAPA's board as hearings officer. A hearings officer's report and summary of testimony were presented at this time with the SIP document. Comments received from DEQ and EPA during the public notice period had also been incorporated into the final proposal.

Motion

Based on the record of the public hearing and the information presented at this time, Horvath MOVED for adoption of the PM10 SIP for Oakridge. Schue SECONDED, and the MOTION PASSED BY UNANIMOUS VOTE.

The SIP and supporting documentation will be forwarded to DEQ for presentation to the EQC for approval. Following EQC action, the SIP will be submitted to EPA for approval.

M I N U T E S

LANE REGIONAL AIR POLLUTION AUTHORITY
BOARD OF DIRECTORS MEETING
TUESDAY--JULY 12, 1988
SPRINGFIELD CITY COUNCIL CHAMBERS

ATTENDANCE:

Board	Rich Gorman, Chair--City of Springfield; Rob Bennett--City of Eugene; Debra Ehrman--City of Eugene; Ben Reed--City of Springfield; Emily Schue--City of Eugene (ABSENT: Ellie Dumdi--Lane County; Betty Horvath--City of Cottage Grove)
Staff	Don Arkell--Director; Paul Willhite; Ralph Johnston; Tim Mixon; Merrie Dinteman
Advisory Committee	Kathryn Barry
Other	Ed Black
OPENING:	Gorman called the meeting to order at 12:25 p.m.
MINUTES:	MSP (Ehrman/Bennett)(unanimous) approval of minutes of the June meeting as submitted.
EXPENSE REPORT:	After brief discussion, MSP (Ehrman/Reed)(unanimous) approval of the expense and appropriations reports for June 1988 as presented.
REQUEST FOR PUBLIC HEARING, PROPOSED CHANGES TO LRAPA TITLES 43 AND 34 (Asbestos-related):	Arkell explained that the proposed changes would make LRAPA's rules equivalent to the most recent state and federal rules, which include contractor certification and worker training, federal handling, demolition and disposal requirements and fee schedules. The most substantive change, the fee schedule, is identical to the state's. Arkell said authority had been granted to local authorities to set separate fee schedules, and LRAPA could adopt a separate fee schedule at a later date if necessary; however, staff recommended adoption of the state's schedule, initially, in order to avoid confusion among contractors who work in other areas of the state as well as Lane County. The state fee schedule had been reviewed by the LRAPA Advisory Committee and determined to meet the goals set by the committee for an asbestos program fee schedule. Arkell said a review of the agency's asbestos notifications for the past three years showed a 100 percent increase each year over the previous year, and approximately half of the cost of this program could have been recovered if the fee schedule had been in place. This growth, Arkell said, is a

nationwide trend attributable to greater emphasis on regulatory asbestos-related activities and greater public awareness of the asbestos problem. Since the program is growing so rapidly and more staff time is being devoted to it, fees are necessary to help offset the cost of operation.

Motion — After discussion, MSP (Erhman/Reed)(Unanimous) authorization of public hearing on the proposed rule amendments at the September board meeting.

PUBLIC HEARING, PROPOSED CHANGES TO LRAPA TITLES 14, 38, 31 AND 51 (PM10-related): Arkell submitted for the record affidavits of publication of public hearing notice in the Eugene Register-Guard and The Springfield News, stating that notice had also been published in the Cottage Grove Sentinel. In addition to the regular A-95 review required for this SIP change, drafts of the proposals which were shown to the board earlier were submitted to DEQ and EPA for their review prior to this hearing. Comments had been received and incorporated into the proposals submitted at this time, and LRAPA had also been designated by DEQ as hearings officer for the EQC.

Federal requirements, Arkell said, were to add PM10 provisions to emergency action plans, New Source Review (NSR) and Prevention of Significant Deterioration (PSD) requirements. The proposed amendments also included some "housekeeping" changes as part of the ongoing rewriting of LRAPA's rules and regulations for consistency and clarity. A new Title 50 was proposed to replace existing Title 31.

Arkell explained that, at present, LRAPA's rules respond to Total Suspended Particulate (TSP) which has a primary standard related to effects on human health and a secondary standard related to effects on materials and plants. The PM10 standard is both primary and secondary.

Regarding the PM10 SIP to be developed this year, Arkell said the advisory committee had been working on it for several months and planned to have a proposal to bring before the board in November or December. He indicated that the process had been slowed somewhat, due to problems with the modeling necessary to develop attainment strategies, but that board consideration was still scheduled by the end of this year.

Gorman opened the public hearing at 12:49 p.m. No one present wished to testify either in favor of or in opposition to the proposed rule amendments. Gorman closed the hearing at 12:50 p.m.

Motion — Following discussion, MSP (Ehrman/Schue)(Unanimous) adoption of the proposed changed to LRAPA Titles 14, 38, 31 and 51.

DISCUSSION--AUTHORIZATION FOR DIRECTOR TO ISSUE SUBPOENAS: Arkell said staff had discussed with the agency's legal counsel a case which might be coming up soon involving appeal of a Notice of Violation with civil penalty assessment. The rules under which the agency operates authorize the issuance of subpoenas but do not spell out the process. Arkell requested that the board designate him as the individual responsible for this, in order to acquire the information necessary to handle appeals.

Gorman stated that the board already has the power to issue subpoenas but could act as an appeals board and should not be involved in the process prior to that. He said the board should designate Arkell to take care of this instead of having the board do it.

Motion — MSP (Schue/Bennett)(Unanimous) authorization of director to issue subpoenas for LRAPA.

DIRECTOR'S REPORT: Arkell reviewed some significant activities from the month of June.

End of FY 87/88 — The agency closed out the FY 87/88 budget at the end of June. A major effort during the year was beginning the PM10 SIP process. Another was development of the technical basis for declaring success on attainment of the CO standard. The plan will be used as a maintenance strategy. Expenditures were kept to less than the budgeted amount, and cash carry-forward for the beginning of FY 88/89 was slightly higher than what is in the budget for the current fiscal year.

Air Quality — Cool weather in June kept air quality good and ozone levels relatively low for this time of year.

Indirect Sources — Major new developments had been proposed and were undergoing air quality analysis.

Superfund — Forrest Paint in Eugene has a pit which has been classified by EPA as an abandoned toxic waste dump site. Although it is a ground water clean-up program, an air stripping process will be used, and LRAPA will be monitoring its progress. It is expected to take approximately nine to ten months to complete.

APCA — Arkell indicated he had been elected to the board of directors of the Air Pollution Control Association (APCA) and will be serving in that capacity for three years.

Oakridge PM10 SIP — Public hearing on the proposed committal PM10 SIP for Oakridge is scheduled for August 3 in Oakridge. Ellie Dumdi plans to attend that hearing with staff. Arkell will act as hearings officer for the board.

Emergency Plan Meeting

Arkell explained the meeting held with private and public agencies in June to discuss emergency action plans for the area. EPA's Superfund Amendments and Reauthorization Act (SARA) requires that all users of certain specified chemicals in amounts of 75,000 pounds or more submit to EPA information as to its use and whether it is emitted to the air, water or land. EPA, in turn, will make that information available to the public (Community Right to Know). An emergency coordinating committee is a local plan to develop emergency response in case of accidental release of any of these chemicals. Arkell said that fires would be the most likely scenario under which these chemicals would be released in this area. There is also a potential for problems with trucks or trains transporting materials through the county.

ADVISORY COMMITTEE:

Nothing new to report.

OLD BUSINESS:

Gorman said he still needed one performance evaluation form for the director before he could compile a composite for discussion by the board. He suggested an executive session in a couple of weeks to include board members and the director. The date agreed to by board members present at this meeting was Friday, July 22, at 12:15 p.m. in the Springfield City Hall. Staff will provide lunch.

NEW BUSINESS:

None

PUBLIC PARTICIPATION:

None

ADJOURNMENT:

There being no further business, the meeting adjourned at 1:22 p.m. The next regular meeting of the LRAPA Board of Directors is scheduled for Tuesday, August 9, 1988, 12:15 p.m. in the Springfield City Council Chambers.

Respectfully submitted,

Merrie Dinteman

Merrie Dinteman
Recording Secretary

LANE REGIONAL
AIR POLLUTION AUTHORITY

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

Donald R. Arkell, Director

To: Oregon Environmental Quality Commission

From: Donald R. Arkell, LRAPA Director

Subj: Report on Public Hearing Held August 3, 1988 Concerning Proposed Commitments for Oakridge PM10 Group II Area as a Revision to Oregon's State Implementation Plan

Summary of Procedure, Testimony and Action

Pursuant to public notice, a public hearing was convened by the Lane Regional Air Pollution Authority Board of Directors at 7:30 p.m., on August 3, 1988 in the Oakridge City Hall at 48318 E. 1st., Oakridge. The purpose of the public hearing was to receive testimony on the proposed PM10 Group II Committal SIP for that community. This hearing was held before Ellie Dumdi, Vice Chair of the LRAPA Board of Directors, on behalf of the board and as designee of the Oregon Environmental Quality Commission.

Summary of Testimony

The only testimony was from LRAPA staff and is contained in the attached minutes. The record also contains affidavits of publication on notice of hearing in three Lane County newspapers, the state and local A-95 review, and written comments submitted by the Department of Environmental Quality and the Environmental Protection Agency.

Action of the LRAPA Board of Directors

A summary of the public hearing, revised staff report, and the revised SIP (incorporating DEQ, EPA comments) were presented to the LRAPA Board of Directors on August 9, 1988, along with the LRAPA Director's recommendation to adopt the proposed SIP with DEQ and EPA comments incorporated.

Based on the proposal and statement of need, and having offered opportunity for public comment, the LRAPA Board of Directors, by unanimous vote of those present, adopted the Oakridge PM10 Group II Committal SIP as proposed. The board directed that the SIP be forwarded to the commission for adoption as a revision of the Oregon State Implementation Plan.

Respectfully submitted,

Donald R. Arkell for
Ellie Dumdi, Hearing Officer

LANE REGIONAL

AIR POLLUTION AUTHORITY

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

Donald R. Arkell, Director

TO: Oregon Environmental Quality Commission

FROM: Donald R. Arkell, Hearing Officer

SUBJ: Report on Public Hearing Held July 12, 1988 Concerning Proposed Amendment to LRAPA Titles 14, 31, 38 and 51, Incorporating PM10 into LRAPA's Rules and Regulations

Summary of Procedure, Testimony and Action

Pursuant to public notice, a public hearing was convened by the LRAPA Board of Directors at 12:49 p.m. on March 8, 1988 in the Springfield City Council Chamber at 225 North 5th, Springfield. The purpose of the hearing was to receive testimony concerning proposed amendment to LRAPA rules and regulations, specifically inclusion of PM10 provisions in Titles 14, "Definitions", 31, "Ambient Air Standards", 38, "New Source Review" and 51, "Air Pollution Emergencies". In addition, Title 31 was redesignated Title 50 and rewritten in a format consistent with the general, ongoing re-writing of LRAPA's rules. This hearing was held before the Board of Directors of the Lane Regional Air Pollution Authority, on its own behalf and as designee of the Oregon Environmental Quality Commission, in order to comply with ORS 468.020 and 468.535(2) pertaining to adoption of rules. One person attended the hearing in addition to LRAPA board, staff and one Advisory Committee representative. An attendance list is included in the minutes of the July 12 meeting of the LRAPA Board of Directors.

Summary of Testimony

The only testimony was from LRAPA staff and is contained in the attached staff report. The LRAPA Director's recommendation to the board was for approval of the proposed amendments. The record also contains affidavits of publication of notice of hearing in three Lane County newspapers.

Action of the LRAPA Board of Directors

Based on the proposal and statement of need, and having offered opportunity for public comment, the LRAPA board, by unanimous vote of those present, adopted the amendments as proposed. The board directed that the rule amendments be forwarded to the commission for adoption as a revision of the Oregon State Implementation Plan.

Respectfully submitted,

Donald R. Arkell
Hearing Officer

DRA/mjd

EQC Agenda Item L
November 4, 1988
EQC Meeting

RULEMAKING STATEMENTS FOR

PROPOSED CHANGES IN LRAPA TITLES 14, 31, 38 and 51

It is proposed to amend Titles 14, "Definitions", 31, "Emission Standards", 38, "New Source Review" and 51, Emergency Episodes" to maintain equivalency with the new federal particulate matter standards (PM10) and newly-adopted state rules. In addition, a new Title 50 is proposed to replace existing Title 31, as part of the ongoing general re-write to update LRAPA's rules and provide consistent format.

Pursuant to ORS 183.335, the following statement provides information on the proposed action to amend Oregon's Revised State Implementation Plan (SIP) for Particulate Matter for the Eugene/Springfield Air Quality Maintenance Area.

STATEMENT OF NEED

Legal Authority

LRAPA is authorized to adopt the proposed rules by ORS 468.535, Title 12 of the LRAPA Rules and Regulations, and the federal Clean Air Act Amendments of 1977 (PL 95-95).

Need for the Rules

In July of 1987, the federal government adopted new particulate matter standards (PM10). The new standards control particles that are capable of penetrating far enough into the respiratory system to cause significant harm, thus making the new standard more protective of public health than the old Total Suspended Particulate rules were. The Oregon Environmental Quality Commission recently adopted amendments to state rules to bring them into conformance with federal rules. In order for LRAPA to continue to maintain local administration of air quality programs, local rules must be at least as stringent as those of the federal and state governments. The proposed amendments would provide equivalency with federal and state rules.

Principal Documents Relied Upon

- Federal Clean Air Act, PL 95-95
- Title 40, Code of Federal Regulations, Parts 50, 51, 52 and 58
- Federal Register, Vol. 52, #126, July 1, 1987
- ORS 468, et. seq.
- OAR 340-20-220 through 260; OAR 340-31-100 through 130; OAR 340-30-005 through 055; and 340-27-005 through 012
- LRAPA Title 14
- LRAPA Title 31
- LRAPA Title 38
- LRAPA Title 51

FISCAL AND ECONOMIC IMPACT STATEMENT

The proposed amendments affect any source which emits PM10 in excess of the standard, since additional controls could be necessary; however, those sources are already subject to the federal standards, whether local rules are changed or not. Changing local rules maintains local control.

LAND USE CONSISTENCY STATEMENT

The proposed rules do not affect land use as described in any applicable land use plan in Lane County.

mjd/05/20/88

RULEMAKING STATEMENTS FOR
PROPOSED COMMITTAL SIP, OAKRIDGE PM10 GROUP II AREA

Pursuant to ORS 183,335, the following statements provide information on the proposed action to amend Oregon's Revised State Implementation Plan (SIP) for Particulate Matter for the Oakridge PM10 Group II Area.

STATEMENT OF NEED

Legal Authority

LRAPA is the designated local air quality planning agency in Lane County. LRAPA is authorized to adopt the proposed "Committal SIP" by ORS 468.535 and the federal Clean Air Act Amendments of 1977 (PL 97-95). This proposal amends OAR 340-20-047, the Oregon Clean Air Act State Implementation Plan.

Need for Rules

In July of 1987, the federal government adopted a new particulate matter standard (PM10). All areas of the country have been classified into 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 in each area of ambient air monitoring, reporting of 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. 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 3-5 years of approval of the commitment.

Principal Documents Relied Upon

° Clean Air Act as Amended (PL 95-95) August 1977

- Oregon State Implementation Plan, Section 5.4, Commitments for PM10 Group II Areas, as approved by EQC April 29, 1988
- LRAPA Annual Reports
- Federal Register, Vol. 52, #126, pp. 24681-84
- Code of Federal Regulations, 40 CFR Part 50

FISCAL AND ECONOMIC IMPACT STATEMENT

Adoption of this revision to the State Implementation Plan commits LRAPA to provide for monitoring and assessment of compliance status for Oakridge. Besides the resource requirements for conducting air monitoring, adoption of this provision by itself carries no fiscal or economic impact on the public or private sectors. It may lead to more extensive regulatory activity in the future which will result in some economic effects. These would be identified by separate action.

Public comment on any fiscal or economic issue is invited and may be submitted in the same manner as indicated for testimony in this notice.

LAND USE CONSISTENCY STATEMENT

The proposed revision 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 revision is designed to enhance and preserve air quality in the affected area and is considered consistent with the goal.

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

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

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, EQC Meeting

Informational Report: Report to the Legislature on the Management of Solid Waste in Oregon

BACKGROUND

House Bill 2619, passed by the Oregon Legislature in 1987, requires that the DEQ "shall study the management of solid waste throughout the state". HB 2619 further required that the study shall be made available to the Legislature by December 15, 1988 and shall include:

a) A review of the capacity of all domestic solid waste disposal sites and the need for locating new sites;

b) The identification of significant regional solid waste disposal problem areas; and

c) A survey of local governments to determine their willingness to participate in regional solid waste management planning."

This report, prepared by the Solid Waste Section staff of DEQ, summarizes the information required by HB 2619. Some important findings are:

CAPACITY AND NEED FOR NEW SITES

- There are 100 permitted municipal solid waste landfills in Oregon. For most regions of the state, landfill capacities are expected to be adeqate for 10 to 15 years or more.

- Special wastes such as asbestos, incinerator ash and medical solid wastes currently do not provide significant management or capacity problems in the state. However, increasing public concern about these wastes, increasing operator liabilities, and closure of the St. Johns landfill pose a potential for capacity shortages for these wastes in the near future.

- Approximately 170 municipal waste disposal sites have been closed in the last 15 years; approximately 20 are expected to close in the next ten years.

SIGNIFICANT CAPACITY PROBLEM AREAS

- One region, the Willamette Valley region, shows significant landfill capacity used up by the year 2000 with no identified replacement. This is due to the anticipated filling of the Marion County ashfill in Woodburn, and to the anticipated filling of two landfills in Lincoln County.

- There are currently five counties with no municipal solid waste disposal facilities. These five counties, along with six others, have already decided upon regional disposal strategies. Two permitted sites, the Gilliam County site and the Coffin Butte landfill, are defined by statute as 'regional disposal sites'.

SURVEY RESULTS: REGIONAL PLANNING

- A DEQ survey of local governments indicated that the majority were willing to participate in regional solid waste management planning. Local governments in the central and eastern regions of the state were less willing to participate in regional planning.

OTHER RESULTS: ENVIRONMENTAL PROTECTION FACILITIES

- Disposal capacity in the state will be affected in the next several years by new design and operational criteria proposed by EPA. These regulations, along with state groundwater protection rules, will require lining systems, leachate collection, better top covers, and gas controls. In addition, requirements for groundwater monitoring and cleanup will significantly increase landfill costs and operator liabilities.

- Of the currently active municipal landfills in the state, only five sites have lining systems for leachate containment. Three have clay liners; two have composite liners made up of synthetic material backed by clay. The new N. Gilliam County landfill will also have a composite, clay and high-density polyethylene, liner.

- Six sites (Coffin Butte, River Bend, St Johns, Short Mountain, S. Lincoln, Tillamook) have leachate collection systems.

- Groundwater monitoring is being done on a regular basis at 15 active landfills, and at 12 inactive landfills.

- While only six operating landfills are presently known to have groundwater problems, at least 29 additional municipal landfills require further investigation and/or analysis by the Department.

- Open burning is allowed at 19 sites in Eastern Oregon for a number of reasons: full-time operators and daily cover cannot be provided at many small sites; the burning is not considered to be dangerous or hazardous; it reduces waste volumes, thereby extending disposal site life; it makes the site less attractive to nuisances such as rodents, insects and birds. However, new federal regulations may force closure of many of these sites, which will impact disposal capacity in these areas.

- Recycling participation and volumes are not currently as high as anticipated with the passage of the 1983 Opportunity to Recycle Act. However, expected increases in disposal fees will provide increased incentives for recycling and waste reduction.

DIRECTOR'S RECOMMENDATION

It is recommended that the attached report to the Legislature be submitted to the Legislature, as directed by statute, by December 15, 1988.

Fred Hansen

Attachments
Municipal Landfills in Oregon: A Report to the Oregon Legislature

(List Attachments)

spg
5782
October 4, 1988

RL-COVER
9-6-88

[D R A F T]

M U N I C I P A L L A N D F I L L S

I N O R E G O N

A REPORT

TO THE

LEGISLATURE

Department of Environmental Quality

Solid Waste Section

December, 1988

RL-SUMRY
9-6-88

[D R A F T]

REPORT TO THE LEGISLATURE

Executive Summary

House Bill 2619, passed by the Oregon Legislature in 1987, requires that the DEQ "shall study the management of solid waste throughout the state". HB 2619 further required that the study shall be made available to the Legislature by December 15, 1988 and shall include:

a) A review of the capacity of all domestic solid waste disposal sites and the need for locating new sites;

b) The identification of significant regional solid waste disposal problem areas; and

c) A survey of local governments to determine their willingness to participate in regional solid waste management planning."

This report, prepared by the Solid Waste Section staff of DEQ, summarizes the information required by HB 2619. Some important findings are:

CAPACITY AND NEED FOR NEW SITES

- There are 100 permitted municipal solid waste landfills in Oregon.
  For most regions of the state, landfill capacities are expected to be adeqate for 10 to 15 years or more.

- Special wastes such as asbestos, incinerator ash and medical solid wastes currently do not provide significant management or capacity problems in the state. However, increasing public concern about these wastes, increasing operator liabilities, and closure of the St. Johns landfill pose a potential for capacity shortages for these wastes in the near future.

- Approximately 170 municipal waste disposal sites have been closed in the last 15 years; approximately 20 are expected to close in the next ten years.

SIGNIFICANT CAPACITY PROBLEM AREAS

- One region, the Willamette Valley region, shows significant landfill capacity used up by the year 2000 with no identified replacement. This is due to the anticipated filling of the Marion County ashfill in Woodburn, and to the anticipated filling of two landfills in Lincoln County.

- There are currently five counties with no municipal solid waste disposal facilities. These five counties, along with six others, have already decided upon regional disposal strategies. Two permitted sites, the Gilliam County site and the Coffin Butte landfill, are defined by statute as 'regional disposal sites'.

SURVEY RESULTS: REGIONAL PLANNING

- A DEQ survey of local governments indicated that the majority were willing to participate in regional solid waste management planning. Local governments in the central and eastern regions of the state were less willing to participate in regional planning.

OTHER RESULTS: ENVIRONMENTAL PROTECTION FACILITIES

- Disposal capacity in the state will be affected in the next several years by new design and operational criteria proposed by EPA. These regulations, along with state groundwater protection rules, will require lining systems, leachate collection, better top covers, and gas controls. In addition, requirements for groundwater monitoring and cleanup will significantly increase landfill costs and operator liabilities.

- Of the currently active municipal landfills in the state, only five sites have lining systems for leachate containment. Three have clay liners; two have composite liners made up of synthetic material backed by clay. The new N. Gilliam County landfill will also have a composite, clay and high-density polyethylene, liner.

- Six sites (Coffin Butte, River Bend, St Johns, Short Mountain, S. Lincoln, Tillamook) have leachate collection systems.

- Groundwater monitoring is being done on a regular basis at 15 active landfills, and at 12 inactive landfills.

- While only six operating landfills are presently known to have groundwater problems, at least 29 additional municipal landfills require further investigation and/or analysis by the Department.

- Open burning is allowed at 19 sites in Eastern Oregon for a number of reasons: full-time operators and daily cover cannot be provided at many small sites; the burning is not considered to be dangerous or hazardous; it reduces waste volumes, thereby extending disposal site life; it makes the site less attractive to nuisances such as rodents, insects and birds. However, new federal regulations may force closure of many of these sites, which will impact disposal capacity in these areas.

- Recycling participation and volumes are not currently as high as anticipated with the passage of the 1983 Opportunity to Recycle Act. However, expected increases in disposal fees will provide increased incentives for recycling and waste reduction.

[D R A F T]

1. INTRODUCTION

The Municipal Solid Waste Problem

We produce more than 2 million tons of solid waste every year in the state of Oregon. As more solid wastes are produced, the problem of where to store these wastes and how to dispose of them becomes ever more serious. Past solid waste practices have resulted in contamination of groundwater and surface water resources, leading to increased public concern for how our wastes are managed, and to greater federal and state requirements for groundwater protection and cleanup. Some landfills have been closed, and others have become more expensive to operate given the new requirements. In other states, similar events have led to major disposal crises, as disposal capacity has dwindled. Local opposition has made new facilities more difficult to site, and some states have looked to regional sites, other states, or even other countries as the answer to solving capacity problems.

This combination of factors led the 1987 Oregon Legislature to require DEQ to study the management of municipal solid wastes in Oregon. The study was intended to provide the Legislature with a picture of the state's present and future capacity for disposal of solid waste, and secondly, to identify any specific regions of the state with impending capacity problems. Third, the study was to determine the need and willingness for local governments to participate in regional solutions to providing solid waste disposal capacity.

This report attempts to describe the solid waste picture in Oregon, as the Legislature instructed, with respect to the disposal of municipal solid wastes. In addition, the Department has included in this study a number of elements that greatly impact both future capacity and environmental protection at landfills.

Demolition landfills, which accept only non-putrescible wastes from land clearing or from building demolition activities, are not covered in this report and are listed separately in Appendix A. One demolition site (Bandon) is listed as a municipal landfill, since it serves as a backup landfill for the Beaver Hill incinerator in Coos County whenever that facility is not operating.

Industrial landfills are another category not covered in this report. They are listed in Appendix B.

Municipal solid wastes are also disposed of at two additional facilities: Brookings Energy Facility in Curry County, and the Marion County incinerator at Brooks. Both of these facilities increase landfill capacities by reducing waste volumes by about 75-80 %.

The first part of the study focuses on disposal capacity in the state, based upon an estimate of remaining landfill capacity at existing landfills. It also looks at disposal of 'special wastes' and the results of the survey of local governments on the potential for regional solutions.

The second part of the study focuses on groundwater protection, analyzing the amount and type of environmental protection facilities at municipal solid waste landfills in Oregon, including lining systems, leachate collection, groundwater monitoring, and the need for groundwater cleanup activities.

The last part of the study presents some conclusions, and looks at the impact of a number of emerging issues and regulatory changes on solid waste disposal capacity and landfill operation.

[D R A F T]

2. LANDFILL CAPACITIES

There are currently 100 active municipal landfills for which DEQ permits have been issued. The landfills are listed in Table 2-1.

Remaining Landfill Capacity

Generally, the State of Oregon is expected to have sufficient landfill capacity for the next 10 to 15 years. Only 19 of the 100 currently operating landfills are expected to close between now and the year 2000. Sixty-six (66) of the active landfills are expected to be filled to capacity between the years 2000 and 2020. Fifteen (15) are currently expected to have capacity beyond the year 2040.

The region with the most significant capacity problem, according to the figures in Table 2-1, is the Willamette Valley Region, with three landfills anticiping closure before the year 2000.

Some of the closure dates shown in Table 2-1, particularly those for rural landfills, were estimated when the initial landfill permits were issued. These estimates need to be updated. The indicated closure dates apply only to active landfill areas, and do not take into account areas that are being reserved for future landfill expansion. In addition, Tillamook County has recently identified a replacement for the Tillamook landfill, although that replacement is in another county.

Many factors can affect these capacity estimates and the rate of filling in the future, including:

- Waste reduction and recycling rates;
- Landfill operation procedures;
- "Imported" waste regulations and use of Oregon landfills by out-of-state waste generators;
- Business cycles and economic activity.

Closures

Approximately 170 municipal landfills, (listed in Appendix C) have been officially closed since the DEQ permit system was established in 1971. Landfills expected to close before the

year 2000 are listed in Table 2-2. As indicated in the table, some of these landfills will be converted to transfer stations, thereby minimizing manpower and equipment costs associated with landfill supervision and operation.

The anticipated closures are not expected to significantly reduce Oregon's waste disposal capacity. However, proposed federal regulations (EPA Subtitle D) and increased liabilities for groundwater cleanup at landfills has made several operators consider closing for reasons other than capacity, according to a recent survey. Therefore more landfills are likely to close than those listed in Table 2-2.

Replacement of closed sites within the same county or wasteshed may prove difficult, as the recent experiences in the Portland Metropolitan area, Tillamook County, and Clatsop County suggest. Greater citizen concern about the environmental and economic impacts of landfills and incinerators have made replacement of disposal capacity an arduous task nationwide.

Six counties do not have municipal landfills: Clackamas, Clatsop, Hood River, Linn, Polk, and Washington. Solid wastes from these counties are hauled to regional disposal sites in neighboring counties. By 1990, solid wastes from Multnomah, Clackamas and Washington Counties, are expected to be transported to Gilliam County and placed in the Oregon Waste Systems North Gilliam County landfill near Arlington.

Special Wastes

Special wastes include asbestos, medical wastes, incinerator ash, demolition waste, household and exempt quantity hazardous wastes, industrial hazardous substances, and waste tires.

Asbestos is being handled at 28 "regional" sites listed in Table 2-3. Thirteen counties (Clackamas, Clatsop, Columbia, Coos, Hood River, Lake, Linn, Morrow, Polk, Sherman, Wallowa, Washington and Wheeler) currently have no asbestos disposal site. Asbestos wastes from these counties are taken to disposal sites in neighboring counties. Asbestos disposal could become a significant concern when the St. Johns landfill closes, as the Gilliam County site is not expected to accept asbestos.

Medical wastes have become the subject of national attention in 1988, and there are legislative proposals at both the federal and state level dealing with collection and disposal of biomedical waste. The major environmental concern with these wastes is the potential for infecting people who handle

this waste during collection and transport. There is not currently a disposal capacity problem regarding these wastes.

Incinerator ash is placed in special areas at Beaver Hill landfill in Coos County, Wridge Creek Transfer Station in Curry County, and at Woodburn landfill in Marion County. The Department has adopted a policy of landfilling ash in a separate "monofill" which utilizes best management practices, including composite liners and leachate collection. Presently, only the Marion county ashfill is in compliance with this policy.

Hazardous substances, including household hazardous waste, contaminated soil, and other substances were mentioned by several counties surveyed as lacking appropriate capacity or management options. These substances increase operator liabilities, and many landfills do not knowingly accept one or more of these wastes.

Waste tires are being handled under a special program authorized in accordance with ORS 459.504-785, passed in the 1987 Legislature. This law provides for the regulation of tire storage areas and tire carriers, and bans the disposal of whole tires in landfills after July 1989.

Survey of Local Governments: Regional Solutions?

The 1987 Oregon Legislature required DEQ to conduct a survey of local governments, to determine their willingness to participate in regional solid waste management planning. In September 1988, the Department conducted a telephone survey of county governments.

Out of 26 respondents, a majority (16 respondents) indicated an interest in regional solid waste management. Several counties already are participating in regional solid waste management were not surveyed or did not respond. One reason given by respondents for favoring regional solutions was the increasing cost of impending regulations.

Counties in eastern and central Oregon expressed less interest in regional solid waste management (6 out of 13) than counties in western Oregon (10 out of 13) who responded to the survey. .

In general, counties who were not concerned about long term solid waste disposal capacity were less likely to favor regional solutions. Those who were concerned about long term capacity (the majority of respondents) were more likely to favor regional solutions.

3. GROUNDWATER PROTECTION AT LANDFILLS

In addition to ensuring future disposal capacity, protection of groundwater resources at existing and closed landfills is a critical priority. This can be accomplished through several actions: ensuring adequate design and operation through permit conditions; review of groundwater monitoring data to determine if design and operation components are working to prevent leachate from migrating into groundwater; and taking steps to clean up or remediate situations where leachate migration is found.

Lining Systems and Leachate Collection

The most effective way to protect groundwater resources at landfills is to locate landfills in areas with good natural protection. Engineered systems then serve as a backup level of protection. One of the principal design measures for groundwater protection is construction of bottom lining systems, coupled with leachate collection. Proposed new federal rules would require lining systems at virtually all landfills.

The Department of Environmental Quality has begun to require lining and leachate collection systems at new landfills and landfill expansions, particularly in the western part of the state. As Table 2-1 indicates, however, only five existing landfill sites have engineered lining systems. Of those five, three have clay liners, and only two (Coffin Butte landfill and the Woodburn ashfill) have the preferred composite lining systems, consisting of one layer of high density polyethylene backed by a layer of low permeability clay material. The Gilliam County regional site includes a composite lining system, but is still under construction.

Good landfill design and operation also require that leachate production be minimized by preventing infiltration of rain and surface waters from entering the landfill. Once an area has been filled, an impermeable cap must be placed on it to prevent rainfall from soaking into the landfill and causing increased leachate production. The Department of Environmental Quality has begun to require better design of top caps, and some landfills now being built will include synthetic caps made of high density polyethylene.

Groundwater Monitoring

As indicated in Table 3-1, groundwater quality is being monitored at 14 of the 100 active municipal disposal sites in

Oregon, as well as at one active demolition waste landfill (Killingsworth/ Nash), and 12 closed landfills. Types of monitoring stations are also indicated in Table 3-1. These include wells on or near the site, leachate sumps, and surface water monitoring stations.

Proposed new federal regulations and state groundwater rules will require all landfills, with limited exceptions, to have groundwater monitoring. The number of chemicals tested for in the monitoring would also increase from the present 15 to a minimum of 59 and a potential for over 230. This will involve substantially increased costs at most landfills in the state. In addition, this increase in monitoring will impose additional responsibilities for DEQ regulatory staff, both for laboratory analysis and for follow-up action when problems are detected.

Groundwater Cleanup: Follow-up Actions

Of the 74 municipal landfills operating east of the Cascades, only two (2.7%) are presently known to have leachate migrating from the site: Southwest at LaPine, and Fox Hill at LaGrande. Of the 26 landfills located west of the Cascades, four (15.4%) are known to have groundwater problems. However, an additional 29 municipal landfills (14 east of the Cascades and 15 west of the Cascades) have been designated in Table 2.1 as NFI (Need Further Investigation). Groundwater studies and additional monitoring wells have been ordered at most of the NFI sites in order to determine whether, and to what extent groundwater problems exist.

Hydrogeological investigations have been undertaken at some sites (Grants Pass, St. Johns-Portland, Short Mountain-Eugene, South Stage-Jacksonville, Tillamook, and Woodburn), but further investigations are needed to obtain additional data, interpret existing data, and to determine what impacts leachates may have on surface and groundwater quality.

Proposed Oregon remedial action rules for cleanup of groundwater contamination require a cleanup standard approaching background (or previous) levels of groundwater quality. However, many of the landfills that now have groundwater monitoring do not have background levels established for comparison, and there is no upgradient well monitoring the quality of groundwater before it enters a landfill. Consequently, many landfills which now have groundwater monitoring will need to establish upgradient wells.

4. CONCLUSIONS

Based upon current data on landfill capacities, it appears that Oregon, unlike many states, does not have a disposal capacity crisis. For most regions in the state, there is sufficient capacity either developed or identified to provide adequate disposal past the year 2000.

In addition, it does not appear that special wastes currently present a substantial disposal problem. Most counties in the state are able to dispose of these wastes without significant problems.

However, the current data may be misleading. There are a number of emerging issues and regulatory changes that are already having a significant impact on solid waste management in Oregon. The changes will generally result in greater environmental protection at landfills, but this protection will come at a significantly greater cost and financial liability to landfill operators and, ultimately, the public.

Most of Oregon's municipal landfills do not meet the current or anticipated environmental standards. Many of our existing landfills, particularly smaller landfills, do not have liners, leachate collection, or adequate groundwater monitoring. Changes to our existing landfills to meet these requirements will be expensive, ultimately increasing the costs of disposal for the residents and businesses of the state.

The anticipated cost increases and added liabilities are causing many landfill operators to consider closing, or in some cases restricting the types of waste they will accept. The DEQ survey of local governments indicated that most counties have disposal concerns about one or more special wastes. In addition, nearly all counties responded that they are interested in participating in regional solid waste solutions.

Shaping the Future of Solid Waste Management

A number of issues that will shape the future of solid waste management in Oregon are listed below:

- New Permit and Design criteria. New federal EPA regulations are proposed for municipal solid waste landfills. These regulations, along with state groundwater protection rules, will require significantly more environmental protection in the design and operation of landfills. Multiple lining systems, leachate collection and treatment, better top covers, and gas controls are all part of the evolving standard for municipal solid waste landfills.

- Groundwater Protection, Monitoring, and Cleanup. There are a number of regulatory changes taking place at both the state and federal level which will affect the way we regulate protection, monitoring, and cleanup of groundwater resources around landfills. With new federal and state regulations, groundwater monitoring wells will be required at most municipal landfills, with more specific cleanup requirements where migration of leachate is found.

- Increased Disposal Costs. Landfill costs are rising dramatically, primarily because of increased design requirements and liabilities for groundwater cleanup. These costs are leading many operators of smaller sites to consider closing, which in turn will lead to longer haul distances and even greater costs for the public. One result will be an increase in recycling and waste reduction, as these activities become more cost competitive.

- Special Wastes. Over the past few years, there has been more and more emphasis on 'special wastes', those solid wastes that require special handling or separate disposal because of their characteristics. These wastes include: asbestos, incinerator ash, biomedical wastes, construction debris, and industrial waste that contains 'hazardous substances'. In the past, these wastes have generally been mixed with the other refuse in solid waste landfills. However, many of these wastes may have to be handled separately in the future, adding to costs and adding to the number of disposal facilities that need to be sited.

- Landfill siting. As already noted, it is becoming increasingly more difficult to locate a municipal landfill due to such objections as traffic noise and congestion, litter and odor, and potentially adverse environmental impacts like groundwater or surface water pollution. Some municipalities, such as Portland and Oregon City, have passed laws prohibiting the establishment of refuse disposal sites within their borders. As older sites close, their replacement is difficult, and uncertain.

- Regional Sites. Rising costs, new regulations, and the difficulty in siting new facilities has led some to advocate the development of more regional solutions to solid waste management, as opposed to each county or wasteshed developing disposal capacity within its own boundaries. With the recent decision by Metro to send its waste to the Gilliam County regional solid waste disposal site, a major portion of the state's solid waste has already been committed to a regional site. Other local governments have made a similar decision, or are actively considering a regional disposal strategy. In order to encourage regional strategies, the 1987

Legislature passed measures that would provide extra compensation, financial assurance, and waste reduction for a host community.

- Recycling. Oregon state law puts the highest priority for solid waste management on recycling and waste reduction. Those are the most environmentally sound methods of managing the waste. Recent trends in the cost of disposal add yet another reason to devote resources to recycling and waste reduction activities.

  The 1983 Opportunity to Recycle Act is the cornerstone of the state's waste reduction policy. So far, its implementation has not had the impact on recycling rates that was originally envisioned. Recently, other states have begun to take a more agressive stance on recycling with mandatory recycling laws and financial assistance for implementing recycling programs.

  Some are now calling for mandatory recycling laws similar to those recently passed in New Jersey and other states. However, the Opportunity to Recycle Act should be given a greater chance to succeed. A review of recycling rates for all wastesheds in the state clearly identifies a number of activities which make a difference in the success of recycling programs: promotion and education, more frequent collection, and the provision of recycling containers. In addition, waste stream studies conducted over the past two years show that the greatest opportunities for waste volume reduction are in commercial sector recycling, multi-family housing programs, and yard debris. Oregon needs to ensure that adequate resources are committed to these activities.

- Energy recovery, or waste incineration, is a means of significantly reducing the volume of waste that needs to be landfilled. However, it is expensive and can be as objectionable publicly as constructing a new landfill. Advantages of this method of disposal are the ability to partially recover costs through the sale of steam or electricity, stabilization of the waste into a non-biodegradable end product, and reduction of the waste to approximately one-third of its original volume. Disposal of incinerator ash has also become an environmental issue, and DEQ has established a policy of monofilling (separating) the ash in a landfill using best management practices.

  Some have argued that the uncertainty of stack emissions from waste-to-energy facilities, coupled with greater design requirements for landfills, should make resource recovery a lower priority in the state waste management hierarchy. Advocates for incineration point out that research and technological changes are also making garbage incinerators

safer, and that resource recovery is still preferable to landfilling.

- Out-of-state refuse. The development of regional disposal sites in Oregon has brought with it a new issue: the importation of waste from outside Oregon. Recent court decisions in other parts of the country indicate that no state can ban the importation of solid waste, due to interstate commerce laws. However, the importation of large amounts of waste bring added costs to Oregon residents in the form of decreased capacity, added regulatory responsibilities, and increased environmental risks. Compensation for these costs can be acheived in a variety of ways, but must be done in a manner that does not treat out-of-state waste as measurably different than waste generated in Oregon.

Summary

The results of the study should not lead Oregonians to complacency. While we are not experiencing an immediate landfill capacity crisis, we are far behind in bringing our landfills up to environmental standards, and in cleaning up groundwater resources at existing and closed landfills.

In the next decade, increased costs may lead to landfill closures and capacity problems in some areas of the state. We will need to respond to the changes by a) increasing our commitment to waste reduction and recycling, b) bringing our landfills up to environmental standards to protect groundwater resources, and c) ensure proper planning for either regional or local solutions for disposal capacity and management of special wastes.

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Date: 9-8-88

Table 2-1

ACTIVE MUNICIPAL LANDFILLS IN OR

	Landfill (Location)	County	Region	Permit Number	Permittee	Facility Type	Initial Permit Date	Estimated Population Served	1987 Fill Rate Tons	1987 Fill Rate 1000 yd3	Volume Remaining 1000 yd3
1	Crook County (Prineville)	Crook	C	74	County	MLF	7-01-72	10,000		60.0 e	300
2	Fryrear (Sisters-E)	Deschutes	C	27	County	MLF	7-01-72	1,000		14.6	50
3	Negus (Redmond)	Deschutes	C	28	County	MLF	7-01-72	10,000		51.0	96
4	Southwest (LaPine)	Deschutes	C	259	County	MLF	7-01-75	200		19.6	222
5	Knott Pit (Bend)	Deschutes	C	6	County	MLF	5-01-72	20,000		190.7	5000
6	Brothers	Deschutes	C	200	OSHD	MLF	7-01-72	100		0.6 e	11 f
7	Alfalfa (E of Bend)	Deschutes	C	26	County	MLF	7-01-72	400		2.4 e	16
8	Andrews	Harney	C	337	County	MLF	11-20-80	100		0.6 e	4 f
9	Diamond	Harney	C	312	County	MLF	6-27-78	100		0.6 e	3
10	Drewsey	Harney	C	202	County	MLF	7-01-72	100		0.6 e	4 f
11	Frenchglen	Harney	C	204	County	MLF	7-01-72	100		0.6 e	4 f
12	Burns-Hines	Harney	C	179	Private	MLF	7-01-72	5,000		30.0 e	180 f
13	Sodhouse	Harney	C	318	County	MLF	5-19-78	100		0.6 e	4 f
14	Fields	Harney	C	203	County	MLF	7-01-72	100		0.6 e	4 f
15	Crane	Harney	C	298	County	MLF	10-13-77	100		0.6 e	4 f
16	Riley	Harney	C	338	County	MLF	11-20-80	100		0.6 e	4 f
17	Box Canyon (Madras)	Jefferson	C	139	County	MLF	7-01-72	3,000		18.0 e	640
18	Crescent	Klamath	C	244	County	MLF	7-01-74	200		9.5	247 f
19	Langell Valley	Klamath	C	42	County	MLF	7-01-72	100		0.6 e	640
20	Sprague River	Klamath	C	40	County	MLF	6-01-72	200		1.2 e	160
21	Chiloquin	Klamath	C	48	County	MLF	7-01-72	1,000		6.0 e	160
22	Klamath Falls	Klamath	C	302	County	MLF	10-31-77	45,000		427.5	2565 f
23	Malin	Klamath	C	43	County	MLF	7-01-72	700		4.2 e	260
24	Chemult	Klamath	C	47	County	MLF	7-01-72	200		1.2 e	100
25	Bly	Klamath	C	38	County	MLF	6-01-72	100		0.6 e	24
26	Beatty	Klamath	C	39	County	MLF	6-01-72	100		0.6 e	4 f
27	Summer Lake	Lake	C	183	County	MLF	7-01-72	100		0.6 e	4 f
28	Christmas Valley	Lake	C	9	County	MLF	5-19-72	100		0.6 e	4 f
29	Plush	Lake	C	10	County	MLF	6 - 71	100		0.6 e	4 f
30	Silver Lake	Lake	C	184	County	MLF	7-01-72	100		0.6 e	4 f
31	Paisley	Lake	C	178	City	MLF	7-01-72	500		3.0 e	18 f
32	Lakeview	Lake	C	206	County	MLF	7-01-72	3,000	6.0	18.0 e	36 f
33	Adel	Lake	C	4	County	MLF	7 - 71	100		0.6 e	123
34	Fort Rock	Lake	C	276	County	MLF	2-27-76	100		0.6 e	2 f
35	Sherman County	Sherman	C	294	County	MLF	5-19-77	2,000		12.0 e	70
36	Shaniko	Wasco	C	304	City	MLF	1-04-78	100		0.6 e	10 f
37	North Wasco	Wasco	C	53	Private	MLF	7-01-72	30,000		104.5	1800
38	Antelope	Wasco	C	187	City	MLF	7-01-72	100		0.6 e	30
39	Haines	Baker	E	154	City	MLF	7-01-72	500		3.0 e	48 f
40	Halfway	Baker	E	181	City	MLF	7-01-72	500		3.0 e	11 f
41	Unity	Baker	E	352	City	MLF	5-19-82	200		1.2 e	55 f
42	Richland	Baker	E	323	City	MLF	6-19-79	300		1.5	9 f
43	Huntington	Baker	E	151	City	MLF	7-01-72	1,000		6.0 e	36 f
44	Baker	Baker	E	152	Private	MLF	7-01-72	15,000		28.1	1293 f
45	Arlington	Gilliam	E	122	County	MLF	6-18-75	1,000		6.0 e	12 f
46	S. Gilliam Co. (Condon)	Gilliam	E	256	County	MLF	6-26-75	1,000		6.0 e	36 f

EGON

Est Close Date	Liner Material	Monitoring Stations			Leachate Problem	Burning Allowed	Special Waste Handling			Comments
		Wells	Sumps	Surface			Asb	Bio	Ash	
2000	None				NO	Brush	X			
1996	None	(1)			NFI	Brush				Transfer to Knott Pit
1991	None				NO	Brush				Transfer to Knott Pit
1990	None	5			YES	NO				Transfer to Knott Pit
2020-50	None				NFI	NO	X			Monitoring system ordered
2025	None				NO	Brush				
1989	None				NO	Brush				Transfer to Knott Pit
2000+	None				NO	NO				
2000+	None				NO	NO				
2000+	None				NO	NO				
2000+	None				NO	NO				
2000+	None				NO	Brush	X			
2000+	None				NO	NO				
2000+	None				NO	NO				
2000+	None				NO	Brush				
2000+	None				NO	NO				
2030	None				NFI	Brush	X			
2040	None	(1)			NFI	Brush				
2000+	None				NO	Brush				
1995	None				NO	NO				
2000+	None				NO	NO				
2000	None				NFI	NO	X			Groundwater study in progress
2000	None				NO	Brush				
2040	None				NO	NO				
2000	None				NO	NO				
2000	None				NO	NO				
2000+	None				NO	Open				
2000+	None				NO	Open				
2000+	None				NO	Open				
2000+	None				NO	Open				
2000+	None				NO	Open				
1992	None				NO	Brush				Expansion planned
2000+	None				NO	Open				
1995	None				NO	Open				
2020	None				NO	NO				
2020	None				NO	NO				
2065-90	None				NFI	NO	X			Groundwater study in progress
1995	None				NO	NO				
2020	None				NO	NO				
1995	None				NO	NO				BLM prohibits burning
2080	None				NO	Brush				Old permit #191
2000	None				NO	Open				Old permit #153
2000+	None				NO	Brush				
2080	None	Reqd			NFI	Brush	X			Old permit #69
1992	None				NO	NO				
2000	None				NO	Brush				

47	N. Gilliam Co.	Gilliam	E	391	Private	MLF	5-18-88		Scales			100,000 f
48	Seneca	Grant	E	201	City	MLF	7-01-72	500			3.0 e	18 f
49	Dayville	Grant	E	332	County	MLF	4-07-82	400			2.4 e	14 f
50	Prairie City	Grant	E	219	City	MLF	5-04-73	2,000			1.3	8 f
51	Hendrix (John Day)	Grant	E	209	County	MLF	7-01-72	4,000			29.3	112
52	Long Creek	Grant	E	127	City	MLF	7-01-72	500			3.0 e	16
53	Monument	Grant	E	324	City	MLF	5-18-83	400			2.4 e	38 f
54	Foothill (Ontario)	Malheur	E	100	Private	MLF	7-01-72	15,000			40.0	240 f
55	Lytle Blvd (Vale-S)	Malheur	E	348	County	MLF	2-24-82	2,500			9.7	58 f
56	Juntura	Malheur	E	272	County	MLF	12-08-75	100			0.6 e	4 f
57	Jordan Valley	Malheur	E	295	County	MLF	7-07-77	800			4.8 e	53 f
58	McDermitt	Malheur	E	310	County	MLF	12-20-78	200			1.2 e	7 f
59	Turner (Heppner)	Morrow	E	275	City (pr)	MLF	1-20-76	1,500			3.0	3 f
60	Finley Buttes	Morrow	E	394	Private	MLF	Early 89					0 f
61	Pendleton	Umatilla	E	105	Private	MLF	7-01-72	25,000			84.0	504 f
62	Rahn's (Athena)	Umatilla	E	217	Private	MLF	3-19-73	2,000			11.2	67 f
63	Pilot Rock	Umatilla	E	291	Private	MLF	2-22-77	3,000			9.1	9 f
64	Umatilla Depot	Umatilla	E	320	USArmy	MLF	3-30-79	500			3.0 n	33 f
65	Milton-Freewtr	Umatilla	E	106	City	MLF	7-01-72	7,000			19.8	515 f
66	Sanitary Disp,Inc (Hrmstn)	Umatilla	E	143	Private	MLF	7-01-72	15,000			126.3	400
67	Umatilla Tribe	Umatilla	E	7	Tribe	MLF	7-05-72	300			9.5	100
68	Fox Hill (LaGrande-Elgin)	Union	E	311	Private	MLF	5-12-78	17,000			55.9	335 f
69	Ant Flat (Entrprs-Jos)	Wallowa	E	261	County	MLF	6-30-76	5,000			30.0 e	180 f
70	Troy	Wallowa	E	192	County	MLF	7-01-72	100			0.6 e	4 f
71	Imnaha	Wallowa	E	300	County	MLF	10-26-77	100			0.6 e	4 f
72	Mitchell	Wheeler	E	175	City	MLF	7-01-72	300			1.8 e	11 f
73	Spray	Wheeler	E	257	County	MLF	11-18-74	200			1.2 e	7 f
74	Fossil	Wheeler	E	260	County	MLF	11-18-74	1,000			6.0 e	18 f
75	Vernonia	Columbia	NW	234	City (pr)	MLF	4-22-74	3,000			3.8	3
76	St Johns	Multnomah	NW	116	Metro (pr)	MLF	7-01-72	900,000	Scales		5195.0	7793 f
77	Tillamook	Tillamook	NW	148	County	MLF	7-01-72	20,000	Scales		29.0	1400
78	Bandon	Coos	SW	68	County	DEMOL	7-01-72	200			1.2 e	***
79	Powers	Coos	SW	160	City	MLF	7-01-72	1,000			6.0 e	12 f
80	Beaver Hill (CoosB-Bandn)	Coos	SW	333	County	INCIN	8-08-80	50,000			100.0 n	***
81	BrookingsEnergy/WridgeCr	Curry	SW	316	Private	TS	11-14-79	15,000			5.0	***
82	Port Orford	Curry	SW	210	County	MLF	7-01-72	2,000			3.1	19 f
83	Reedsport	Douglas	SW	19	County	MLF	7-01-72	6,000			101.9	1223 f
84	Roseburg	Douglas	SW	265	County	MLF	11-12-75	70,000			425.5	9574 f
85	South Stage (Mdfrd-Jksnvl)	Jackson	SW	67	Private	MLF	7-01-72	100,000			474.6	7594 f
86	Dry Creek (White City-E)	Jackson	SW	190	Private	MLF	7-01-74	1,000			148.1	889 f
87	Ashland	Jackson	SW	35	Private	MLF	6-01-72	30,000			99.6	80
88	Prospect	Jackson	SW	223	County	MLF	9-28-73	500			5.0	30 f
89	GrantsPass (Merlin)	Josephine	SW	159	City	MLF	7-01-72	30,000			195.2	1854 f
90	Kerby (OR Caves)	Josephine	SW	197	County	MLF	7-01-72	2,000			19.8	218 f
91	Coffin Butte (Linn-BntnCo)	Benton	WV	306	Private	MLF	3-16-78	130,000			740.0	8140 f
92	Florence	Lane	WV	91	County	MLF	7-01-72	8,000			46.2	1502 f
93	Short Mountain (Eugene)	Lane	WV	290	County	MLF	12-20-76	250,000			1907.4	42917 f
94	Franklin	Lane	WV	79	County	MLF	7-01-72	10,000			60.6	100
95	Oakridge	Lane	WV	86	County	MLF	7-01-72	4,000			16.1	97 f
96	Agate Beach (Newport)	Lincoln	WV	373	Private	MLF	10-22-84	10,000			61.1	61 f
97	S.Lincoln (Waldport)	Lincoln	WV	132	Private	MLF	7-01-72	2,500			17.0	60 f
98	McCoy Creek (Detroit)	Marion	WV	55	County	MLF	6-01-72	700			1.8	160
99	Brooks/Woodburn	Marion	WV	240	County	ASH	6-23-74	150,000	Scales		90.2	451 f
100	River Bend (McMinnville)	Yamhill	WV	345	Private	MLF	11-25-81	50,000	Scales		437.1	5901 f

2020	Clay/HDP	(4)			NO	NO				Oregon Waste Systems/Portland Metro site
2000+	None				NO	Open				
2000+	None				NO	Open				Old permit #207
2000+	None				NO	Brush				Old permit #133
2010	None				NFI	Brush	X			G.W. diversion system installed; study ordered
2000	None				NO	Open				
2020	None				NO	Open				Old permit #180
2000	None				NO	Brush	X			
2000+	None				NO	Brush				
2000	None				NO	Open				Closure in 1995
2010	None				NO	Open				
2000	None				NO	Open				
1990	None				NFI	Brush				Transfer to Hermiston; G.W. study ordered
2020	Clay/HDP				NO					Tidewater Barge Lines site
2000+	None				NFI	NO	X			Groundwater study in progress
2000	None				NO	NO				
1990	None				NO	NO				Closure planned
2010	None				NO	NO				
2040	None	Reqd			NFI	NO				Groundwater study to be reviewed
2040	None				NFI	NO				Groundwater study in progress
2000+	None				NFI	NO				EPA/BIA Jurisdiction; G.W. study ordered
2000	None	(2)			YES	NO	X			Insufficient cover soil
2000+	None				NO	Brush				
2000	None				NO	Open				
2000	None				NO	Open				Old permit #193
2000	None				NO	Open				
2000	None				NO	NO				
1994	None				NFI	Brush				Old permit #131
2000	None				NO	NO				
1991	Clay(p)	38		16	NFI	NO	X	X		G.W. study in progress; leachate piped to WWTP
1994?	Clay(p)	6	1	2	NO	Brush	X	X		Trans to Coffin Butte 11/88; leachate irr system
2000	None				NFI	NO				Beaver Hill backup site; groundwater study ordered
1992	None				NO	Open				
2005	None	Reqd			NFI	Brush			X	Monitoring wells to be installed
1995	None				NFI	Brush			X	Ash disposal for Brookings Energy
2000	Sand	Reqd			NFI	Brush	X			Planned conversion to TS
2010-15	None				YES	NO	X			
2030-40	None	18	1	2	YES	NO	X			Groundwater study completed
2020	None	Reqd			NFI	NO	X			Groundwater study in progress
2000+	None	1			NFI	NO	X			Groundwater study planned
2000+	None	Reqd			NFI	Brush	X			Groundwater study in progress
2000	None				NO	Brush				
2007	None	3		3	YES	NO	X			Groundwater/leachate collection study required
2010	None	3			NFI	Brush	X			Groundwater study planned
2010	Cl/HDP(p)	20		4	NFI	NO	X			Leachate lagoon
2050+	None	1(1)			NFI	NO				Port wants to close landfill
2020-50	CLAY	8			NFI	NO	X			Leachate lagoon; more wells reqd
2000	None	2			NFI	NO				Groundwater study in progress
2000+	Nat Clay				NO	Brush				
1990	None	4	1	1	YES	NO	X			Solving G.W. problem could extend life to 2010+
1995+	Comp Soil	4		1	NFI	Brush	X			Leachate collection & irrigation system
2000+	None				NO	NO				
1998?	Clay/HDP	18			NFI	NO	X		X	Also takes cannery & demol waste
2015+	Nat soil	7			NO	NO	X			Small leachate lagoon; management system ordered

Table 2-1 Footnotes:

1. When it is not otherwise apparent, landfill locations are indicated in parentheses next to the landfill name.

2. The five DEQ regions are indicated by code letter and by office location as follows:

   C = Central Region (Bend)
   E = Eastern Region (Pendleton)
   NW = Northwest Region (Portland)
   SW = Southwest Region (Medford)
   WV = Willamette Valley Region (Salem)

3. Estimated Population Served is rounded to the nearest 100 persons.

4. 1987 Fill Rate--Tons are indicated only for those landfills where scales have been installed. The word "Scales" indicates that scales are available, but no tonnage figures have been reported. Rough tonnage values may be calculated by assuming that each person served produces 1 ton of refuse per year.

5. An "e" after the 1987 Fill Rate yardage (listed as thousands of cubic yards) indicates that the volume was estimated by multiplying 6 cubic yards (the estimated annual refuse production rate per person per year) by the Estimated Population Served. All yardages are rough estimates, indicating combined loose and compacted refuse delivered for disposal, rather than in-place disposal volumes. Absence of an "e" indicates a measured value reported by the landfill operator.

6. An "f" after the Volume Remaining column (thousands of cubic yards) indicates that the remaining volume has been calculated by subtracting 1988 from the Estimated Closure Date, multiplying by the 1987 Fill Rate, and dividing by 2 (the ratio of loose refuse volume to compacted volume in the landfill). The result is a very rough approximation of the remaining volume in the landfill. Absence of an "f" indicates that the value is documented in a report on file with DEQ.

7. Estimated Close Date is a "best estimate" figure based on the current fill rate for a currently owned site.

8. "HDP" in the Liner Material column indicates that a High-Density Polyethylene liner has been installed; "(p)" indicates that only part of the landfill is lined.

9. A number in parentheses in the Monitoring Stations--Wells column indicates that wells that have been installed, but are not used by DEQ as sampling stations.

10. A "NO" in the Leachate Problem column indicates no known leachate problem at this time; "NFI" indicates a "need for further information".

	2,104,200	11,690.2	207,138

NOTES: 1. Some closure dates were estimated when the initial permit was issued.
These estimated dates could be considerably out of date, and should be recalculated.

2. Volumes Remaining were calculated by multiplying years to Estimated Closure Date times 1987 Fill Rate.
Since both numbers are, for the most part, only rough approximations, the calculated volumes are likewise only rough approximations.

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Date: 8-31.1-88

Table 2-2

ACTIVE MUNICIPAL LANDFILLS IN OREGON
Expected to Close Before the Year 2000

	Landfill (Location)	County	Region	Permit Number	Permittee	Facility Type	Initial Permit Date	Estimated Population Served	1987 Fill Rate 1000 yd3	Est Close Date	Replacement Site
1	Alfalfa (E of Bend)	Deschutes	C	26	County	MLF	7-01-72	100	0.6 e	1989	Knott Pitt
2	Southwest (LaPine)	Deschutes	C	259	County	MLF	7-01-75	200	19.6	1990	Knott Pitt
3	Turner (Heppner)	Morrow	E	275	City (pr)	MLF	1-20-76	1,500	3.0	1990	Sanitary Disp. Inc
4	Pilot Rock	Umatilla	E	291	Private	MLF	2-22-77	3,000	9.1	1990	Sanitary Disp. Inc
5	Agate Beach (Newport)	Lincoln	WV	373	Private	MLF	10-22-84	10,000	61.1	1990	Unknown
6	Negus (Redmond)	Deschutes	C	28	County	MLF	7-01-72	10,000	51.0	1991	Knott Pitt
7	St Johns	Multnomah	NW	116	Metro (pr)	MLF	7-01-72	900,000	5195.0	1991	N. Gilliam County
8	Lakeview	Lake	C	206	County	MLF	7-01-72	3,000	18.0 e	1992	Unknown
9	Powers	Coos	SW	160	City	MLF	7-01-72	1,000	6.0 e	1992	Unknown
10	Fossil	Wheeler	E	260	County	MLF	11-18-74	1,000	6.0 e	1994	Unknown
11	Tillamook	Tillamook	NW	148	County	MLF	7-01-72	20,000	29.0	1994?	Unknown
12	S.Lincoln (Waldport)	Lincoln	WV	132	Private	MLF	7-01-72	2,500	17.0	1995+	Unknown
13	Fort Rock	Lake	C	276	County	MLF	2-27-76	100	0.6 e	1995	Unknown
14	Antelope	Wasco	C	187	City	MLF	7-01-72	100	0.6 e	1995	Unknown
15	Sprague River	Klamath	C	40	County	MLF	6-01-72	200	1.2 e	1995	Unknown
16	Halfway	Baker	E	181	City	MLF	7-01-72	500	3.0 e	1995	Unknown
17	Wridge Creek (Brkngs)	Curry	SW	316	Private	TS	11-14-79	15,000	5.0	1995	Unknown
18	Fryrear (Sisters-E)	Deschutes	C	27	County	MLF	7-01-72	1,000	14.6	1996	Knott Pit
19	Woodburn	Marion	WV	240	County	ASH	6-23-74	250,000	90.2	1998?	Unknown
								1,219,200	5530.6		

NOTE: Some of the closure dates were estimated when the initial permit was issued.
These estimated dates could be considerably out of date, and should be recalculated.

RL-T2-3
9-6-88

Table 2-3

MUNICIPAL LANDFILLS DESIGNATED
TO RECEIVE ASBESTOS

Landfill (Location)	County (*host county)
CENTRAL REGION (6 sites, 9 counties)	
Crook County (Prineville)	Crook
Knott Pit (Bend)	Deschutes
Burns-Hines	Harney
Box Canyon (Madras)	Jefferson
Klamath Falls	*Klamath, Lake
North Wasco (The Dalles)	*Wasco, Hood River, Sherman
EASTERN REGION (6 site, 9 counties)	
Arlington	*Gilliam, Wheeler, Morrow
Baker	Baker
Hendrix (John Day)	Grant
Foothill (Ontario)	Malheur
Pendleton	Umatilla
Fox Hill (LaGrande)	*Union, Wallowa
NORTHWEST REGION (2 sites, 6 counties)	
St Johns (Portland)	*Multnomah, Clackamas Columbia, Washington
Tillamook	*Tillamook, Clatsop
SOUTHWEST REGION (8 sites, 5 counties)	
Port Orford	*Curry, Coos
Reedsport	Douglas
Roseburg	Douglas
Ashland	Jackson
South Stage (Jacksonville)	Jackson
Dry Creek (White City)	Jackson
Merlin (Grants Pass)	Josephine
Kerby (Oregon Caves)	Josephine
WILLAMETTE VALLEY REGION (6 sites, 7 counties)	
Coffin Butte (Corvallis)	*Benton, Linn
Short Mountain (Eugene)	Lane
Agate Beach (Newport)	Lincoln
S. Lincoln (Waldport)	Lincoln
Brooks	*Marion, Polk
River Bend McMinnville	Yamhill

File: \Lotus\S-S-ALFA.wk1
Date: 8-30.1-88

Table 3-1

LANDFILL SAMPLING SITES

	Landfill	County	Region	Permit Number	Facility Type	Closed	Monitor Wells	Sumps	Surface	Comments
1	Agate Beach	Lincoln	WV	373	MLF		4	1	1	No upgrade well
2	Astoria	Clatsop	NW	118	MLF	Yes	3		4	No upgrade well
3	Browns Island	Marion	WV	255	MLF	Yes	13			Well #15 upgrade
4	Coffin Butte (Linn-BntnCo)	Benton	WV	306	MLF		20		4	No upgrade well
5	Dry Creek (White City-E)	Jackson	SW	190	MLF		1			Upgrade well to be installed
6	Florence	Lane	WV	91	MLF		1			No upgrade well
7	Fowlers	Polk	WV	198	DEMOL	Yes	4			Low priority
8	GrantsPass (Merlin)	Josephine	SW	159	MLF		3		3	No upgrade well; need 3 more wells
9	Hood River	Hood River	C	347	MLF	Yes	1	1		
10	Kerby (OR Caves)	Josephine	SW	197	MLF		3			New upgrade well; new sampling site
11	Killingsworth (Nash)	Multnomah	NW	330	DEMOL		4	1		
12	Lebanon	Linn	WV	144	MLF	Yes	4			Low priority
13	Newberg	Yamhill	WV	97	MLF	Yes	6			
14	Obrist	Multnomah	NW	213	MLF	Yes	2			
15	River Bend	Yamhill	WV	345	MLF		7			
16	Roche Road	Linn	WV	301	DEMOL	Yes	5			
17	Roseburg	Douglas	SW	265	MLF		18	2	2	New wells installed 5-20-87
18	Rossmans	Clackamas	NW	115	MLF	Yes	12	1	3	Upgrade well not identified
19	Santosh	Columbia	NW	195	MLF	Yes	4			
20	Short Mountain	Lane	WV	290	MLF		8		3	Upgrade well not identified
21	Southwest	Deschutes	C	259	MLF		5			New wells installed
22	St Johns	Multnomah	NW	116	MLF		26		10	Hydrogeologic study in progress
23	S.Lincoln (Waldport)	Lincoln	WV	132	MLF		4		1	Upgrade well not identified
24	Tillamook	Tillamook	NW	148	MLF		6	1	2	Well #MW-3 upgrade
25	Warrenton (Clatsop)	Clatsop	NW	120	MLF	Yes	3			Sampling discontinued in 1981
26	Whiteson	Yamhill	WV	212	MLF	Yes	6			
27	Woodburn	Marion	WV	240	ASH		18		1	Wells #12A, 12B, 12C upgrade
						13 Closed	191	7	34	

RL-T3-2
9-6-88

Table 3-2

WATER QUALITY PARAMETERS
MONITORED AT OREGON LANDFILL SITES

Storet Code No.	Parameter	Advisory Drinking Water Max	Typical Leachate Value[1]	Range[2]
10	Temperature (Celcius)	None		
94	Conductivity - Field (umho)	300 - 400		1000 - 20,000
95	Conductivity - at 25 C (umho)	300 - 400		
400	pH - Field	6.0 - 9.0	6	5.7 - 7.6
403	pH - Lab	6.0 - 9.0		
940	Chlorides - total (mg/L)	250	500	100 - 2,500
915	Calcium - dissolved (mg/L)		1,000	200 - 2,000
925	Magnesium - dissolved (mg/L)		250	150 - 750
1046	Iron - dissolved (ug/L)	300	60,000	0 - 500,000
1056	Manganese - dissovled (ug/L)3	50		0 - 10,000
945	Sulfate - SO_4 total (mg/L)	250	300	50 - 1,500
410	Total Alkalinity - $CaCO_3$ (mg/L)		3,000	500 - 10,000
630	Nitrite & Nitrate as N (mg/L)	10*	25	0 - 30
610	Ammonia as N (mg/L)		200	0 - 350
900	Total Hardness - $CaCO_3$ (mg/L)	250	3,500	500 - 10,000
300	Dissolved Oxygen (mg/L)			
335	Chemical Oxygen Demand (mg/L)		18,000	500 - 50,000
680	Total Organic Carbon (mg/L)		6,000	
80	Color (CU)	15		
31615	Fecal Coliform (MPN)	4		
31639	Enterococcus (per 100 ml)	4		

* indicates primary EPA Drinking Water Standard maximum.

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[1] From: Tchobanoglous et al, Solid Wastes: Engineering Principles and Management Issues, 1977

[2] From: Kmet and McGinley, "Chemical Characteristics of Leachate from Municipal Solid Waste Landfills in Wisconsin", Proceedings of 5th Annual Conference on Municipal and Industrial Waste, Madison, 1982.

File: \Lotus\DEMO-LF.wk1
Date: 8-31-88

Appendix A

ACTIVE DEMOLITION WASTE LANDFILLS IN OREGON

	Landfill	County	Region	Permit Number	Facility Type	Permitted Capacity (cu yd)	FillRate (cuyd/yr)	Est Close Date	Monitor Wells	Liner
1	Bracelin/Yeager	Coos	SW	344	DEMOL					
2	Hillsboro	Washington	NW	112	DEMOL					
3	Delta Sand & Gravel	Lane	WV	340	DEMOL					
4	Bend Demolition	Deschutes	C	215	DEMOL					
5	North Lincoln	Lincoln	WV	182	DEMOL					
6	Lakeside Reclam	Washington	NW	214	DEMOL					
7	Killingsworth (Nash)	Multnomah	NW	330	DEMOL				4+	Yes
8	Salem Airport	Marion	WV	136	DEMOL					
9	Browns Island (Salem)	Marion	WV	54	DEMOL				13	No

File: \Lotus\INDUS-LF.wk1

Date: 9-06-88

Appendix B

INDUSTRIAL LANDFILLS IN OREGON

	Landfill (Location)	Permit Number	Permittee	County	Region	Capacity (cu yd)	Monitor Well	Leachate Problem
1	Avison Lumber (Molalla)	1139	Avison Lumber	Clackamas	NW			
2	Saginaw Mill	1001	Bohemia, Inc	Lane	WV			
3	Dorena Mill	1002	Bohemia, Inc	Lane	WV			
4	Priceboro	1028	Bohemia, Inc	Linn	WV			
5	Wilkins Corner	1044	Bohemia, Inc	Coos	SW			
6	Cascade	1083	Bohemia, Inc	Lane	WV			
7	Boise Cascade (Elgin)	1131	Boise Cascade	Union	E			
8	Boise Cascade (Independence)	1077	Boise Cascade	Polk	WV			
9	Joseph Mill	1051	Boise Cascade	Wallowa	E			
10	Boise Cascade (Medford)	1080	Boise Cascade	Jackson	SW			
11	Boise Cascade (St Helens)	1127	Boise Cascade	Columbia	NW			
12	Boise Cascade (South 80)	1152	Boise Cascade	Columbia	NW			
13	Willamina Mill	1140	Boise Cascade	Yamhill	WV			
14	Burrill Lumber	1105	E.F. Burrill Lumber Co	Jackson	SW			
15	C & D Lumber Co	1085	C & D Lumber Co	Douglas	SW			
16	Cascade Utilities	1117	Cascade Utilities, Inc	Clackamas	NW			
17	Clackamas Log Yard	1014	Cavenham Forest Industries	Clackamas	NW			
18	Coates Tire	1035	Cavenham Forest Industries	Columbia	NW			
19	Lewis & Clark Log Yard	1055	Cavenham Forest Industries	Clatsop	NW			
20	Gunners Mainline	1137	Cavenham Forest Industries	Columbia	NW			
21	Cedar Lumber	1078	Cedar Lumber, Inc	Linn	WV			
22	Champion, Internatl, Dee	1056	Dee Forest Products, Inc	Hood River	C			
23	Rifle Range Road	1075	Champion Internatl Corp	Douglas	SW			
24	Christad Ash Disposal	1149	Christad Enterprises	Baker	E			
25	Clear Pine Mouldings	1144	Clear Pine Mouldings, Inc	Crook	C			
26	Wauna Mill	1032	James River of Nevada	Clatsop	NW			
27	Lebanon	1070	James River of Nevada	Linn	NW			
28	Sweet Creek	1121	Davidson Industries	Lane	WV			
29	Douglas County Lumber	1110	Douglas County Inc	Douglas	SW			
30	Dow Corning	1120	Dow Corning Corp	Lane	WV			
31	ESCO, Sauvie Island	1091	ESCO Corp	Multnomah	NW			
32	ESCO, Willbridge	1104	ESCO Corp	Multnomah	NW			
33	Eugene Chemical	1008	Eugene Chemical Works	Linn	WV			
34	Fort Hill Lumber	1021	Fort Hill Lumber Co	Yamhill	WV			
35	Fremont Sawmill	1095	Fremont Sawmill	Lake	C			
36	Freres Lumber	1135	Freres Lumber Co, Inc	Linn	WV			
37	G-P, Coos Bay Plywood	1101	Georgia-Pacific Corp	Coos	SW			
38	Irving Road	1031	Georgia-Pacific Corp	Lane	WV			
39	G-P, Toledo	1059	Georgia-Pacific Corp	Lincoln	WV			
40	G-P, Sutherlin	1145	Georgia-Pacific Corp	Douglas	SW			
41	Gilchrist Timber #1	1084	Gilchrist Timber Co	Klamath	C			
42	Gilchrist Timber #2	1129	Gilchrist Timber Co	Klamath	C			
43	Glide Lumber Products	1053	Glide Lumber Products Co	Douglas	SW			
44	Glide Lumber Products	1130	Glide Lumber Products Co	Douglas	SW			
45	Goose Lake Lumber	1151	Goose Lake Lumber Co	Lake	C			
46	Green Veneer	1007	Green Veneer, Inc	Marion	WV			
47	Hayward	1114	Gregory Timber Resources	Douglas	SW			
48	Hanel Lumber	1033	Hanel Lumber Co	Hood River	C			

49	Neal Creek Mill	1099	Hanel Lumber Co	Hood River	C
50	Diamond Fruit	1093	Hood River County	Hood River	C
51	I. P. Gardiner	1069	International Paper Co	Douglas	SW
52	Horse Barn	1076	International Paper Co	Douglas	SW
53	Jackson Sports Park	1072	Jackson County Park Dept	Jackson	SW
54	Kogap	1082	Kogap Mfg Co	Jackson	SW
55	Lakeview Lumber	1143	Lakeview Lumber Prod Inc	Lake	C
56	Clatskanie Log Yard	1094	Longview Fibre Co	Columbia	NW
57	Round Prairie Lumber	1058	Louisiana-Pacific Corp	Douglas	SW
58	Malarkey Roofing	1041	Malarkey Roofing Co	Multnomah	NW
59	Medford Corp	1088	Medford Corp	Jackson	SW
60	Medco, Rogue River	1109	Medford Corp	Jackson	SW
61	Modoc Lumber	1042	Modoc Lumber Co	Klamath	C
62	Tygh Valley Log Yard	1126	Mountain Fir Lumber Co	Wasco	C
63	Mountain Fir Lumber	1098	Mountain Fir Lumber Co	Josephine	SW
64	Ore-Ida Foods	1027	Ore-Ida Foods, Inc	Malheur	E
65	Denman Wildlife Area	1081	OR Dept of Fish & Wildlife	Jackson	SW
66	P & M Lumber	1123	P & M Lumber Products	Douglas	SW
67	Pine Products	1147	Pine Products Corp	Crook	C
68	Pope & Talbot	1020	Pope & Talbot Inc	Lane	WV
69	Port of Tillamook	1107	Port of Tillamook Bay	Tillamook	NW
70	Port of Tillamook	1132	Port of Tillamook Bay	Tillamook	NW
71	Faraday Plant	1087	Portland General Co	Clackamas	NW
72	Molalla Pit	1103	RSG Forest Products	Clackamas	NW
73	Park Lumber	1034	RSG Forest Products	Clackamas	NW
74	Green	1050	Roseburg Forest Prod Co	Douglas	SW
75	Dixonville	1060	Roseburg Forest Prod Co	Douglas	SW
76	Riddle	1061	Roseburg Forest Prod Co	Douglas	SW
77	Dillard	1065	Roseburg Forest Prod Co	Douglas	SW
78	Ply #2	1066	Roseburg Forest Prod Co	Douglas	SW
79	Sutherlin	1074	Roseburg Forest Prod Co	Douglas	SW
80	Coquille	1097	Roseburg Forest Prod Co	Coos	SW
81	Rough & Ready	1003	Rough & Ready Lumber Co	Josephine	SW
82	Les Schwab Tires	1049	Les Schwab Warehouse Ctr	Crook	C
83	Fred Smith	1009	Fred V. Smith	Linn	WV
84	Smith Frozen Foods	1096	Smith Frozen Foods	Umatilla	E
85	Stuckart Lumber	1073	Stuckart Lumber Co	Marion	WV
86	Sun Studs	1012	Sun Studs, Inc	Douglas	SW
87	Westbrook Wood Products	1068	Westbrook Wood Prod, Inc	Coos	SW
88	Western Kraft	1025	Western Kraft Paper Group	Linn	WV
89	Hickethier Quarry	1018	Weyerhaeuser (Cottage Gr)	Lane	WV
90	Last Chance	1111	Weyerhaeuser (Cottage Gr)	Lane	WV
91	Weyerhaeuser, K. Falls	1106	Weyerhaeuser (K. Falls)	Klamath	C
92	Weyerhaeuser, Bly	1128	Weyerhaeuser (K. Falls)	Klamath	C
93	Rail Dike	1133	Weyerhaeuser (Springfield)	Lane	WV
94	Weyerhaeuser, N. Bend	1142	Weyerhaeuser Container Div	Coos	SW
95	North Spit	1142	Weyerhaeuser Container Div	Coos	SW
96	Mettman Ridge	1064	Weyerhaeuser (N. Bend)	Coos	SW
97	Allegany Shop	1102	Weyerhaeuser (N. Bend)	Coos	SW
98	Scale Shack	1134	Weyerhaeuser (N. Bend)	Coos	SW
99	Toledo Mill	1141	Wheeler Mfg Co	Lincoln	SW
100	Lebanon Mill	1026	Willamette Industries	Linn	WV
101	Old Timber Pond	1071	Willamette Industries	Linn	WV
102	Buck Hollow	1115	Willamina Lumber Co	Yamhill	WV

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Date: 8-31.1-88

Appendix C

CLOSED MUNICIPAL LANDFILLS IN OREGON

	Landfill	Permit Number	County	Region	Facility Type	Capacity (cu yd)	Monitor Well	Leachate Problem
1	Deer Creek	3	Grant	E	MLF			
2	Camas Valley	11	Douglas	SW				
3	Canyonville	12	Douglas	SW				
4	Elkton	13	Douglas	SW				
5	Glendale	14	Douglas	SW				
6	Glide	15	Douglas	SW				
7	Lookingglass	16	Douglas	SW				
8	Myrtle Creek	17	Douglas	SW				
9	Oakland	18	Douglas	SW				
10	Tiller	20	Douglas	SW				
11	Yoncalla	21	Douglas	SW				
12	Seaside/Cannon Beach	22	Clatsop	NW				
13	Cannon Beach	23	Clatsop	NW				
14	Tumalo	24	Deschutes	C				
15	McGrath	25	Deschutes	C				
16	LaPine	29	Deschutes	C				
17	Cline Falls	30	Deschutes	C				
18	Lower Bridge	31	Deschutes	C				
19	Sisters	32	Deschutes	C				
20	Pistol Butte	33	Deschutes	C				
21	Arnold	34	Deschutes	C				
22	Roseburg Disposal	36	Douglas	SW				
23	Merrill	44	Klamath	C				
24	Keno	45	Klamath	C				
25	Crescent	46	Klamath	C				
26	Odessa	49	Klamath	C				
27	Fort Klamath	50	Klamath	C				
28	Coffin Butte	51	Lane	WV				
29	Stayton	52	Marion	WV				
30	Browns Island	54	Marion	WV				
31	Mill City Disposal	56	Marion	WV				
32	Fishback Hill	57	Polk	WV				
33	Dallas	58	Polk	WV				
34	Holley	59	Linn	WV				
35	Fugate	60	Douglas	SW	Sludge			
36	Roto-Rooter	62	Linn	WV	Sludge			
37	Nored	63	Linn	WV	Sludge			
38	Roche Road	64	Linn	WV	Demol			
39	Fairview	69	Coos	SW				
40	Remote	70	Coos	SW				
41	Joe Ney	71	Coos	SW				
42	Mickey's	72	Columbia	NW				
43	Elsie	73	Clatsop	NW				
44	Dwire	75	Curry	SW				

45	Agness	76	Curry	SW	
46	Klamath Disposal	77	Klamath	C	
47	Veneta	80	Lane	WV	
48	Horton	81	Lane	WV	
49	Erbs	82	Lane	WV	
50	London	84	Lane	WV	
51	Disston	85	Lane	WV	
52	Vida	87	Lane	WV	
53	Rattlesnake	88	Lane	WV	
54	McKenzie Bridge	89	Lane	WV	
55	Marcola	90	Lane	WV	
56	Mapleton	92	Lane	WV	
57	Swisshome	93	Lane	WV	
58	Walton	94	Lane	WV	
59	Day Island	95	Lane	WV	
60	Five Rivers	96	Lane	WV	
61	Newberg	97	Yamhill	WV	
62	High Heaven	98	Yamhill	WV	
63	Sheridan Willamina	99	Yamhill	WV	
64	Lytle Blvd	102	Malheur	E	
65	Vale	104	Malheur	E	
66	Pilot Rock	107	Unatilla	E	
67	Athena	108	Umatilla	E	
68	Weston	109	Umatilla	E	
69	North Powder	110	Union	E	
70	Elgin	111	Union	E	
71	LaVelle	113	Clackamas	NW	
72	Hidden Valley	114	Multnomah	NW	
73	Rossmans	115	Clackamas	NW	
74	Frank's	117	Washington	NW	
75	Astoria	118	Clatsop	NW	
76	Knappa	119	Clatsop	NW	
77	Warrenton	120	Clatsop	NW	
78	Canyon City	123	Grant	E	
79	Retherford Sanit	124	Grant	E	
80	Valley Sanit	125	Grant	E	
81	Bates	126	Grant	E	
82	Heppner	128	Morrow	E	
83	LaGrande	129	Union	E	
84	Kinzua	130	Wheeler	E	
85	Fossil	131	Wheeler	E	
86	Sherman County	134	Sherman	C	
87	Filmore Park	137	Lincoln	WV	
88	Jefferson County	138	Jefferson	C	Sludge
89	Culver	140	Jefferson	C	
90	Albany	141	Linn	WV	
91	Woodburn	142	Marion	WV	
92	Lebanon	144	Linn	WV	
93	Clatskanie	145	Columbia	NW	
94	Bay City	146	Tillamook	NW	
95	Manzanita	147	Tillamook	NW	
96	Pacific City	149	Tillamook	NW	
97	Wallowa	150	Wallowa	E	
98	Oxbow	155	Baker	E	

99	Myrtle Point	157	Coos	SW	
100	Shinglehouse Slough	158	Coos	SW	
101	Nesika Beach	161	Curry	SW	
102	Newport (Agate Beach)	162	Lincoln	WV	
103	Mt Vernon	163	Grant	E	
104	Brookings	164	Curry	SW	
105	Langlois	165	Curry	SW	
106	Minto Island	166	Marion	WV	
107	Union City	167	Union	E	
108	Hood River	168	Hood River	C	
109	Baker	169	Baker	E	
110	Condon	171	Gilliam	E	
111	Arnold	172	Deschutes	C	Sludge
112	Coquille	173	Coos	SW	
113	Enterprise	174	Wallowa	E	
114	Lexington	176	Morrow	E	
115	Spray	177	Wheeler	E	
116	Monument	180	Grant	E	
117	Joseph	185	Wallowa	E	
118	Maupin	186	Wasco	C	
119	Wamic	188	Wasco	C	
120	Shaniko	189	Wasco	C	
121	Unity	191	Baker	E	
122	Imnaha	193	Wallowa	E	
123	Logsden	194	Lincoln	WV	
124	Santosh	195	Columbia	NW	
125	Florence	196	Lane	WV	Sludge
126	Drewsey	202	Harney	C	
127	Fields	203	Harney	C	
128	Frenchglen	204	Harney	C	
129	Butte Falls	205	Jackson	SW	
130	Dayville	207	Grant	E	
131	Valsetz	208	Polk	WV	
132	LaVelle	211	Clackamas	NW	Demol
133	Whiteson	212	Yamhill	WV	
134	Obrist	213	Multnomah	NW	Demol
135	Ironside	227	Malheur	E	
136	West Delta Park	231	Multnomah	NW	
137	Clark	232	Lincoln	WV	Sludge
138	Hoodview	233	Clackamas	NW	Transfer
139	Bethel-Danebo	236	Lane	WV	
140	Columbia Processor's Co-op	237	Multnomah	NW	Barge/Sludge
141	Columbia Processor's Co-op	237	Morrow	E	Barge/Sludge
142	Desert Magic, Inc.	238	Morrow	E	Sludge
143	Columbia Land Reclam	239	Multnomah	NW	Demol
144	Ladd Canyon	248	Union	E	Tires
145	Macadam Processing	250	Multnomah	NW	Tires
146	Riverside Ranch	254	Crook	C	Transfer
147	Dellwood Shop	264	Coos	SW	
148	Huntley Park	267	Curry	SW	
149	MacLeay	270	Marion	WV	Transfer
150	Oak Grave Power	277	Clackamas	NW	
151	MacLaren School	278	Marion	WV	Demol
152	Prineville Reservoir	279	Crook	C	

153	Tygh Valley Metal Products	282	Wasco	C	Metal
154	MDC Tire Processing	285	Multnomah	NW	Tires
155	Tremaine	286	Benton	WV	Demol
156	Metro Disposal Corp.	292	Clackamas	NW	Tires
157	S. Willamette	297	Lane	WV	Demol
158	Lawen	299	Harney	C	
159	Roche Road	301	Linn	WV	Demol
160	Union County	303	Union	E	Processing
161	Forest Grove Disp Service	305	Washington	NW	
162	March	307	Umatilla	E	Sludge
163	Howard	308	Umatilla	E	Sludge
164	Key	309	Umatilla	E	Sludge
165	Lane County	317	Lane	WV	Processing
166	Williams	322	Coos	SW	Demol
167	Clark	331	Lincoln	WV	Sludge
168	Union Ave Recycling	339	Multnomah	NW	
169	Axtell	353	Josephine	SW	
170	McFarlane Bark, Inc.	354	Clackamas	NW	Yard Debris
171	Hayden Island	355	Multnomah	NW	Sludge
172	Rajneeshpuram	357	Wasco	C	

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 N, 11/4/88, EQC Meeting, EQC Meeting

Executive Summary of Staff Report Proposing Adoption of New Administrative Rules for the Waste Tire Program, OAR 450-62: Reimbursement for Use and Cleanup of Waste Tires

BACKGROUND

The 1987 Legislature passed HB 2022 establishing a comprehensive program governing the storage, transportation and reuse of waste tires. On July 8, 1988 the Commission adopted rules governing permitting of waste tire storage sites and waste tire carriers. The other part of the program deals with use of funds from the Waste Tire Recycling Account, funded by a $1 fee on new replacement tires. Use of the Account is the subject of the present proposed rule. The Account may be used to partially reimburse persons who use waste tires, and to fund cleanup of some tire piles.

The Department developed the rule with the help of the Waste Tire Task Force. The Commission authorized public hearings on the proposed rule at its July 8, 1988, meeting. Four public hearings were held on the proposed rule in La Grande, Bend, Medford and Portland, from August 15 through 18, 1988.

PROPOSED ACTION

The Department is requesting that the Commission adopt the proposed rule concerning use of the Waste Tire Recycling Account.

SUMMARY OF KEY ISSUES IN RULE AND STAFF REPORT

1. Policy. Priority in use of the Account would be given to reimbursement over cleanup.

2. Reimbursement procedure. The reimbursement would be disbursed quarterly. Applicants could apply to the Department for "advance certification" as an eligible use. Applications would be approved by the Director. If insufficient funds are available in any quarter to

cover all reimbursements, some would be prorated and the excess rolled over and reimbursed in the following quarter.

3. Amount of reimbursement. Recommended level is $.01 per pound of rubber used. The Waste Tire Task Force and the Department's economic consultant concur with this amount.

4. Eligible uses. The rule determines what uses of waste tires will be eligible for the reimbursement, including energy recovery (incineration) and using waste tires to produce new products. Comment was received that the reimbursement should follow the solid waste hierarchy in giving reuse and recycling an advantage over incineration. The proposed rule offers a flat rate to all uses. However, the rule gives an advantage to reuse and recycling by exempting such uses from the prorating requirement. Incineration would be subject to proration.

5. Recipient of reimbursement. The person receiving the reimbursement would be the last person to use the waste tires as a tire, tire chips, or similar materials to make a product with economic value. Consensus was not reached on the Task Force as to who this person should be in the case of a pyrolysis operation. The proposed rule defines the products of pyrolysis as "similar materials", giving the reimbursement to the customers of pyrolysis operators.

6. Cleanup funds. Priority in use of cleanup funds would be for sites with the greatest potential environmental risks. Use of cleanup funds to help permittees clean up waste tire storage sites must be approved by the Commission. The Department may order site owners to clean up sites which pose an environmental risk.

dmc:f
299-5808
September 25, 1988
SF3474.C

REQUEST FOR EQC ACTION

Meeting Date: 11/14/88
Agenda Item: N
Division/Section: HSW/SW/WTP

Subject: Reimbursement for Use of Waste Tires.

Purpose: Eliminate waste tires from waste stream by stimulating markets for their reuse and recycling.

Action Requested:

___	Authorize Rulemaking Hearing	
	Draft Proposed Rules	Attachment ___
	Rulemaking Statements	Attachment ___
	Fiscal and Economic Impact Statement	Attachment ___
	Draft Public Notice	Attachment ___
_X_	Adopt Rules	
	Proposed Rules	Attachment I
	Rulemaking Statements	Attachment V
	Fiscal and Economic Impact Statement	Attachment V
	Public Notice	Attachment VI
___	Issue Contested Case Decision/Order	
	Proposed Order	Attachment ___
___	Approve Agency Action	
___	Other: _____	

Authority/Need for Action:

_X_	Pursuant to Statute: ORS 459.705 to .790	Attachment II
	Enactment date: 1987 (HB 2022)	
___	Amendment of Prior Rule: _____	Attachment ___
___	Implement Delegated Federal Program:	
	_____	Attachment ___
___	Staff Recommendation: _____	Attachment ___
___	Other: _____	Attachment ___

Summary Description of Action Requested:

The rules proposed for adoption contain the following elements:

- definitions of terms,
- A policy on priority uses of the Waste Tire Recycling Account,
- Eligible and ineligible uses of waste tires for the reimbursement,
- Application procedures,

- How the amount of reimbursement will be determined,
- prorating of the reimbursement,
- criteria and procedures for use of cleanup monies.

Developmental Background:

___	Staff Report / Recommendation	Attachment ___
_X_	Advisory Committee Report / Recommendation	Attachment III
_X_	Hearings Officer Report / Recommendation	Attachment VII
_X_	Response to Testimony/Comments	Attachment VIII
_X_	Prior or Related Report/Rules/Statutes:	
	Agenda Item G, 7/8/88 Meeting -- Permitting Requirements for Waste Tire Storage Sites and Waste Tire Carriers	(Not included)
	Report: Economic Analysis of a Reimbursement to Users of Waste Tires; ECO Northwest	Attachment _IV

Consistency with Strategic Plan, Agency Policy, Legislative Policy:

Implements statutory mandate and legislative intend of stimulating use of energy value of tire chips and manufacturing of new products. Encourages recycling, minimizes health hazards and impact on waste stream.

Regulated/Affected Community Constraints/Considerations:

The Task Force was not cohesive, never got formally organized and was unable to achieve unanimity. A substantial dispute remains between pyrolysis producers who seek reimbursement and tire chippers who contend that processors and chippers must be treated equitably and alike, and that neither should receive reimbursement as an "end user".

Programmatic Considerations: (Description of mechanics, FTE, Budget impacts, relation to other agencies, other states, the region, or the Federal Government.)

This program is primarily funded by the $1 fee on new replacement tires that is authorized and imposed by statute.

There is no comparable program at the federal level.
There is no similar program in adjacent states????

Policy Issues for Commission to Resolve:

In this pathfinding entry of regulatory reimbursement in the marketplace, where should the reimbursement go. In other words, who is an end user under the rule format?

Commission Alternatives:

1. Adopt Rules as proposed in Attachment I. This alternative treats processors and chippers alike and gives reimbursement to their customers. This alternative is substantially supported by the Advisory Committee, although there were several dissenters.

2. Modify the Rules as proposed in Attachment I to provide reimbursement for Pyrolysis Processors. The Department is not uncomfortable with this alternative, but believes alternative 1 is more equitable.

3. Refer the matter back to the Department and Advisory Committee for further consideration of the matter. (If selected, the Commission should provide specific direction to enhance the chances for reaching consensus on a recommendation.)

Department Recommendation for Action, with Rationale:

The Department Recommends that the Commission adopt Alternative 1. It appears to best implement legislative intent. It meets the equity argument of chippers. Since both are purchasers or disposers of waste tires, one should not receive reimbursement while the other does not. Reimbursement to their respective customers will best produce equity and meet the goal to stimulate development of new products or recovery of the energy value of waste tires.

Intended Followup Actions:

File Rules with the Secretary of State.

Notify chippers and processors of rule adoption by letter, and advise them of our expectation that they will notify their customers of the potential for reimbursement.

Evaluate the program after 1 year of experience and report to the commission on the results of that evaluation.

Approved:
Section: _____
Division: _____
Director: _____

Contact: _____
Phone: _____

WH:l

NEIL GOLDSCHMIDT
GOVERNOR

Department of Environmental Quality

811 SW SIXTH AVENUE, PORTLAND, OREGON 97204-1390 PHONE (503) 229-5696

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item N, 11/4/88, EQC Meeting

Proposed Adoption of New Administrative Rules for the Waste Tire Program, OAR 340-62: Reimbursement for Use and Cleanup of Waste Tires

BACKGROUND

Approximately 2 million waste tires are generated each year in Oregon. Just over half are reused or recycled. The rest find their way into landfills or are burned or dumped illegally.

Tires pose environmental problems because they resist compaction in solid waste disposal sites. Also, once tires catch on fire the fires are nearly uncontrollable. Tire fires emit many toxic compounds. Tires also offer a breeding ground for mosquitoes and other vectors.

Although waste tires have a resource value which can be recovered, landfilling or otherwise "getting rid of" them is usually cheaper for the person who generates the waste tire. Reuse and recycling of waste tires has also been restricted by a lack of developed markets.

Waste Tire Program

The 1987 Legislature passed HB 2022 (ORS 459.705 - 459.790) (Attachment II) to address the waste tire disposal problem, and to enhance the market for waste tires. A separate rule has already been adopted dealing with permitting requirements for waste tire storage sites and waste tire carriers. (See Agenda Item G, 7/8/88 EQC meeting)

To deal with the "demand" side for waste tires, the legislation establishes a Waste Tire Recycling Account. The account is funded by a $1.00 fee on the sale of all new replacement tires sold in Oregon, beginning January 1, 1988. The fee sunsets June 30, 1991.

The Waste Tire Recycling Account may be used for:

1. Partial reimbursement to users of waste tires or chips.

2. To help finance the cleanup of some waste tire sites.

3. To pay for the Department's administrative costs.

Available Funds

The Department estimates that about $1.4 million will be available in the 1987-89 biennium from the Account for reimbursement and cleanup. This represents tire fees collected during five quarters. About $2.5 million will be available in the 1989-91 biennium.

Markets for Waste Tires

Information on potential markets for waste tires was included in the Waste Tire Market Analysis as Attachment II to Agenda Item I at the April 29, 1988 EQC meeting.

It appears that use as "tire-derived fuel" (TDF) offers the greatest near-term potential for absorbing significant additional amounts of waste tires in the state. See next section, and the attached economic analysis for the Department by ECO Northwest, Inc. (Attachment IV).

Consultant's Report on Reimbursement

The Department contracted with ECO Northwest, Inc. for an economic analysis of the proposed reimbursement rule. The analysis estimated the effect of the reimbursement fund on the market for waste tires. A representative of the contractor will be available at the November 4 EQC meeting to answer questions.

Major conclusions and recommendations of the report include:

-- Energy recovery (combustion) offers by far the largest opportunity for increased use of waste tires in the near future.

-- A subsidy of $.01 per pound of rubber used (or $20 per ton) should stimulate annual use of about 2.3 million tires for combustion.

-- The user of waste tires is unlikely to retain all the reimbursement. The receiver of the reimbursement in a competitive environment will share or pass on part of

the reimbursement to other parties involved in generation, use, storage and disposal of waste tires.

Waste Tire Task Force

The Department created a Waste Tire Task Force of interested parties to help in developing rules for the program. Three working subcommittees were formed (Attachment III), including the Reimbursement Subcommittee.

At the July 8, 1988 meeting of the EQC, the Department requested and received permission to hold public hearings on the proposed rule developed through the Task Force. The following hearings were held:

LaGrande	August 15
Bend	August 16
Medford	August 17
Portland	August 18

Statement of Need for Rulemaking is attached (Attachment V), as well as a copy of the notice of public hearing (Attachment VI).

ALTERNATIVES AND EVALUATION

Public Comment Process

At the four public hearings concerning the proposed rule, eleven people submitted oral testimony. In addition, eight people submitted written testimony.

Two waste tire processors noted that there is a level of uncertainty in the reimbursement; if requests for reimbursement exceed available funds, the amount is to be prorated down. This will severely discourage new firms from making capital investments in waste tire processing.

A common concern was lack of reasonable options for tire disposal outside of the Portland and Willamette Valley areas.

A few persons felt that the Department (and the Legislature) had failed to involve persons that are most involved in the tire problem (auto wreckers) in developing the program. They also commented that the Department should develop markets to get rid of the tires before imposing the permitting requirements.

The attached hearing officer's reports (Attachment VII) and response to public comment (Attachment VIII) provide a complete listing of all comments received and the Department's response.

Major Elements in the Proposed Rule

The rule as drafted includes the following main elements: a policy on priority uses of the Waste Tire Recycling Account; eligible and ineligible uses of waste tires for the reimbursement; eligible applicants; application procedures; how the amount of the reimbursement will be determined; prorating of the reimbursement; and criteria and procedures for use of cleanup monies.

Only areas receiving public comment are discussed below. For discussion of other main elements, see Agenda Item E, July 8, 1988 EQC meeting.

1. Uses of Waste Tires Eligible for Reimbursement. Appropriate uses of waste tires include incineration for energy recovery, pyrolysis, and using tires or tire chips to manufacture new products. (In pyrolysis, tires are heated in a controlled environment, usually oxygen-free, to degrade them into oil, gas, carbon black, and mineral ash.)

   The Department received comments from the public concerning eligibility of incineration for the reimbursement, and expressing concerns about air quality. One respondent felt incineration should not be eligible for the reimbursement. Others felt that incineration should receive a lesser incentive to reflect the Department's solid waste disposal hierarchy which gives preference to reuse and recycling over energy recovery.

   The statute includes energy recovery as an "eligible use" for the reimbursement. The proposed rule specifies that if incineration of waste tires would violate an air quality permit, it is not eligible for the reimbursement. The Department feels that the advantages of having an "across-the-board" reimbursement for all uses of waste tires outweigh the disadvantages of not specifically supporting the solid waste disposal hierarchy in the amount of the reimbursement. The most economic use will be the one most used. This will result in the greatest number of waste tires reused for a given level of reimbursement.

   However, the Department agrees that the structure of the reimbursement should in some way reflect the solid waste hierarchy. The proposed rule would make energy recovery uses subject to prorating if insufficient funds are available to fully reimburse all eligible uses in any one quarter. The unfundable amount would be

carried forward to the next quarter when it would be funded. Other uses (e.g. recycling) would receive a 100 percent proration.

The Department will monitor the issue of whether it is appropriate to incorporate the solid waste hierarchy more directly into the reimbursement structure.

2. Definition of "User". ORS 459.770(1) states that "Any person...who uses the tires or chips or similar material for energy recovery or other appropriate uses may apply for partial reimbursement of the cost..." (emphasis added).

Those involved with developing the legislation agreed that the intent was for the reimbursement to go to companies burning tire-derived fuel (tire chips) for its energy value, or manufacturers using waste tires to create new products.

The Department proposed, and the majority of the Task Force agreed to, the following: the last person to use the tires or chips or similar material, either to recover energy or to produce another product which is not a tire, chip or similar material, should be considered the "user" and receive the reimbursement. The proposed rule calls such a person the "end user".

There was disagreement on the Task Force as to whether or not a pyrolysis operation should be considered an "end user." The draft rule stated that pyrolysis operations are "end users" because pyrolysis creates new products, i.e. oil, gas, carbon black and mineral ash. Pyrolysis operations would thus be the "last person" to use the tires as tires and would, therefore, be eligible for the reimbursement.

The tire chipping industry, which would not be eligible for the reimbursement, because chipped tires are sold again to burn for energy, disagreed. They argued that pyrolysis operations should be treated the same as the chipping industry because the products are sold to the same markets. Providing pyrolysis operations with the reimbursement would thus give pyrolysis an unfair market advantage over chipping.

The Department has determined that the products of pyrolysis (oil, gas, carbon black, and mineral ash) should be considered "similar" materials to tire chips and, because there is a market for pyrolysis products,

that pyrolysis operations are not "end users" and should not be eligible for reimbursements. The rule has been modified accordingly.

A related issue of concern to the Task Force was the point in the process where a reimbursement is appropriate, i.e. in some cases, more than one "processor" may be involved. The tire chipping industry proposed that the reimbursement go to the point where value is added, which is where the market is. An example is rubber-modified asphalt for paving highways or athletic tracks. One "processor" granulates tires and sells them to a contractor. The contractor mixes the rubber granules with asphalt and lays the paving. Under the value-added proposal, the reimbursement could go to either or both the granulator and the contractor who lays the paving.

The Department believes that the value-added suggestion is not consistent with the intent of the legislation and would not result in optimum use of the reimbursement fund. The proposed rule directs the reimbursement to the "last person" to use the tires, chips or similar materials as tires, chips or similar materials. In this example, the contractor who lays the paving is the last person.

The ECO Northwest report suggests that in a competitive market it may not make too much difference where the reimbursement enters the waste tire processing stream, since any user will have to share some of the reimbursement with their supplier of waste tires to ensure supply.

3. Amount of Reimbursement. The Task Force recommended that the reimbursement be $.01 per pound of rubber from waste tires used, based on sales of product.

The Department received public comment that the proposed level of reimbursement is not enough to take care of the problem. Suggestions ranged from $.02 to $.025 per pound. The Department believes it is prudent to begin the program with the more moderate $.01/pound level of reimbursement. This level allows sufficient funds to cover anticipated reimbursement requests, and can potentially promote use of more tires with a given amount of reimbursement funds. The ECO Northwest report estimates that this level of reimbursement will be

sufficient to induce a significant increase in the use of waste tires.

4. Other Proposed Changes from the Draft Rule.

Some housekeeping changes and clarifications are being made. In addition, ORS 340-62-130 (5) is being deleted. This would have allowed reimbursements of greater than $.01/pound for waste tires used in artificial reefs. The Department received public comment that all uses should receive the same level of reimbursement; the Department agrees.

It was also recommended, and the Task Force agreed, to raise the minimum amount of tires eligible for the reimbursement from 5,000 lbs. to 10,000 lbs. This would help keep Department administrative costs down by eliminating small-dollar applicants. The Department agrees, and is making that change (OAR 340-62-120(7)).

Authority to Act

HB 2022 requires the Commission to adopt rules concerning use of the Waste Tire Recycling Account. The rules shall:

1. Govern the types of energy recovery or other uses appropriate for the reimbursement; establish a procedure for the reimbursement, and the amount of the reimbursement (ORS 459.770 (5)).

2. Establish criteria and a procedure for use of tire pile cleanup funds.

The proposed rule is included as Attachment I.

DIRECTOR'S RECOMMENDATION

Based upon the summation, it is recommended that the Commission adopt the proposed new rule governing use of the Waste Tire Recycling Account for reimbursements to persons using waste tires, and cleanup of tire piles, in OAR Chapter 340, Division 62.

Fred Hansen

Attachments I. Proposed Rule OAR 340-62

II. HB 2022
III. Waste Tire Task Force Subcommittees
IV. Economic Analysis of Reimbursement by ECO Northwest, Inc.
V. Rulemaking Statements
VI. Notice of Public Hearing
VII. Hearing Officer's Reports (5)
VIII. Department Response to Public Comment

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229-5808
September 20, 1988

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Attachment I
Agenda Item N
11/4/88, EQC Meeting

DRAFT RULE

RELATING TO REIMBURSEMENTS TO USERS OF WASTE TIRES
AND CLEANUP FUNDS FOR TIRE STORAGE SITES

10/18/88

Definitions

340-62-010 As used in these rules unless otherwise specified:

(1) "Buffings" -- a product of mechanically scarifying a tire surface, removing all trace of the surface tread, to prepare the casing to be retreaded.

(2) [(1)] "Commission" -- the Environmental Quality Commission.

(3) [(2)] "Department" -- the Department of Environmental Quality.

(4) [(3)] "Director" -- the Director of the Department of Environmental Quality.

(5) [(4)] "Dispose" -- to deposit, dump, spill or place any waste tire on any land or into any water as defined by ORS 468.700.

(6) "End user":

(a) For energy recovery: the person who utilizes the heat content or other forms of energy from the incineration or pyrolysis of waste tires, chips or similar materials.

(b) For other eligible uses of waste tires: the last person who uses the tires, chips, or similar materials to make a product with economic value. If the waste tire is processed by more than one person in becoming a product, the "end user" is the last person to use the tire as a tire, as tire chips, or as similar materials. A person who produces tire chips or similar materials and gives or sells them to another person to use is not an end user.

(7) "Energy recovery" -- recovery in which all or a part of the waste tire is processed to utilize the heat content, or other forms of energy, of or from the waste tire.

(8) [(5)]"Financial assurance" -- a performance bond, letter of credit, cash deposit, insurance policy or other instrument acceptable to the Department.

(9) [(6)]"Land disposal site" -- a disposal site in which the method of disposing of solid waste is by landfill, dump, pit, pond or lagoon.

(10)[(7)]"Oversize waste tire" -- a waste tire exceeding an 18-inch rim diameter, or a 35-inch outside diameter.

(11)[(8)]"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.

(12)[(9)]"Private carrier" -- any person who operates a motor vehicle over the public highways of this state for the purpose of transporting persons or property when the transportation is incidental to a primary business enterprise, other than transportation, in which such person is engaged.

(13)[(10)]"PUC" -- the Public Utility Commission of Oregon.

(14)[(11)]"Retreader" -- a person engaged in the business of recapping tire casings to produce recapped tires for sale to the public.

(15)[(12)]"Rick" -- to horizontally stack tires securely by overlapping so that the center of a tire fits over the edge of the tire below it.

(16) "Similar materials" -- includes the products of pyrolysis, such as pyrolytic oil, gas, and carbon black.

(17)[(13)]"Store" or "storage" -- the placing of waste tires in a manner that does not constitute disposal of the waste tires.

(18)[(14)]"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.

(19)[(15)]"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.

(20)[(16)]"Tire processor" -- a person engaged in the processing of waste tires.

(21)[(17)]"Tire retailer" -- a person in the business of selling new replacement tires.

(22)[(18)]"Tire derived products" -- tire chips or other usable materials produced from the physical processing of a waste tire.

(23)[(19)]"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.

(24) "Waste Tires Generated in Oregon" -- Oregon is the place at which the tire first becomes a waste tire. A tire casing imported into Oregon for potential recapping, but which proves unusable for that purpose, is not a waste tire generated in Oregon. Examples of waste tires generated in Oregon include but are not limited to:

(a) Tires accepted by an Oregon tire retailer in exchange for new replacement tires.

(b) Tires removed from a junked auto at an auto wrecking yard in Oregon.

Policy on Use of Waste Tire Recycling Account Funds

340-62-090 Waste tires have a resource value to society that is lost if they are landfilled. One goal of the Waste Tire Program is to control the transportation and storage of waste tires so that illegal dumping is eliminated, and the tires do not cause environmental hazards. The major tools for this are the permitting requirements for tire sites and tire carriers, and civil penalties for illegal tire storage/disposal.

Another program goal is to enhance the market for reuse of waste tires so that their value is recovered, and the market helps divert the stream of waste tires from being landfilled. For this to happen, an economically attractive alternative to landfilling must be in place. The major tool for this is a reimbursement to users of waste tires from the Waste Tire Recycling Account. However, some existing sites will need financial help, or they will never be cleaned up. The Waste Tire Recycling Account also addresses this need, but under limited circumstances. The Department shall recommend or determine use of available funds in the Waste Tire Recycling Account, based on the following priority order:

(1) Reimbursement to people who use waste tires.

(2) Cleanup of permitted or non-permitted waste tire storage sites, following criteria established in OAR 340-62-155. Priority shall be given to abating a danger or nuisance created by waste tires, pursuant to OAR 340-62-155.

Reimbursement for Use of Waste Tires

340-62-100 (1) Funds in the Waste Tire Recycling Account may be used to reimburse persons for the costs of using waste tires or chips or similar materials.

(2) A person may apply to the Department for partial reimbursement from the Account for using waste tires. To be eligible for the reimbursement, the tires must:

(a) Be waste tires generated in Oregon;

(b) Be tire chips or similar materials from waste tires generated in Oregon; and

(c) Be used for energy recovery or other appropriate uses as specified in OAR 340-62-110.

Uses of Waste Tires Eligible for Reimbursement

340-62-110 (1) Uses of waste tires which may be eligible for the reimbursement include:

(a) Energy recovery. Energy recovery shall include:

(A) Burning of whole or chipped tires as tire-derived fuel. The tire-derived fuel shall be burned only in boilers which have submitted test burn data to the Department and whose air quality permits are not violated by burning tire-derived fuel in the quantities for which reimbursement is requested.

(B) Incineration or pyrolysis of whole tires or tire chips to produce electricity or process heat or steam, either for use on-site, or for sale.

(b) Other eligible uses. Other eligible uses shall include:

(A) Pyrolysis of tires to produce combustible hydrocarbons and other salable products.

(B) Use of tire chips as road bed base, driveway cover, and the like.

(C) Recycling of waste tire strips, chips, shreds, or crumbs to manufacture a new product. The new product may be produced by physical or chemical processes such as:

(i) Weaving from strips of waste tires.

(ii) Stamping out products from the tire casing.

(iii) Physically blending tire chips with another material such as asphalt.

(iv) Physically or chemically bonding tire chips or crumbs with another material to form a new product such as tire chocks.

(D) Use of whole tires:

(i) In artificial fishing reefs, pursuant to OAR 340-46.

(ii) For the manufacture of new products which have a market value such as buoys.

(2) If a proposed use of waste tires would in the Department's opinion cause environmental, safety or health hazards, the Department may disallow the partial reimbursement. An example of a health hazard would be use of tire chips for playground cover without removing the steel shreds.

(3) The following uses are not considered appropriate for use of the reimbursement, and shall not be eligible for the reimbursement:

(a) Reuse as a vehicle tire.

(b) Retreading.

(c) Use of tires as riprap.

(d) Use of whole or split tires for erosion control.

(e) Use of whole or split tires for tire fences, barriers, dock and racetrack bumpers, ornamental planters, agricultural uses such as raised beds, or other uses in which the user incurs little or no cost, the use is of limited economic value, and the use does not take place within a market.

(f) Use of tire buffings.

Who May Apply for a Reimbursement

340-62-115 (1) A person who uses waste tires generated in Oregon may apply to the Department for a partial reimbursement.

(2) To be eligible for the reimbursement, the user of a waste tire shall be the end user of the waste tire, chips or similar material for energy recovery or other appropriate uses pursuant to OAR 340-62-110. The end user need not be located in Oregon.

(3) For purposes of the reimbursement, the end user shall document the number of pounds of waste tires, chips or similar materials used by proof of purchase or sale, as appropriate, of the waste tires, chips or similar materials to or from another person. In order to qualify as a purchase or sale, the transaction cannot take place between two persons (including a firm or corporation) if:

(a) One of the persons has a financial interest in the other;

(b) One of the persons is a subsidiary of the other;

(c) The family of one of the persons has an interest in the other firm or corporation;

(d) The two firms or corporations have common officers or common directors.

Application for Reimbursement

340-62-120 (1) Application for reimbursement for use of waste tires shall be made on a form provided by the Department.

(2) An applicant may apply in advance for certification ("advance certification") from the Department that his or her proposed use of waste tires shall be eligible for reimbursement.

(a) Such advance certification may be issued by the Department if the applicant proves to the Department's satisfaction that:

(A) The use being proposed is an eligible use under OAR 340-62-110;

(B) The applicant is an eligible end user under OAR 340-62-010 (6) and OAR 340-62-115;

(C) The applicant will be able to document that the waste tires used were generated in Oregon; and

(D) The applicant will be able to document the number of net pounds of waste tires used.

(b) The applicant must still apply to the Department for reimbursement for waste tires actually used, and document the amount of that use, pursuant to sections (3) and (4) of this rule.

(c) Advance certification issued by the Department to an applicant shall not guarantee that the applicant shall receive any reimbursement funds. The burden of proof shall be on the applicant to document that the use for which reimbursement is requested actually took place, and corresponds to the use described in the advance certification.

(3) An applicant may apply to the Department directly for the reimbursement each quarter without applying for advance certification. The application shall be on a form provided by the Department.

(4) To apply for reimbursement for the use of waste tires an applicant shall:

(a) Apply to the Department no later than thirty (30) days after the end of the quarter in which the waste tires were used.

(b) Unless the applicant holds an advance certification for the use of waste tires for which they are applying, prove to the Department's satisfaction that:

(A) The use being proposed is an eligible use under OAR 340-62-110; and

(B) The applicant is an eligible end user under OAR 340-62-010(6) and OAR 340-62-115.

(c) Provide documentation acceptable to the Department, such as bills of lading, that the tires, chips or similar materials used were from waste tires generated in Oregon.

(d) Provide documentation acceptable to the Department of the net amount of pounds of waste tires used (including embedded energy from waste tires) in the quantity of product sold, purchased or used. Examples of acceptable documentation are:

(A) For tire-derived fuel: receipts showing tons of tire-derived fuel purchased.

(B) For incineration of whole tires producing process heat, steam or electricity: records showing net tons of rubber burned.

(C) For pyrolysis plants producing electricity or process heat or steam: billings showing sales of kilowatt hours or tons of steam produced by the tire pyrolysis, calculations certified by a professional engineer showing how many net pounds of tires were required to generate that amount of energy, and receipts or bills of lading for the number of waste tires actually used to produce the energy.

(D) For pyrolysis technologies producing combustible hydrocarbons and other salable products: billings to customers showing amounts of pyrolysis-derived products sold (gallons, pounds, etc.) with calculations certified by a professional engineer showing the number of net pounds of waste tires, including embedded energy, used to produce those products.

(E) For end users of tire strips, chunks, rubber chips, crumbs and the like in the manufacture of another product: billings to purchasers for the product sold, showing net pounds of rubber used to manufacture the amount of product sold.

(F) For end users of tire chips in rubberized asphalt, or as road bed material, driveway cover and the like: billings or receipts showing the net pounds of rubber used.

(G) For end users of whole tires: documentation of the weight of the tires used, exclusive of any added materials such as ballast or ties.

(5) The Department may require any other information necessary to determine whether the proposed use is in accordance with Department statutes and rules.

(6) An applicant for a reimbursement for use of waste tires, and the person supplying the waste tires, tire chips or similar materials to the applicant, for which the reimbursement is requested, are subject to audit by the Department (or Secretary of State) and shall allow the Department access to all records during normal business hours for the purpose of determining compliance with this rule.

(7) In order to apply for a reimbursement, an applicant must have used an equivalent of at least 10,000 pounds of waste tires or 500 passenger tires after the effective date of this rule. Waste tires may be used in more than one quarter to reach this threshold amount.

Basis of Reimbursement

340-62-130 (1) In order to be eligible for reimbursement, the use of waste tires must occur after the effective date of this rule.

(2) Any one waste tire shall be subject to only one request for reimbursement.

(3) The amount of the reimbursement shall be based on $.01 per pound for rubber derived from waste tires which is used by an applicant.

(4) The amount of rubber used shall be based on sales of product containing the rubber; or if the applicant is an end user who consumes and does not further sell the tires, chips or similar materials, the reimbursement shall be based on net pounds of materials purchased or used.

Processing and Approval of Applications

340-62-135 (1) An applicant shall submit a complete application for a reimbursement to the Department within 30 days of the end of the quarter in which the waste tires were used. The Department shall act on an application only if it is complete.

(2) If an application is late or incomplete, the Department shall not act on the application.

(3) The applicant may submit additional information required by the Department to complete the application. However, the Department shall not act on such an application until the end of the following quarter.

(4) The Department shall review a complete reimbursement application form for overall eligibility. The Department shall then determine the eligible number of pounds of rubber used.

(5) When the Department has received and reviewed pursuant to section (4) of this rule all completed applications for reimbursement for a quarter, the Department shall calculate the total dollar amount of eligible reimbursements requested at $.01 per pound of rubber used.

(6) The Department shall determine the amount of available funds in the Waste Tire Recycling Account. In determining the amount of funds available for the reimbursement in any quarter, the Department shall first deduct the amount of prorated reimbursement from the previous quarter "made whole" under section (8) of this rule.

(7) If the amount of eligible reimbursements requested exceeds the amount of funds available for reimbursement, the Commission shall prorate the amount of all reimbursements for eligible uses received for that quarter. The time period for reimbursement as specified by the Commission shall be a calendar quarter. The proration shall be done as follows:

(a) First, uses which reuse or recycle the waste tires, chips or similar materials shall receive one hundred percent of the eligible amount requested up to the amount of funds available. Available funds in the Waste Tire Recycling Account shall be reduced by that amount.

(b) Remaining available funds in the Waste Tire Recycling Account shall then be prorated among all eligible applicants who have used waste tires, chips or similar materials to recover their energy value. This proration shall be based on an equal reduction per pound of rubber used by all remaining eligible applicants.

(8) When the final amount of reimbursement for all applicants under section (7)(a) and (7)(b) of this rule has been determined, the Department shall make payment in that amount to each applicant.

(9) The Department shall keep track of the amount by which a proration under section (7)(b) of this rule has reduced an otherwise eligible amount of reimbursement for an applicant. Before making reimbursements for the following quarter, the Department shall first reserve funds from the Waste Tire Recycling Account for applicants to "make whole" any reductions in costs eligible for the reimbursement caused by prorating in the preceding quarter under section (7)(b) of this rule.

(10) Within 30 days of the filing of an application for advance certification, the Department shall request any additional information needed to complete the application. The application is not complete until such additional information requested by the Department has been received.

(11) If the Department determines that an application for advance certification is eligible, it shall within 60 days of receipt of a completed application issue an advance certification.

(12) The Department shall process applications for reimbursement which have "advance certification" before acting on other applications.

(13) To ensure that a use continues to be eligible for the reimbursement, the Department may review the eligibility of an approved advance certification form:

(a) Annually;

(b) After any revision of this rule; or

(c) After a finding of the Commission that a reimbursement is not necessary to promote the use of waste tires.

Use of Waste Tire Site Cleanup Funds

340-62-150 (1) The Department may use cleanup funds in the Waste Tire Recycling Account to:

(a) Partially pay to remove or process waste tires from a permitted waste tire storage site, if the Commission finds that such use is appropriate pursuant to OAR 340-62-165.

(b) Pay for abating a danger or nuisance created by a waste tire pile, subject to cost recovery by the attorney general pursuant to OAR 340-62-165.

(c) Partially reimburse a local government unit for the cost it incurred in abating a waste tire danger or nuisance.

(2) Priority in use of cleanup funds shall go to sites ranking high in criteria making them an environmental risk, pursuant to OAR 340-62-155.

(3) For the Department to reimburse a local government for waste tire danger or nuisance abatement, the following must happen:

(a) The Department must determine that the site ranks high in priority criteria for use of cleanup funds, OAR 340-62-155.

(b) The local government and the Department must have an agreement on how the waste tires shall be properly disposed of.

Criteria for Use of Funds to Clean Up Permitted Waste Tire Sites

340-62-155 (1) The Department shall base its recommendations on use of cleanup funds on potential degree of environmental risk created by the tire pile. The following special circumstances shall serve as criteria in determining the degree of environmental risk. The criteria, listed in priority order, include but are not limited to:

(a) Susceptibility of the tire pile to fire. In this, the Department shall consider:

(A) The characteristics of the pile that might make it susceptible to fire, such as how the tires are stored (height and bulk of piles), the absence of fire lanes, lack of emergency equipment, presence of easily combustible materials, and lack of site access control;

(B) How a fire would impact the local air quality; and

(C) How close the pile is to natural resources or property owned by third persons that would be affected by a fire at the tire pile.

(b) Other characteristics of the site contributing to environmental risk, including susceptibility to mosquito infestation.

(2) In determining the degree of environmental risk involved in the two criteria above, the Department shall consider:

(a) Size of the tire pile (number of waste tires).

(b) How close the tire pile is to population centers. The Department shall especially consider the population density within five miles of the pile, and location of any particularly susceptible populations such as hospitals.

(3) Financial hardship on the part of the permittee shall be an additional criterion in the Department's determination. Financial hardship means that strict compliance with OAR 340-62-005 through 340-62-045 would result in substantial curtailment or closing of the permittee's business or operation, or the bankruptcy of the permittee. The burden of proof of such financial hardship is on the permittee.

Procedure for Use of Cleanup Funds for a Permitted Waste Tire Storage Site

340-62-160. (1) The Department may recommend to the Commission that cleanup funds be made available to partially pay for cleanup of a permitted waste tire storage site, if all of the following are met:

(a) The site ranks high in the criteria making it an environmental risk, pursuant to OAR 340-62-155.

(b) The permittee submits to the Department a compliance plan to remove or process the waste tires. The plan shall include:

(A) A detailed description of the permittee's proposed actions;

(B) A time schedule for the removal and or processing, including interim dates by when part of the tires will be removed or processed.

(C) An estimate of the net cost of removing or processing the waste tires using the most cost-effective alternative. This estimate must be documented.

(c) The plan receives approval from the Department.

(2) A permittee claiming financial hardship under OAR 340-62-155 (3) must document such claim through submittal of the permittee's state and federal tax returns for the past three years, business statement of net worth, and similar materials. If the permittee is a business, the income and net worth of other business enterprises in which the principals of the permittee's business have a legal interest must also be submitted.

(3) If the Commission finds that use of cleanup funds is appropriate, the Department shall agree to pay part of the Department-approved costs incurred by the permittee to remove or process the waste tires. Final payment shall be withheld until the Department's final inspection and confirmation that the tires have been removed or processed pursuant to the compliance plan.

Use of Cleanup Funds for Abatement by the Department

340-62-165. (1) The Department may use funds in the Account to contract for the abatement of:

(a) A tire pile for which a person has failed to apply for or obtain a waste tire storage site permit.

(b) A permitted waste tire storage site if the permittee fails to meet the conditions of such permit.

(2) The Department may abate any danger or nuisance created by waste tires by removing or processing the tires. The Department shall follow criteria in OAR 340-62-155 in determining which sites shall be subject to abatement.

(3) 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.

(4) 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 (3) of this section within the time specified, the Director may contract to abate the danger or nuisance.

(6) The order issued under subsection (3) 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.

(7) 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. The Department may consider the financial situation of the person in determining the amount of abatement costs to be recovered.

Attachment II
Agenda Item N
11/4/88, EQC Meeting

64th OREGON LEGISLATIVE ASSEMBLY-1987 Regular Session

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

.....
Speaker of House

Passed by Senate June 12, 1987

.....
President of Senate

Received by Governor:

.....M., ..., 1987

Approved:

.....M., ..., 1987

.....
Governor

Filed by Office of Secretary of State:

.....M., ..., 1987

.....
Secretary of State

Attachment III
Agenda Item N
11/4/88, EQC Meeting

Waste Tire Task Force Subcommittees

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 subcommittee members follows.

Reimbursement Subcommittee

Mark Hope Waste Recovery, Inc. Portland, OR	tire-derived fuel manufacturer
Joyce Martinak Tangent, OR	League of Women Voters (public interest)
Ken Sandusky Lane County Waste Management Division Eugene, OR	county solid waste, and recyclers
Beverly Johnson Oregon Department of Revenue Salem, OR	tire fee collection program
Mike Harrington Pave Tech Corporation Seattle, WA	manufacturer, rubberized asphalt
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

Tire Site Permitting and Cleanup Subcommittee

	Group represented
Mike Doyle Les Schwab Tires Prineville, OR	retail tire dealers retreaders tire carriers
Dave Phillips Clackamas County Department of Transportation & Development Oregon City, OR	county solid waste
Joyce Martinak Tangent, OR	League of Women Voters (public interest)
Cecilia DeSantis-Urbani Salem City Planning Department Salem, OR	city planner
Dennis Mulvihill Metro Portland, OR	landfill operator
Marilyn Adams Commercial Retread Salem, OR	retreader
Keith Rowbotham Northwest Tire Dealers Association Ellensburg, WA	retail tire dealers
Ken Erickson, County Engineer Douglas County Courthouse Roseburg, OR	solid waste regulator
Brad Prior Jackson County Medford, OR	solid waste regulator

Tire Carrier Permitting Subcommittee

Mike Doyle Les Schwab Tires Prineville, OR	retail tire dealers retreaders tire carriers
Marilyn Adams Commercial Retread	retreader

Salem, OR

Dave Phillips Clackamas County Department of Transportation & Development Oregon City, OR	county solid waste
Keith Rowbotham Northwest Tire Dealers Association Ellensburg, WA	retail tire dealers
Doug Carothers Carother's Tire Hillsboro, OR	tire carrier
Paul Henry Public Utility Commission Salem, OR	transportation regulatory agency
Mark Hope Waste Recovery, Inc. Portland, OR	tire-derived fuel manufacturer

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Attachment IV
Agenda Item N
11/4/88, EQC Meeting

ECONOMIC ANALYSIS OF A REIMBURSEMENT TO USERS OF WASTE TIRES

Prepared for:
Oregon Department Of Environmental Quality

by:
ECO Northwest

20 June 1988

ECONOMIC ANALYSIS OF A REIMBURSEMENT TO USERS OF WASTE TIRES

Prepared for:

Oregon Department Of Environmental Quality
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20 June 1988

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PREFACE

Under the provisions of House Bill 2022 (adopted in 1987), the Oregon Legislature directed the Department of Environmental Quality (DEQ) to develop regulations to encourage the productive use of waste tires. The legislation also imposes a one-dollar fee on each new replacement tire sold in the state and directs that the proceeds collected should be used to induce greater use of waste tires as fuel and in other appropriate uses and to clean up waste-tire storage sites. The inducements will be provided through reimbursements to users of waste tires.

On 27 May 1988 DEQ contracted with ECO Northwest to assist with an economic analysis of alternatives for providing reimbursements to users of waste tires in Oregon. The primary goal of the study is to determine how DEQ can administer the reimbursement funds to accomplish the most efficient use of waste tires, subject to legal constraints and DEQ's concerns about equity and the environmental implications of alternative uses. The secondary goal is to provide DEQ with direction for structuring the reimbursement program so it effectively addresses the short-run problem of reducing the current inventory of waste tires in Oregon and makes a smooth transition to addressing the long-run problem of managing future additions to the inventory.

This document is our final report. It was prepared by Ernie Niemi (Project Manager) and Carl Batten. We gratefully acknowledge the assistance of the many individuals who provided us with information and other assistance. We especially appreciate the information and insights from the members of the Waste Tire Task Force, and the assistance of Deanna Mueller-Crispin, the Waste Tire Program Coordinator for DEQ, who supervised the study.

EXECUTIVE SUMMARY

Oregonians generate approximately 2 million new waste tires each year. Nobody knows exactly how many tires various legal and illegal storage sites around the state contain, but DEQ has documented an inventory of approximately 4 million. The goal of DEQ's reimbursement program is to stimulate market demand for waste tires in the short run by providing a subsidy to users of waste tires, thereby developing viable markets that will continue to demand waste tires and tire-derived products after the reimbursement program ends. This report examines the economics of the market for waste tires and the likely effects of various reimbursement schemes and amounts.

Currently and in the near future, energy recovery (combustion) offers by far the largest opportunity for increased use for waste tires. The use of tires in rubber-modified asphalt and other products probably will eventually exceed use for energy recovery, but such uses will take time to grow regardless of any reimbursement. A reimbursement will reduce a user's cost of using waste tires. In the range of the reimbursement amounts being considered, the percentage increase in the use of waste tires for fuel stimulated by the reimbursement will be approximately twice the percentage decrease in the user's effective cost. The change in the user's effective cost of using waste tires, though, will be less than the reimbursement amount, as part of the reimbursement will end up in the hands of suppliers of waste tires, especially after the most accessible tires have been used and the cost of seeking out additional tires increases.

We evaluated flat-rate and variable reimbursement schemes using four types of economic criteria: administrative, performance, efficiency, and equity. The flat-rate reimbursement dominates the alternatives according to all four economic criteria. It costs less to administer, promotes the development of a viable and efficient market structure, and treats all eligible users equally.

We recommend that DEQ adopt a flat-rate reimbursement for users who use a minimum number of tires and that the rate initially be set at $20 per ton (one cent per pound). Because so little information about the responsiveness of waste-tire users to price changes exists, considerable uncertainty surrounds any estimates about the likely effects of any reimbursement program. We therefore strongly recommend that DEQ closely monitor the progress of the program and react by adjusting the reimbursement amount, the eligibility requirements, and the allocation of funds between the reimbursement program and cleanup activities, as required.

CHAPTER 1
OVERVIEW OF THE MARKET FOR OREGON'S WASTE TIRES

In this chapter we summarize information on the supply and demand for waste tires to provide an overview of the market for waste tires in Oregon. We begin by briefly describing the existing inventory of waste tires in the state and the number of tires generated annually. We then outline the alternative uses of waste tires and estimate the demand stemming from each. To the extent that the available data allow, we look at the current level of demand, describe the past, current, and expected trends, and explain the factors that determine whether demand is stable, growing, or declining. Finally, we relate the number of waste tires to the amount of reimbursement funds available.

Nobody knows with certainty the number and location of the inventory of waste tires currently stored in Oregon or the number and location of additional waste tires generated annually in the state. Better information will become available soon, however, as DEQ fully implements the waste-tire program and collects data on the number of tires sold, the transportation of tires within the state, and the contents of storage piles.

Inventory: DEQ estimates that there currently are approximately 4 million waste tires stored at known storage sites. An unknown number of additional tires exist in piles not yet catalogued by DEQ and strewn throughout the state. The distribution, by county, of piles identified by DEQ during a preliminary survey in May, 1988, is shown in Table 1-1. Table 1-2 identifies the 14 known piles with 10,000 or more tires. Three piles, in Deschutes, Klamath, and Jackson Counties, account for more than 3 million tires.

Each tire, on average, weighs 20 pounds. Thus, the catalogued inventory of waste tires contains approximately 40,000 tons (80 million pounds) of waste-tire material.

TABLE 1-1
TIRE SITES BY SIZE AND COUNTY

	Number of Tires per Site				
COUNTY	100-499	500-599	1,000-4,999	5,000-9,999	10,000+
BAKER	3	0	1	0	0
BENTON	0	0	0	0	0
CLACKAMAS	4	0	5	4	1
CLATSOP	0	0	0	0	0
COLUMBIA	1	1	0	0	2
COOS	1	1	0	0	0
CROOK	0	0	1	0	0
CURRY	0	0	0	0	0
DESCHUTES	13	4	0	2	1
DOUGLAS	3	1	1	0	0
GILLIAM	0	0	0	0	0
GRANT	0	0	0	0	0
HARNEY	0	0	0	0	1
HOOD RIVER	1	0	1	0	0
JACKSON	2	0	3	1	1
JEFFERSON	0	0	0	0	0
JOSEPHINE	2	1	0	1	0
KLAMATH	5	0	2	0	1
LAKE	0	0	0	0	0
LANE	2	3	3	1	2
LINCOLN	2	0	0	0	0
LINN	0	1	1	0	0
MALHEUR	0	0	2	0	0
MARION	1	2	2	3	0
MORROW	0	0	0	0	0
MULTNOMAH	9	3	9	9	9
POLK	2	1	4	0	2
SHERMAN	0	0	0	0	0
TILLAMOOK	0	0	4	0	0
UMATILLA	0	0	0	0	1
UNION	0	0	2	0	0
WALLOWA	0	0	0	0	0
WASCO	4	3	2	0	0
WASHINGTON	1	0	0	0	0
WHEELER	0	0	0	0	0
YAMHILL	0	0	0	0	2

Source: Oregon Department of Environmental Quality

TABLE 1-2
SITES WITH 10,000 OR MORE TIRES

SITE OWNER	COUNTY	NUMBER OF TIRES
LES SCHWAB	DESCHUTES	OVER 1,000,000
HARPOLD	KLAMATH	OVER 1,000,000
WILSON	JACKSON	OVER 1,000,000
SCIENTIFIC DEVELOPMENT	LANE	4 ACRES
RAUCH	COLUMBIA	100,000
ALBANY TIRE	POLK	50,000
MISHLER	YAMHILL	50,000
REMIOR	YAMHILL	50,000
KRENIK	LANE	40,000
MOLLALLA DISCOUNT TIRES	CLACKAMAS	20,000 TO 30,000
J&M TOWING	UMATILLA	10,000
TRI CITY WRECKERS	POLK	10,000
B&S AUTO WRECKERS	HARNEY	10,000
DUBOIS AUTO WRECKERS	COLUMBIA	10,000

Source: Oregon Department of Environmental Quality

Annual Supply: Approximately 2 million waste tires are generated annually within Oregon. Results from the first three months of the dollar-per-tire fee indicate that about 1.5 million replacement tires other than retreads will be sold this year in Oregon. We assume that the number of retreads sold equals the number of tires used to make retreads (net imports of casings equal net exports of retreads). Additional waste tires will be generated as about 100,000 cars (each with 4 or 5 tires) are retired from service each year. Based on these estimates, we conclude that approximately 2 million waste tires will be generated in Oregon each year. By comparison, the Minnesota study[1] states that approximately 0.8 tires are generated per resident per year. With a population of 2.7 million, Oregon should generate

[1]Hope, Mark W. and Charles Lederer. (1985). Scrap Tires in Minnesota. St. Paul, MN: Minnesota Pollution Control Agency.

2.16 million tires, of which about 10 percent or 216,000 will be returned to service as retreads, leaving 1.94 million waste tires.

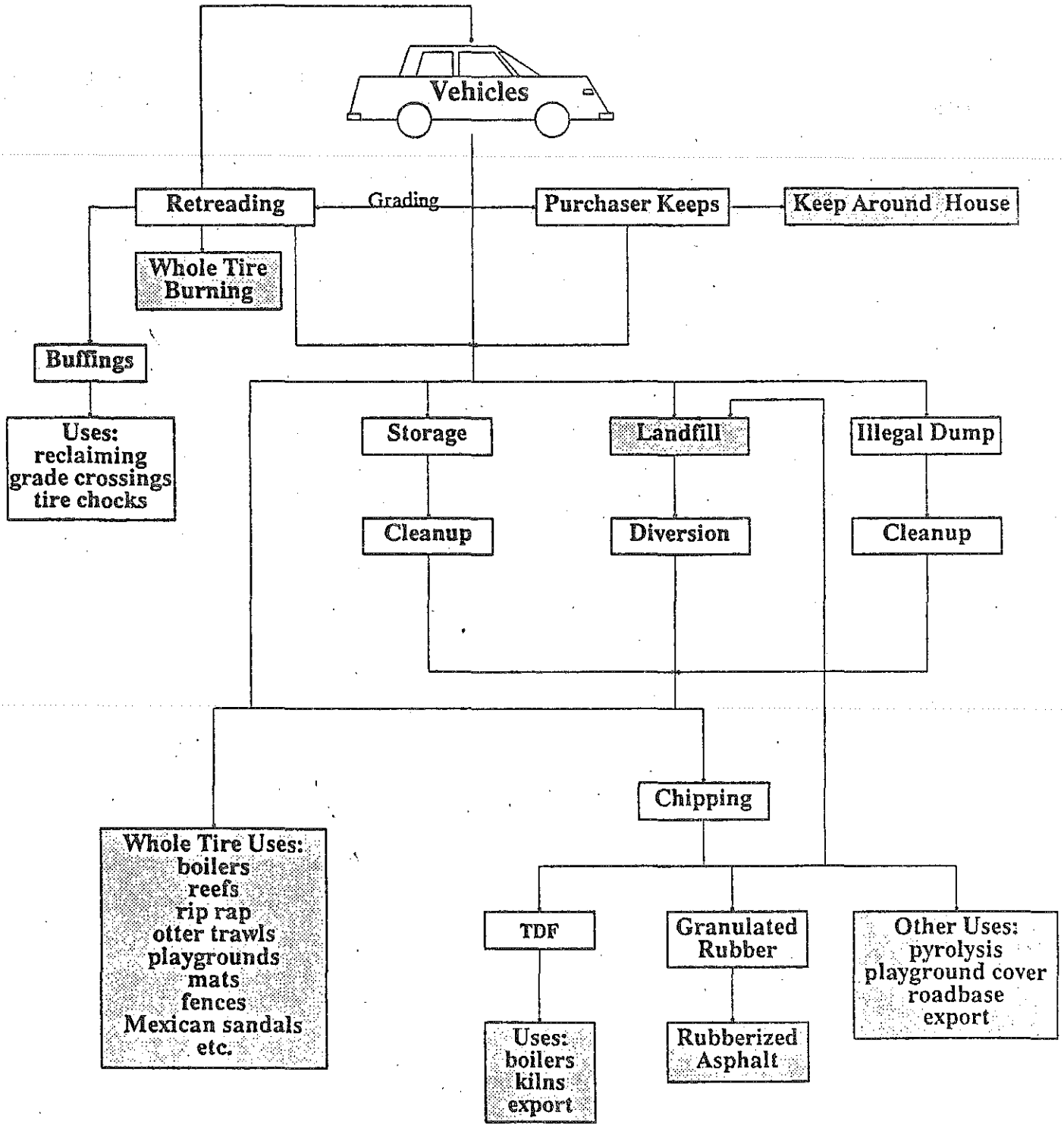
Figure 1 depicts the current flow of waste tires in Oregon:

1. Approximately 216,000 (10%) are reused for retreading (and ineligible for the reimbursement).

2. Approximately 1.1 million are burned or converted to other products. Waste Recovery, Inc. supplies tire-derived fuel (TDF) made from about 1.78 million tires per year to its customers in Oregon and Washington, including a cement kiln that recently began using TDF at a rate of about 482,000 tires per year. Currently, about 60 percent of these originate in Oregon. A large number of other uses currently consume relatively few tires.

3. Approximately 800,000 are not used. No one knows exactly where they go. DEQ estimates that about 100,000 are retained by individuals, 200,000 get landfilled, and the rest go to storage sites or illegal dumps. If all the rest went to the known stockpiles, the stockpiles would be larger. Hence, some must go to unknown stockpiles or illegal dump sites. With implementation of the waste tire program, we expect that there will be fewer leakages from the controlled system.

FIGURE 1
WASTE TIRE FLOW IN OREGON



CHAPTER 2
ANALYSIS OF THE MARKET FOR WASTE TIRES IN OREGON

In this chapter we lay the analytical groundwork for evaluating alternative reimbursement schemes. We begin by seeing if changes in the price of waste tires, occasioned by reimbursements from DEQ, will lead to changes in the consumption of tires. Specifically, we examine the price elasticity of demand for waste tires, which measures the sensitivity of different users' demand for waste tires to changes in their price. We then discuss the extent to which users of waste tires actually will realize price reductions stemming from the reimbursement program.

Throughout this report we use the term "users" to mean those who consume tires (by incineration) or transform tires into non-tire products (such as asphalt concrete or fuel oil). Note that the user does not have to produce a final good. For example, when TDF is used as an input into the production of paper pulp, the pulp mill is the user rather than the person who buys the paper or the person who chops up the tires. We use the term "suppliers" to mean those who supply whole or processed tires to users.

A. HOW WILL USERS OF WASTE TIRES RESPOND TO PRICE REDUCTIONS?

A.1 THE CONCEPT OF PRICE ELASTICITY

A central issue related to the design of a reimbursement scheme is the responsiveness of individual users to the change in price it brings about. The more one knows about the responses various changes in price will stimulate, the more accurately one may tailor the reimbursement to achieve the desired effect. If the reimbursement is too small to stimulate sufficient change in users' demand for tires, the program will not be able to achieve its goals; if it is too large, it will waste reimbursement funds. Also, by knowing how different users are likely to respond to price incentives, DEQ can more

accurately evaluate the merits of targeting reimbursements to just those users most responsive to price.

Economists use the term, own-price elasticity of demand, to describe the relationship between proportional changes in the price of a good and the resulting proportional changes in the quantity of that good demanded in the market. For example, if a good's own-price elasticity of demand is -1.5, a one-percent decrease in the price of that good will lead to a 1.5 percent increase in the quantity demanded of that good.[2] In the remainder of this report, we use the shortened term, elasticity, to mean own-price elasticity of demand, ignoring the other elasticities that relate demand to income, output, the price of other goods, and other variables.

Economists typically estimate elasticities either directly from the production functions of each current and potential user and the supply schedule for every possible substitute, or from a statistical analysis of sample data for a large number of users over a sufficient time to see how each user responds to price changes. Because of the budgetary and time constraints of this study it was impossible to gather the necessary information to apply either of these approaches. Instead, we conducted interviews with major current and potential users.

We specifically attempted to identify major differences among various current and potential users that should make the demand of one user (or group of users) more or less elastic than the demand of another. Factors that can exert a major influence on a user's price elasticity include:

* The fixed costs associated with converting to or increasing the use of waste tires or tire-products.

  New users of tires (or intermediate tire-derived products, such as TDF) and many current users cannot increase their use of tires

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[2]The negative sign indicates that the change in demand and the change in price move in opposite directions (i.e., a decrease in the price of tires leads to an increase in demand).

without incurring capital costs to adjust their productive processes, secure regulatory permits, or otherwise facilitate the expansion.

The less it costs to make the changes necessary to consume more tires, the greater the responsiveness to reductions in the price of tires. The cost of switching away from using tires sometime in the future also affects elasticity; users, thus, will evaluate the likelihood that the favorable reductions in the price of tires will persist long enough to recoup the initial fixed costs.

* The price of substitutes for waste tires or tire-derived products.

In general, the elasticity of demand for tires will be greater, the higher the price of substitutes. One must go beyond a simple comparison of the prices of tires (or intermediate tire-derived products) and their substitutes, however, because most markets are dynamic and a reduction in the price of tires may stimulate a price response from the suppliers of substitutes attempting to protect their markets.

The market is especially complicated in the pulp-and-paper industry because of the current surplus of hogged fuel, the primary substitute for tire-derived fuel. Some suppliers of the wood chips that constitute the primary ingredient of pulp are refusing to sell chips unless the mill also buys hogged fuel, and some mills are owned by forest-products companies that have large amounts of hogged fuel on their hands.

* Uncertainty about the price of waste tires (and intermediate tire-derived products) and the price of substitutes.

If users perceive that the future price of waste tires will be more (less) volatile than the price of substitutes, they generally will be less (more) likely to increase their demand for tires in response to reimbursements from DEQ.

* Environmental and other regulatory constraints.

Most boilers in the Pacific Northwest that currently burn TDF face air-pollution constraints that limit their ability to expand their use of TDF; others face water-pollution constraints. Potential new burners of TDF may face similar limitations that would make them less sensitive to price reductions.

Other regulatory constraints can work to make users more sensitive to price reductions. For example, the regulations accompanying the reimbursement program that make it more costly to store waste tires (in permitted storage sites or in illegal dumps) should enhance the market's response to the reimbursements.

* Physical and engineering constraints on increased tire use.

For example, while some tire-derived fuel increases the grate temperature enough to improve combustion efficiency in a hogged-fuel boiler, too much may raise the temperature or pressure to the point where the boiler is damaged, thus limiting the user's ability to increase consumption of waste tires in response to a price reduction.

A.2 THE ELASTICITIES OF DIFFERENT USERS

Tire-derived fuel (TDF): TDF currently costs between $35 and $40 per delivered ton (see Table 2-1). This is for rubber chips between one and two inches in diameter with most of the steel removed. Waste Recovery, Inc., appears to be the only supplier of TDF currently meeting these specifications in Oregon. Others offer lower-quality fuel (larger chunks and more wire) in the spot market, but the demand for this product as fuel is small and appears unlikely to grow in the foreseeable future. An export market for these larger chips may exist.

Some boilers can utilize whole tires as fuel. Both the larger chips and whole tires are less costly than the TDF sold by Waste Recovery, Inc. The

demand for whole tires, though currently limited, may grow in the future if new boilers capable of handling them are constructed.

With a heat content of approximately 15,500 BTU/lb (British Thermal Units per pound), the current price of TDF represents a heating cost of $1.13 to $1.29 per million BTU (MBTU). Hogged fuel, the primary substitute for TDF used by pulp and paper mills, currently costs $5.00 to $6.50 per ton (wet) and has a heat content of 4,500 BTU/lb, yielding a heating cost of $0.56 to $0.72 per MBTU. Coal currently costs $30 to $45 per ton, has a heat content of about 11,000 BTU/lb, and a heating cost of $1.36 to $2.04 per MBTU.

A comparison of heating costs indicates that TDF is currently competitive with coal, but approximately twice as costly as hogged fuel. The last entry in Table 2-1 indicates that a reduction of $20 per ton (one cent per pound) in the price of TDF would render its heating cost approximately equal to that of hogged fuel and considerably lower than that of coal.[3]

Converting to the use of TDF generally entails some fixed costs. To use TDF, a boiler should be of the traveling-grate variety and fed by a conveyor system into which the tire chips can be continuously metered. Metering equipment costs at least $40,000. Waste Recovery, Inc., helps its customers to select, install, and in some cases, finance the purchase of metering equipment.

The use of TDF also can cause a user to come up against environmental constraints, generally manifesting themselves in air-quality permits. Mills that have tested TDF report that, depending on their equipment and air-quality permit, those with wet scrubbers can handle 2 to 5 percent TDF by weight, and those with baghouses up to 10 percent. Several mills thought they could go to 10 percent or more with additional modifications, but they might have to obtain a PSD air-quality permit. Above 10 percent, both air-quality and engineering constraints effectively preclude additional TDF use in most cases.

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[3]In the next section we discuss the likelihood that a reimbursement of one-cent per pound would reduce the users' cost by an equivalent amount.

TABLE 2-1

COMPARATIVE COSTS OF TIRE-DERIVED FUEL AND SUBSTITUTE FUELS

FUEL	PRICE $/Ton	PRICE Cents/lb	PRICE $/MBTU
Hogged Fuel	5.00-6.50	0.25-0.32	0.56-0.72
Coal	30-45	1.50-2.25	1.36-2.04
Tire-Derived Fuel:			
Current Price	35-40	1.75-2.00	1.13-1.29
With $20/Ton Reduction	15-20	0.75-1.00	0.49-0.65

Source: ECO Northwest

The only operating cement kiln in Oregon, in Durkee, recently began burning TDF supplied by Waste Recovery, Inc. It now uses about 4 percent TDF and its operators have indicated that with some modifications to their process, they could go as high as 15 percent. In a cement kiln, TDF replaces coal.

Two factors complicate the estimation of the price elasticity of demand for TDF. First, hogged fuel burns more efficiently in the presence of TDF. Thus, the use of 1 to 2 percent TDF may be cost-effective even when the cost per BTU is significantly higher. Second, some suppliers of wood chips to pulp and paper mills have been refusing to sell chips unless the mill also takes hogged fuel. At a delivered price of $5 per ton for hogged fuel, suppliers are basically giving it away for the cost of hauling.

We estimate that, in the range of the reimbursement being considered ($20 per ton or about 50 percent of the current price), the price elasticity for TDF as sold by Waste Recovery, Inc. is approximately -2. That is, the

percentage increase in use will be approximately twice as large as the percentage reduction in price. Hence, if the cost to users is reduced 50 percent, we expect that use will double.

Smaller or larger reductions in the price will elicit different elasticities in demand. Based on interviews with current and potential users, we estimate that a reduction in price of less than 30 percent or so will have almost no effect on demand (i.e., the elasticity will be approximately zero). Conversely, reducing the price by more than 50 percent should result in an even greater response in demand (i.e., the elasticity will exceed -2).

Until there have been tests of the market's response to price changes, these estimates necessarily embody considerable uncertainty. Furthermore, it is impossible to predict accurately how quickly demand will respond to price changes. Despite this uncertainty, these estimates reflect the representations of current participants in the market who are familiar with DEQ's efforts to implement a reimbursement program. Thus, we anticipate that these estimates offer a reasonable portrayal of how the market will respond to reimbursement-induced price reductions, and that the market will begin to respond immediately.

Les Schwab operates a boiler that burns up to 500 whole tires per day as a part of his retreading facility in Prineville. This boiler burns tires that were selected for retreading by dealers but rejected at the retreading facility. The reimbursement will not stimulate additional use by this boiler as it now operates at or near capacity.

Ralph Gilbert of East County Recycling in Portland has indicated that a lumber mill somewhere in Oregon is planning to install new boilers capable of burning whole tires. The steam would be used to generate electricity for the mill and for sale to a utility. Mr. Gilbert could not give any details other than that, with the right reimbursement, they could burn all the waste tires generated in the state. We have been unable to confirm this report or to obtain sufficient information to estimate the elasticity of their demand for waste tires.

Rubber-Modified Asphalt: Two types of products fall into the category of rubber-modified asphalt: one uses approximately one percent finely-ground crumb rubber melted into the oil as a binder, and the other uses approximately three percent granulated tires as an additive replacing some of the aggregate in the mix. Neither formula currently enjoys widespread application in Oregon, primarily because public highway agencies have not adjusted their standards to incorporate them. We concentrated on the second type, called PlusRide, for several reasons: it has been tested in Oregon, it uses more tires, and it uses the whole tire.

Conventional Type B asphalt costs about $17 per ton (not including application costs) and PlusRide costs about $35 per ton in the quantities used for the test sections. The granulated tires now cost 12 cents per pound, or $7.20 per ton of mix; it likely would cost less if it were made in Oregon rather than shipped in from other states. For small batches, mixing costs about $6 per ton more because the aggregate must be graded differently and the mixing process, while not inherently more expensive, is different and must be controlled manually. If large quantities were being mixed, the mixing costs would be the same. A royalty fee of $4.50 per ton goes to the PaveTech Corporation to cover the cost of training the contractor, designing the mix, providing an engineer at the site, and to recover research and development costs. This fee would be lower per ton if a larger quantity were being produced. The cost of laying the asphalt is the same for both types.

Testing by researchers at Oregon State University's Transportation Research Institute on roads near Mount Saint Helens and by the Alaska Department of Transportation on Alaskan highways has indicated that when used as an overlay, 2 inches of PlusRide perform roughly the same as 3.6 inches of conventional asphalt. Further testing will be required, however, before engineers are willing to specify significantly thinner layers of PlusRide. Testing has also indicated longer useful life and lower maintenance costs, mostly because as rubber-modified asphalt expands and contracts, it does not crack like conventional asphalt does. Evidence gathered to date suggests that PlusRide could be cost-effective on a per-ton basis without a reimbursement. That is, the present discounted value of all costs associated with construction and maintenance over the lifetime of comparable sections of conventional

asphalt and PlusRide appear to be lower for PlusRide even though the initial costs are significantly higher.

In the short run, the price elasticity of demand for rubber-modified asphalt appears to be near zero because of the reluctance of those who build roads to accept new products, especially new products that cost more initially. Mike Harrington of PaveTech believes that a reimbursement of $100 to $140 per ton of tires (5 to 7 cents per pound) would stimulate some short-run demand. A reimbursement of $300 to $400 per ton of tires (15 to 20 cents per pound) would be required to make PlusRide generally competitive with conventional asphalt as long as highway engineers do not allow thinner layers of PlusRide to replace thicker layers of conventional asphalt and do not consider long-run costs when specifying surfacing materials.

In the long run, PlusRide appears to have the potential to become well-accepted. However, in the short run, when DEQ wants to clean up waste tires, this application of waste tires appears unlikely to increase as a result of a reimbursement in the range DEQ is considering.

Should someone begin to produce granulated tires in Oregon, a reimbursement on the order of one cent per pound could make granulated Oregon tires competitive in rubber-modified asphalt throughout the West. Thus, the reimbursement program, by inducing a (potential) local producer of granulated tires to displace supplies currently produced in other states, could stimulate demand for granulated Oregon tires without stimulating additional use of granulated tires. We discuss this issue in greater detail in the next chapter.

Pyrolysis: During the last decade several firms have attempted to convert waste tires into derivative products, including oil and carbon black through a process called pyrolysis. Many were stimulated by past high energy prices, governmental subsidies, or both. No pyrolysis facility is currently operating routinely in the Pacific Northwest, although several start-ups are rumored. Until Oregon and the region gains experience from the on-going operation of one or more plants, it is impossible to estimate the elasticity of their demand with respect to DEQ's reimbursement.

Crumb Rubber and Buffings: During the retreading process the tread of a used tire is buffed off. The crumb rubber and buffings from this process are used in a wide variety of products, generally as substitutes for virgin rubber. Currently, it appears that local demand generally outstrips supply, leading some to conclude that a reimbursement is unnecessary to stimulate demand. As we explain below, however, a reimbursement must stimulate both demand and supply to increase the use of waste tires. It is possible, therefore, that if allowed, a reimbursement would stimulate this segment of the market, perhaps by inducing the establishment of an additional supplier. However, if more tires were buffed than retreaded, the unused casings would pose almost a great a disposal problem as the original waste tires. Scientific Developments, Inc. in Eugene has collected a large number of tires and has shredded some. They intend to utilize the shredded tires in products similar to those they now produce from buffings, but have not yet been able to do so. There currently does not exist sufficient evidence to estimate price elasticity for this segment of the market.

Other Uses: Other uses either currently consume or promise to consume relatively small numbers of Oregon's waste tires. These include plans by Northwest Tire Disposal Services, Inc., to export cut-up tires overseas and to Canada. There does not exist sufficient evidence currently, however, to estimate price elasticity for this segment of the market.

In summary, it appears that the short-run elasticities are highest for fuel users and lowest where there exist technical or economic impediments to increased use of tires--virtually all other uses. Fuel-related elasticities are volatile, however, because of the competition from other fuels and the volatility of their prices. In the long-run, we expect that other uses will displace combustion as the primary use of waste tires.

B. HOW WILL PRICES RESPOND TO A REIMBURSEMENT?

When DEQ gives a waste-tire user a reimbursement of one cent per pound, the user is unlikely to retain all of the reimbursement and to realize a full one-cent per pound reduction in the price of waste tires.[4] Instead, the user probably will have to share the reimbursement with some or all of the other parties involved with the generation, storage, and disposal of waste tires: the automobile owner who purchases replacement tires, tire dealers, owners of storage piles, firms that dismember whole tires or otherwise produce intermediate tire-derived products, and consumers of the products that have tires (or intermediate tire-derived products) as an input.

It is important to know the actual change in price the user will realize so one can estimate how demand will change in response to the price change. Several factors will influence the extent to which the decline in a user's price will equal the reimbursement:

* The ability of the user to retain the proceeds from the reimbursement.

  In general, it is reasonable to assume that the market for waste tires, consisting of a supplier of waste tires (or intermediate tire-derived products), such as Waste Recovery, Inc., and a user of tires, such as a pulp mill, is in equilibrium, i.e., the supplier of waste tires supplies just enough to satisfy demand at the current market price.[5] When DEQ lowers a user's effective price of waste tires, by giving a reimbursement for each tire used, the user will seek to buy additional tires. The supplier, though, may not be willing to supply more tires unless it receives a higher price. Thus, demand and supply can regain equilibrium only if the user,

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[4]We assume here that DEQ gives the reimbursement to the user who transforms the tire or intermediate tire-derived product into a non-tire product (e.g., energy used to make paper pulp), since this is DEQ's current proposal. We discuss below the implications of giving the reimbursement to the processor who transforms whole tires into intermediate tire-derived products (e.g., TDF).

[5]In economics parlance, the market operates at the intersection of the demand and supply curves, with only slight movements in price and inventory.

who initially received the reimbursement, shares some of it with the supplier. Similar sharing of the reimbursement may occur throughout the chain of demanders and suppliers involved with the generation and use of waste tires.

The extent to which the user can retain the reimbursement and, hence, realize the full reduction in price will be determined by the elasticity of supply relative to the elasticity of demand. The elasticity of supply, in turn, stems from two primary factors: (1) how rapidly the supplier's costs increase as the quantity supplied increases, and (2) the degree of monopolistic market power the supplier has relative to the user.

In general, the suppliers of waste tires (or tire-derived products) do not seem to exhibit either rapidly increasing costs or strong market power. The major possible exception is Waste Recovery, Inc. which dominates the supply of TDF. However, Waste Recovery, Inc., has indicated that it could double its output without increasing its capacity and we believe people will continue to pay Waste Recovery, Inc. to take waste tires off their hands. Also, although it is essentially the only major supplier in the state, it appears that it has not wantonly exercised any monopolistic market power, in part because other potential suppliers seem to exist just over the horizon. Furthermore, Waste Recovery, Inc., appears to have adopted a market strategy that entails successfully demonstrating the use of TDF in Oregon to stimulate new markets in other states. Thus, although it is possible that Waste Recovery, Inc., might exercise its market power to capture much of the reimbursement, we anticipate that it will not do so. Only time will tell.

* The coincident price effects resulting from regulations affecting the storage and disposal of waste tires and DEQ's efforts to clean up noxious storage sites.

These will tend to increase the costs of storing waste tires, force more tires into the market, and lower the price of waste tires and tire-derived products.

* Administrative and other costs imposed by the reimbursement program.

Participants in the reimbursement program will incur costs to document each tire's origin and use. Furthermore, they will incur financial (carrying) costs while waiting for the reimbursement check. The greater these costs, the smaller the response to the reimbursement program.

At first glance, it seems that the sharing of the reimbursement does not depend on who initially receives the reimbursement. If the reimbursement goes to the supplier or processor, he will be willing to supply more tires or intermediate tire-derived products, but will not see additional demand until he shares the reimbursement by reducing the price he charges. If it goes to the user, he will want to consume more, but will not see additional supplies offered until he raises the price he is willing to pay. These symmetrical processes should yield the same result.

This relationship can break down, however, if participation in the reimbursement program imposes asymmetrical costs on suppliers, processors, or users. It probably will. Whoever receives the reimbursement will incur carrying costs, i.e., the costs suppliers (users) will incur between the time they sell (buy) waste tires and when they receive the reimbursement from DEQ. The carrying costs for suppliers, as a percentage of total production costs, probably are greater than for users.

Waste Recovery, Inc., for example, has indicated a preference for giving the reimbursement to its clients rather than to itself. This makes sense given that, with the reimbursement, it would have to simultaneously lower its revenue and increase its costs (it would have to lower its prices to stimulate demand and at the same time acquire and process more tires) in order to earn the reimbursement, but would not receive the reimbursement until later. A

reimbursement that significantly reduced the price of its product could have a severe impact on its cash flow while it waited, but the same reimbursement would, if paid to its customers, impose a very small burden, as the costs of waste-tire products represent only a small fraction of its customers' cash flows.

Giving the reimbursement to one party rather than another also could make a difference if they imposed widely different administrative costs on DEQ. This is unlikely. The number of users is not much different than the number of suppliers and neither is likely to change much even if the program is successful.

Hence, giving reimbursements to users generally should promote the program. Concerns have been raised about the possibility of reimbursing users for consuming tires only to learn later that their products were unmarketable and were introduced to the waste stream. This should not be a large problem. If the users in question do not have a viable product, they will not be able to consume very many tires without other subsidies. If other governmental entities choose to subsidize processes that are not viable, it is probably not DEQ's role to thwart them unless environmental quality is threatened. There may also be legal problems associated with DEQ's saying to an industry, "You can't participate like other industries because we have decreed *a priori* that you aren't viable."

CHAPTER 3
EVALUATION OF ALTERNATIVE REIMBURSEMENT SCHEMES

In this chapter we first identify economic criteria for evaluating alternative reimbursement schemes and then apply the criteria to three alternatives. We also evaluate DEQ's proposed cleanup program, since it will compete with the reimbursement program for available funding.

A. ECONOMIC CRITERIA FOR EVALUATING ALTERNATIVE REIMBURSEMENT SCHEMES

There are four types of economic criteria applicable to this study: administrative, performance, efficiency, and equity criteria.

1. Administrative criteria: All else being equal, DEQ should prefer the alternative that minimizes administrative costs. This generally means a preference for alternatives that exploit market forces rather than those that rely on enforcing complex administrative regulations. DEQ should implement a reimbursement program that, at a minimum, can be administered and enforced with available staff and budget.

2. Performance criteria: All else being equal, DEQ should prefer the alternative that has the greatest impact on the use of waste tires, the clean-up of undocumented sites, and the clean-up of the most noxious sites. Note that it appears the primary concern is the elimination of whole tires from noxious sites (i.e., sites that pose health or fire risks) rather than the stimulation of any particular use.

3. Efficiency criteria: All else being equal, DEQ should prefer the alternative that, upon termination, leaves the market in the best condition to handle future waste-tire flows and that creates the fewest perverse incentives during its implementation. Incentives are perverse if

they lead to an allocation of resources to uses with lower value to society than would otherwise occur. When markets work properly, a resource always goes to the use society values most highly, because that use offers the highest price to suppliers of the resource. The smaller the extent to which the reimbursement program distorts the market, the greater the market's overall economic efficiency.

4. Equity criteria: All else being equal, DEQ should prefer the alternative that treats different parties fairly, i.e., that (1) gives the same financial incentive to parties that make equivalent contributions to the clean-up of waste tires, and (2) does not give any party market power over competitors.

Note that the criteria can conflict. For example, DEQ may have to sacrifice some performance efficiencies (such as not requiring absolute documentation of waste-tire flows) to keep the administrative costs reasonable. Similarly, DEQ might have to give up some performance (i.e., take a little longer to use up all the tires now stockpiled) to avoid stimulating excessive investment in tire-processing capabilities and leaving the market with gross overcapacity at the end of the reimbursement program.

B. ALTERNATIVES

Flat reimbursement amount: Under a flat reimbursement scheme, anyone who uses waste tires or intermediate tire-derived products in such a way that they are either consumed or transformed into a marketable non-tire product will receive a flat amount for every ton of tire he uses. The Task Force has discussed a one-cent per pound ($20 per ton) reimbursement. We use this amount as a reference point when evaluating the flat reimbursement alternative, but do not limit our analysis to any particular amount. We also express the reimbursement amount in terms of dollars per ton rather than cents per pound because, for most people, it is easier to understand the difference between $19 per ton and $20 per ton than between 95 hundredths of a cent per pound and one cent per pound.

The flat reimbursement scheme may be modified to facilitate administration or promote other objectives. For example, a minimum usage may be set below which DEQ would offer no reimbursement. This would alleviate the administrative burden of dealing with a large number of reimbursements for those who use only a very few tires. Certain uses could be made ineligible for reimbursement if DEQ does not wish to encourage those uses.

Variable reimbursement based on cost: DEQ asked us to consider a variable reimbursement designed to equal some proportion of the difference between the cost of using waste tires and the cost of currently-used inputs for which tires may be substituted in a production process. Under such a scheme, those industries best-suited to the use of waste tires would receive the smallest reimbursement (because the cost difference is small) and those for whom the use of waste tires is least efficient would receive the largest (because the difference is large). Such a scheme would target precisely those industries least likely to be viable markets for waste tires after the program ends as the recipients of the largest reimbursements.

Variable reimbursement based on efficiency: An alternative approach to variable reimbursement would promote the efficient use of reimbursement funds rather than inefficient production technologies. To accomplish this, DEQ might offer a graduated scale of reimbursement based on the amount by which use is increased under the reimbursement program. The more a user increases his use, the larger his per-ton reimbursement.

Another way to vary the reimbursement for greater efficiency would involve discriminating among users (targeting). By identifying in advance (through elasticity analysis) those users most sensitive to change in price, DEQ could target the reimbursements to those users and thus get the most response from limited reimbursement funds. The analysis on which this method would rely is, in essence, a prediction of the results of the graduated-scale reimbursement above.

Cleanup: Cleanup is not a reimbursement alternative, but a successful reimbursement program is an alternative to some (or all) potential cleanup activities. By evaluating cleanup on the same criteria as the reimbursement schemes, we intend to help DEQ better understand the tradeoffs involved when allocating funds between the two activities.

C. EVALUATION OF THE ALTERNATIVES

Here we evaluate each of the alternatives described above by applying the four criteria: administrative, performance, efficiency, and equity.

Flat reimbursement amount: This scheme should entail the lowest administrative cost. By treating all eligible applicants for reimbursement equally, administration would be much simpler than under a variable reimbursement scheme. The responsibility for providing accurate and verifiable records documenting the tires' origin and disposition would lie with the applicants.

We estimate that a flat reimbursement sufficient to reduce the cost of using waste tires by $20 per ton would stimulate enough new use to dispose of the entire flow of waste tires generated in Oregon during the reimbursement period as well as most of the approximately four million tires currently in stockpiles documented by DEQ.

The nominal reimbursement amount necessary to achieve a $20 per ton reduction in the effective price paid by users of waste tires will have to be higher than $20 per ton. How much higher depends in part on the details of the administrative rules adopted by DEQ.

The only large-scale use now being made of waste tires generated in Oregon is for fuel. Tire-derived fuel is also the only use we expect to increase significantly in response to the reimbursement program.

Waste Recovery, Inc. currently processes 1.5 to 2 million tires per year, of which about 60 percent, or 0.9 to 1.2 million, originate in Oregon. Two mills in Oregon consume TDF equivalent to about 750,000 tires per year at current prices. A cement kiln in Oregon has used TDF since March 1988 and, although it is still experimenting, it expects to use TDF equivalent to around 480,000 tires per year at current prices. Mills in Washington now use TDF from at least 550,000 tires per year. The flow of tires through Waste Recovery's facility in Portland nearly equals the flow of waste tires generated in Oregon each year.

To be eligible for reimbursement, a user of waste tires would have to provide documentation proving that they originated in Oregon. If DEQ requires that chips from Oregon tires be kept separate from chips from other tires, the cost of obtaining tire chips eligible for reimbursement may rise substantially because of increased costs imposed on the supplier. However, if DEQ is willing to allow intermixing, suppliers' costs should not increase significantly. For example, if of 5,000 tons of chips in inventory, 3,000 tons came from Oregon tires, then the supplier could sell up to 3,000 tons with documentation certifying origin in Oregon without having to keep separate inventories.

It remains unclear how suppliers will respond. Will they provide documentation for 60 percent of each customer's deliveries or will they provide some customers with documentation and not others? How much of a premium would suppliers charge for documented chips? Three factors indicate that suppliers will allow users to keep at least two-thirds of the reimbursement. First, the threat of effective competition from smaller suppliers who handle only Oregon tires will provide strong incentive not to charge a premium, at least within the geographic market of the competitors. Second, suppliers should have little difficulty obtaining more Oregon tires than they do now, especially as rules on landfilling and storing tires in Oregon are tightened. Third, suppliers have a long-run interest in maximizing the extent to which the market for tire chips grows under the reimbursement program. Smaller suppliers want to be left with a market large enough to support more than one supplier and Waste Recovery, Inc. should be especially

interested in ensuring the success of the Oregon program as they could then convince other states to undertake similar programs.

Apparently, the threat of effective competition to Waste Recovery, Inc. is real. All of Waste Recovery's present customers said they had been approached by other suppliers. Most have not purchased from other suppliers because of quality problems (oversize chunks and too much wire) and the perception that other suppliers could not reliably provide large quantities on a timely basis, but they indicated that Waste Recovery, Inc. prices its product to stay competitive. Waste Recovery, Inc. must maintain its superior quality and service levels and keep its price competitive to retain the loyalty of its customers.

If Washington, which has a more severe waste-tire problem than Oregon, makes disposal and storage of tires significantly more expensive or if it begins to subsidize the use of waste tires while Oregon's reimbursement program is in effect, these changes in the market may affect the efficacy of any program in Oregon. For the purpose of this analysis, we assume that such changes will not occur.

Whatever portion of the reimbursement Waste Recovery, Inc. and other suppliers of processed tires extract from users, they will have to share at least part of that portion with those who supply them with whole tires. Waste Recovery, Inc. now charges a tipping fee of about 40 cents per tire for tires delivered to its Portland facility. In order to obtain more tires it probably will have to lower that fee, as nearby supplies become depleted and they seek tires from beyond the Willamette valley. For example, it costs about 28 cents to ship a tire 300 miles when 1500 tires at a time are shipped and a backhaul can be arranged. All else being equal, Waste Recovery, Inc. will not be able to acquire waste tires from Medford, Klamath Falls, and other distant places unless it pays some of these transportation costs, perhaps by reducing its tipping fee. As DEQ's proposed regulations increase a stockpiler's cost of holding onto waste tires, though, the economics will change. Only time will tell how the market will respond, who will bear the cost of cleaning up the stockpiles, and who will receive the benefit of the reimbursement.

Only a very few Oregon tires have been used in rubber-modified asphalt. The granulated tires used in the test sections laid in Corvallis and North Albany were shipped in from the Everett, Washington. Thus, it appears that the market for granulated tires is region-wide. If Oregon processors choose to produce granulated tires, a $20 per ton reimbursement to users might result in their capturing a share of the market, even if no additional asphalt is produced as a result of the reimbursement.

We have no way to estimate the extent to which Oregon tires will be used in rubber-modified asphalt in the future because no one knows if anyone will begin producing granulated tires here (or if Rubber Granulators in Everett would find it worthwhile to obtain Oregon tires) and because the market for rubber-modified asphalt depends more on the willingness of engineers to try a new product than on any difference in price a reimbursement could make. Similarly, we cannot estimate the future use of Oregon tires for pyrolysis, export, or other uses.

Table 3-1 shows our estimates for various gross reimbursement amounts of the number of waste tires that will be consumed, the dollar cost of the reimbursement, and the number of years it would take to eliminate four million stockpiled tires without landfilling.

TABLE 3-1
ESTIMATED EFFECT OF VARIOUS REIMBURSEMENT AMOUNTS

REIMBURSEMENT AMOUNT	TIRES PER YEAR	DOLLARS PER YEAR	YEARS TO ELIMINATE
$15/ton	1,910,000	286,500	36.4
$20/ton	2,310,000	462,000	7.8
$25/ton	2,820,000	705,000	3.9
$30/ton	3,090,000	927,000	3.1
$35/ton	3,540,000	1,239,000	2.3
$40/ton	4,050,000	1,620,000	1.8

Source: ECO Northwest

We relied on several assumptions to calculate the figures shown in Table 3-1. We assumed that 1.8 million new waste tires per year will be made available (not kept by individuals or put to non-reimbursible uses), that users will retain two-thirds of the reimbursement amount, and that tires weigh an average of 20 pounds each.

The total annual cost of the reimbursement program cannot exceed the funds available from the $1 per replacement tire fee. The legislation specifies that if claims exceed funds, the reimbursement must be prorated. The threat of this occurring could significantly reduce the impact of the reimbursement offer, as users are less likely to respond to a chance of getting a reimbursement than to a certain reimbursement. Information available so far from the Department of Revenue suggests that the fee will generate $1.5 million dollars per year. Of this, 15 percent will be retained by the dealers and about $200,000 per year will be used for administration by DOR and DEQ, leaving $1,075,000 to be split between reimbursement and cleanup. Given this amount of funds available, the estimates in Table 3-1 indicate that reimbursement amounts greater than $30 per ton are out of the question.

The additional reimbursement expense incurred by increasing the reimbursement amount from $20 to $25 per ton would clean up an additional 510,000 tires per year at a cost of 48 cents per additional tire. This cost should be compared to the cost per tire of cleanup activities when deciding how funds will be allocated between cleanup and reimbursement.

Of the alternatives being considered, the flat-rate reimbursement scheme poses the least threat of creating an inefficient market structure. It alters the price of waste tires equally for all users and allows the forces of the otherwise undistorted market to determine what happens to them. The markets that will grow most under the flat-rate reimbursement are those that are most likely to remain strong after the reimbursement is terminated.

Equity criteria also are best satisfied by the flat-rate reimbursement. The flat rate applies equally to all eligible users and none is given an unfair advantage.

Variable reimbursement based on cost: Variable reimbursement based on cost falls short on all of the evaluative criteria. Administration would be much more difficult because DEQ staff would have to establish production costs at each plant with and without waste-tire use (or with and without increased waste-tire use) and then set each user's reimbursement at some proportion of the difference in cost.

If that proportion were less than one, any user for whom waste tires are not now cost-effective would still lose money using waste tires. In any case, the lower the feasibility of using tires in a production process, the higher the subsidy offered. The cost-based variable reimbursement would offer the most reimbursement to those users least able to contribute to the solution of the problem and who would be in the worst position to continue using waste tires when the program ends.

Variable reimbursement based on efficiency: Variable reimbursement based on efficiency would result in the largest increase in waste tire use for a given total reimbursement amount by directing the reimbursement to those users most sensitive to changes in the effective price of waste tires.

We described two variations on this scheme above in section B of this chapter. In one, DEQ staff would have to accurately identify in advance the potential for different users to increase their use and vary the reimbursement offered each user accordingly. In the other, larger reimbursements would be specified for users who increased their use more and targeted users be would self-selected. Presumably, the end result would be the same either way.

Successful administration would be difficult in either case. In the first case, DEQ staff would have to do a much more thorough analysis of the type we provide in Chapter 2 and the data to accomplish this simply do not exist. In the second case, DEQ staff would have to determine how many tires users would have used in the absence of the reimbursement. Even users who now use large quantities of tires could claim that they intended to stop using tires

until the reimbursement came along and DEQ would have difficulty disproving such claims. The administrative problems would be similar to those agriculture officials encounter when determining how much corn farmers didn't grow when farmers are paid to not grow corn.

Economic efficiency could suffer if those who get subsidies bid up the price of waste tires to the point where other users who are now using waste tires to the full extent of their capacity reduce their usage. Inaccurate targeting could unfairly distribute reimbursement benefits.

Cleanup: The experience of the Environmental Protection Agency with Superfund sites and of other agencies attempting to clean up waste sites indicates that such programs tend to be costly and slow to achieve results. To the extent that market forces can be exploited to remove tires at less cost and more quickly than through cleanup efforts, funds should be allocated to reimbursement rather than to cleanup.

Information on the cost of cleaning up waste-tire storage sites is not available. The cost depends in part on the characteristics of the individual sites. Waste Recovery, Inc. has indicated that they would have to charge at least 75 cents per tire under current market conditions. We estimate that by increasing the reimbursement from $20 per ton to $25 per ton (an increase of one fourth of one cent per pound), an additional 510,000 tires per year would be cleaned up at a cost of 48 cents per tire.

Cleanup funds should be directed--at least in the first year--only to sites posing significant danger to public health and safety. Illegal dumps on public lands or on private lands where the owner has taken reasonable steps to prevent dumping will probably require cleanup funds, but such sites do not contain great numbers of tires.

Cleanup activities will certainly cost much more per tire to administer than the reimbursement program, especially if legal action becomes necessary. Experience suggests that the performance of cleanup activities will be disappointing. Cleanup should have no effect on economic efficiency. Owners

of noxious storage sites likely will be made to feel worse off (most believe their tires will be valuable someday) and nearby residents now exposed to the risk of disease and fire will be made better off. In the case of cleanup, the equity effects are clearly in the public interest.

D. SUMMARY

The flat-rate reimbursement scheme dominates the alternatives according to the economic criteria. It costs less to administer, promotes the development of an efficient market structure, and treats all eligible users equally. In theory, a variable reimbursement based on efficiency could remove more tires for less total expenditure, but such a scheme would be difficult or impossible to administer. We believe that, in the real world, a flat-rate reimbursement scheme will perform better than the alternatives.

CHAPTER 4
POLICY RECOMMENDATIONS

In the previous chapters we described the current market for waste tires in Oregon, analyzed how it is likely to respond to a reimbursement program, and evaluated several alternative programs. Here we step back and discuss the implications of our findings for the program's implementation.

Basically, our findings indicate that there exists a strong likelihood that the proposed reimbursement program will stimulate considerable progress during the next two years toward accomplishing the goals of the waste-tire program: greater use of the waste tires generated annually in the state and cleanup of the existing stockpiles of tires. This progress will come primarily through greater use of tire-derived fuels. Considerable uncertainty surrounds this conclusion, however. The market may respond sluggishly to the program, fuel prices might change dramatically, fuel-users may not behave as they indicated, other users may prove unexpectedly responsive to the reimbursement, or suppliers may capture most of the proceeds from the reimbursements.

To cope with this uncertainty we recommend that DEQ take a conservative, reactive approach to implementing the program. Specifically, we recommend that DEQ should:

* Implement a flat-fee reimbursement payable to all firms or individuals who can demonstrate they have consumed, exported, or converted waste tires originating in Oregon (or tire-derived products, such as chips) into new non-tire products.

* Set the fee initially at $20 per ton (one cent per pound). Whatever rate DEQ sets initially, experience gained after implementation probably will indicate that it should be changed. Raising the reimbursement amount later will cause fewer problems than having to prorate the

reimbursement. Too low an initial rate will fail to stimulate the necessary investment in metering equipment and air-quality testing, but if DEQ communicates to users that the rate is being set at a level that should obviate proration and that the rate may increase, users should feel more confident about making the necessary investment than if there is reason to worry that the promised reimbursement will not materialize.

* Require that an applicant use a minimum number of tires before being eligible for the reimbursement. This number should be determined so that the administrative costs of processing additional claim forms do not exceed the public benefits from the applicant's disposal of waste tires.

* Activate the cleanup program only when DEQ concludes (1) that the market and regulatory forces activated under the waste-tire program will not stimulate cleanup of a storage site and (2) that the site poses a great enough threat to the public health and safety to warrant direct intervention. Otherwise, funds should be dedicated to the reimbursement program. Do not set an arbitrary division between reimbursement and cleanup funds in advance.

* Adjust the reimbursement fee every six months, informing potential applicants that the fee will remain fixed throughout the next six months (so long as the total claims through 1991 do not exceed total revenues). DEQ should monitor the market to acquire reliable information about the market's responsiveness to the reimbursement and about the extent to which recipients must share the reimbursement with others. It should set the reimbursement fee at the level that promises to yield the greatest use of waste tires during the next six months and the greatest use of tires through 1991 without triggering proration. This approach will reduce applicants' uncertainty about the rate they will realize and encourage potential applicants to participate sooner rather than later.

* Adjust the eligibility requirements every twelve months, targeting the reimbursement to specific users only if it becomes apparent that the initial program, if continued, would be significantly less effective.

Attachment V
Agenda Item N
11/4/88, EQC Meeting

RULEMAKING STATEMENTS
for
Proposed New Rules
Pertaining to the Use of the Waste Tire Recycling Account

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 disposal of waste tires, and creating a Waste Tire Recycling Account. 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 of waste tires. It also establishes a Waste Tire Recycling Account to create financial incentives for people to reuse waste tires, and to help pay for the cleanup of some tire piles. Rules from the Commission are needed to set procedures and requirements for use of the Waste Tire Recycling Account. The rule now proposed deals with: application procedures for a reimbursement to people who use waste tires; who may receive the reimbursement; which uses will be eligible for the reimbursement; the amount of the reimbursement; and criteria for use of cleanup funds.

Principal Documents Relied Upon

a. Oregon Revised Statutes, Chapter 459.
b. Oregon Administrative Rules, Chapter 340, Divisions 60 and 62 (proposed).
c. Report to Minnesota Pollution Control Agency on Scrap Tires in Minnesota, October 1987, prepared by Waste Recovery, Inc.
d. Proceedings of a Workshop on Disposal Techniques with Energy Recovery for Scrapped Vehicle Tires, sponsored by US Dept. of Energy et al, November 1987.

e. Waste Tire Permitting Rules as Proposed by the Minnesota Waste Management Board, Minn. Rules Parts 9220.0200 to 9220.0835.

f. Waste Tire Market Analysis, Oregon Department of Environmental Quality, March 31, 1988.

g. Economic Analysis of a Reimbursement to Users of Waste Tires, ECO Northwest, June 20, 1988.

SF3175

Attachment V
Agenda Item N
11/4/88, EQC Meeting

FISCAL AND ECONOMIC IMPACT STATEMENT:

Implementation of this action will require .5 full-time equivalent employee (Waste Tire Program Coordinator) to implement procedures for reimbursement and cleanup, and to review applications, plus associated clerical support. It will also cause additional work for other Waste Tire Program staff in determining cleanup priorities. It may cause some additional work for the Department's Regional staff. These positions are included in the Department's approved budget.

This action will have a positive economic impact on private businesses, the public, and local government.

Over the duration of the program (through June 30, 1991), approximately $4 million will be available from the Waste Tire Recycling Account for reimbursement and cleanup. The money comes from a $1 fee charged on the sale of all new replacement tires in Oregon. Persons using waste tires and tire chips will be eligible for partial reimbursement for such use. Large users may be eligible for substantial funds. The availability of the reimbursement may encourage new business activity in Oregon. Operators of waste tire storage sites may receive cleanup funds if they meet criteria. Local governments which abate tire pile nuisances may also receive cleanup funds under some circumstances. The reimbursement is meant to enhance the market for waste tires. It should result in creating alternatives to landfill for disposal of waste tires. This should eventually reduce the cost of tire disposal for the public from what it otherwise would have been.

A small business which uses waste tires would be eligible for the partial reimbursement for such use. There are a number of small manufacturers who will likely be eligible. Some of the people now storing waste tires are small businesses. Rather than undergo the expense of operating a waste tire storage site, they may choose to clean up their tire piles. If their site meets program criteria, they may be eligible for some cleanup funds to assist in this.

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 cleanup funds to help get rid of improperly stored waste tires. This should help eliminate or reduce potential tire fires, a source of air pollution, as well as keep waste tires out of waterways. Waste tires are often stored in conflict with local land use rules. As tire sites are cleaned up, land use compliance should improve.

With regard to Goal 11 (Public Facilities and Services), the rules allow for local governments to be partially reimbursed for their costs of abatement of a waste tire nuisance. The Department may also use funds for such abatement. The availability of these funds for nuisance abatement will 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.

SF3173

Attachment VI
Agenda Item N
11/4/88, EQC Meeting

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Proposed Rules Relating to Reimbursements to Users of Waste Tires, and Cleanup funds for Tire Storage Sites

Hearing Date: August 15, 1988
August 16, 1988
August 17, 1988
August 18, 1988
Comments Due: August 24, 1988

WHO IS AFFECTED: Persons using waste tires or tire chips for energy recovery or other uses. Owners and operators of sites where more than 100 waste tires are stored. Owners and operators of retail tire stores and retread shops. Local governments. Auto wreckers. Vector control districts.

WHAT IS PROPOSED: The Department proposes to adopt new Administrative Rules, Division 340, Section 62, to use funds in the waste tire recycling account. The rule would establish procedures to partially reimburse people who use waste tires or tire chips; to determine what uses are eligible for reimbursement; and to set criteria for use of waste tire site cleanup funds.

WHAT ARE THE HIGHLIGHTS: The rules would establish policy that use of funds for reimbursement is to receive priority over cleanup. Uses of tires eligible for reimbursement include energy recovery, pyrolysis, manufacture of new products and artificial reefs. Some uses of whole tires would be excluded. The user of the tire would include a manufacturer or person who burns tires for their energy value. The amount of the reimbursement would be $.01 per pound of rubber used. Priority use of cleanup funds would be for tire piles creating a fire or vector hazard.

HOW TO COMMENT: Public Hearings will be held before a hearings officer at:

7:00 p.m.
Monday, August 15, 1988
Eastern Oregon State College
Hoke Bldg., Room 309
8th and K Street
LaGrande, OR 97850

7:00 p.m.
Tuesday, August 16, 1988
School Administration Bldg. #314
520 N.W. Wall Street
Bend, OR 97701

7:00 p.m.
Wednesday, August 17, 1988
Jackson Co. Courthouse
Auditorium, Main & Oakdale
Medford, OR 97501

7:00 p.m.
Thursday, August 18, 1988
State Office Bldg, Room 26
1400 S.W. 5th Ave.
Portland, OR 97201

(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.

INFORMATIONAL MEETINGS will be held prior to the hearings, from 4 p.m. to 5:30 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, Attn: Deanna Mueller-Crispin, 811 S.W. 6th Avenue, Portland, OR 97204, and must be received no later than 5:00 p.m., Wednesday, August 24, 1988.

For a copy of the PROPOSED RULE PACKAGE, contact the DEQ Hazardous and Solid Waste Division. For further information, contact Deanna Mueller-Crispin at 229-5808, or toll-free at 1-800-452-4011.

WHAT IS THE NEXT STEP:

The Environmental Quality Commission may adopt new rules identical to 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 October 7, 1988.

SF3163

Attachment VII
Agenda Item N
11/4/88, EQC Meeting

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMORANDUM

TO: Environmental Quality Commission DATE: October 19, 1988

FROM: Deanna Mueller-Crispin
Hearing Officer

SUBJECT: Written Comments, Rule for Use of Waste Tire Recycling Account

In July, DEQ gave public notice soliciting comments on a new rule (OAR 340-62-090 through -125) to establish guidelines for use of the Waste Tire Recycling Account. In response, the Department received eight written comments.

A summary of the written testimony follows:

Both Jeanne Roy, Portland, a member of DEQ's Solid Waste Advisory Committee, and Richard A. Parrish, Portland, recommended that the reimbursement for use of waste tires be modified to reflect the solid waste disposal hierarchy in ORS 459.015. Ms. Roy suggested that incineration be reimbursed at a lower rate than recycling. Mr. Parrish suggested assigning a "preference or priority to reuse and recycling technologies that do not involve incineration."

William E. Puntney of Clayton-Ward Company in Salem had a related comment. He wrote that "burners of tires...such as Marion City Burn Plant" should not be reimbursed for incinerating tires. He felt that would replace solid waste pollution by air pollution; and that it would be a disincentive for other productive types of tire recycling.

Keith Read, Director of Klamath County Solid Waste Management, recommended that local conversion of waste tires to energy be encouraged through "a comprehensive and coordinated program of user subsidy and storage cleanup grants." He expressed concern that Department interpretation of financial or environmental hardship might take precedence over "overall good to the public in the long run" in using these funds for local projects.

Eugene A. Papineau, District Manager of the Jackson County Vector Control District, commented on the permitting part of the Waste Tire Program. He suggested that before the Department issues a waste tire storage site permit, a local vector control officer should visit the site to identify any potential vector problems. The site operator should be responsible for any materials necessary to control vectors. Vector control personnel should inspect the site periodically to ensure these requirements are being carried out.

Thom Seal, of Gasifier Energy Coop, Inc., in Prairie City, sent written comments reinforcing his oral comments at the August 15 hearing in

LaGrande (see Hearing Officer's LaGrande report). One of his main concerns was the need for predictability of the reimbursement amount for new businesses. He feels that basing the amount of the reimbursement on quarterly availability of funds will not allow economic forecasting by businesses. He is also concerned that the pollution control equipment in industries burning hog fuel is not designed "to scrub organic and sulfur dioxide gases generated from waste tire incineration." Without new equipment, these industries would increase air pollution if they burn tire chips. He also proposes that funds generated from fines from non-compliance with the waste tire statute should go into the Waste Tire Recycling Account.

Mark Hope, of Waste Recovery, Inc., in Portland, submitted comments mainly on the definition of "end user" in the proposed rule (340-62-010 (6)(b)). He feels this definition excludes his firm, and only his firm (among tire processors), from receiving reimbursements for use of waste tires. He recommends that this definition be changed to specify that the reimbursement go to the person who constitutes the market for waste tires. He feels that no processor of waste tires should be eligible for the reimbursement. He proposes changing the rule so that any person who directly processes whole waste tires could not receive the reimbursement. The reimbursement would instead go to whoever directly buys the product of waste tire processing (e.g. "chips, strips, oil, crumb rubber, or crumb rubber products"). He contends that the rule as written constitutes a competitive disadvantage for his firm compared to other processors (such as pyrolysis plants) who must procure waste tires as their raw materials.

Mike Doyle, of the Les Schwab Production Center in Prineville, asked that the definition of "waste tires generated in Oregon" be clarified. Les Schwab brings in tire casings from outside of Oregon to their retread plant. If these prove unusable, they are incinerated (a use which could receive a reimbursement under the proposed rule). But the casings not generated in Oregon would not be reimbursed. He notes that mills burning tire-derived fuel would burn some rubber that comes from outside Oregon. He feels the reimbursement should be handled the same for all users, based on their Oregon usage only. Mr. Doyle also objects to allowing persons who use tires in artificial reefs to apply for a reimbursement in excess of $.01/pound. He feels all uses should either be limited to the $.01/pound, or all uses should be able to apply for a greater subsidy. He also suggested that an applicant should have to use at least 10,000 pounds of rubber in order to be eligible for the reimbursement. This would help keep administrative costs down by eliminating small-dollar applicants.

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMO

TO: Environmental Quality Commission DATE: October 19, 1988

FROM: Deanna Mueller-Crispin, Hearing Officer

SUBJECT: Public Hearing, Waste Tire Recycling Account Rule
LaGrande, 7:00 p.m., 8/15/88

On August 15, 1988 a Public Hearing regarding a new rule (OAR 340-62-090 through 340-62-165) to establish standards and procedures for using the Waste Tire Recycling Account was held in LaGrande, Oregon. Eleven to fourteen persons attended, and four made comments for the record.

Two of those persons, both interested in establishing businesses to process waste tires, had specific comments on the rule. The other two persons had more general questions on the waste tire program.

A summary of the testimony follows:

Both Jim Breitzman (of Multi-Energy in Baker) and Thom Seal (of G.E. Coop in Prairie City) expressed concern about the uncertainty of the reimbursement for persons establishing a business to use waste tires. They felt a businessman must be assured of receiving a given level of reimbursement in order to take the risk of setting up a business. Mr. Breitzman suggested that DEQ monitor the amount of waste tires being used, with all users assured of receiving the 1¢/lb. reimbursement. New applications should then be cut off when enough applications are received to use all available funds in the Waste Tire Recycling Account. Mr. Seal suggested that all applications for reimbursement be funded for at least a year, even if that would exceed available funds in the Account. Should that happen, DEQ should return to the Legislature and request an increase in the $1.00 tire fee.

Mr. Seal had several other comments. He supported DEQ's proposal to offer the same level of reimbursement everywhere in the state (i.e. no priority areas). He also supported giving priority in use of the Fund to the reimbursement, rather than cleanup. He recommended that any available funds not awarded in a given quarter, be carried over into the next quarter and kept available. He recommended that DEQ classify waste tires as a "renewable energy resource," so that persons using them would quality for state tax breaks. He further recommended that DEQ monitor the efficiency, emissions, and other pollution and discarded waste generated by the uses of waste tires that receive the reimbursement.

Larry Waliser, a retreader from LaGrande, asked about purchasing a tire chipper and potential markets for chips.

Jim McDonald, an auto salvage operator from LaGrande, had concerns about being able to clean up a large amount of tires in a short time. It would cost him several thousand dollars to take his waste tires to the local landfill. He sees it as a county-by-county problem, but sees no good solutions in Union County.

A number of persons asked why tires on new cars were not subject to the $1.00 fee. Another question was why retreads are not eligible for the reimbursement. A number of persons said the development of a market for waste tires should have come before the storage site permit and tire cleanup requirement.

A few persons felt $.01/lb. was not enough reimbursement to "do the job." Mr. Seal thought that $.01 was "equitable", if it could be counted on for sure.

DMC:x
ZX203

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMORANDUM

DATE: October 19, 1988

TO: Environmental Quality Commission

FROM: Deanna Mueller-Crispin, Hearing Officer

SUBJECT: Public Hearing, Waste Tire Recycling Account Rule
Medford, 7:00 p.m., 8/17/88

On August 17, 1988 a Public Hearing regarding a new rule (OAR 340-62-090 through 340-62-165) to establish standards and procedures for using the Waste Tire Recycling Account was held in Medford, Oregon. Eight persons attended, and six made comments for the record. In addition one person attending the afternoon information session left written testimony for the record.

A summary of the testimony follows:

Three of the persons presenting comments were auto wreckers, and three were with the Ashland Sanitary Service. There was general concern about the probable lack of markets for waste tires anywhere but in the Willamette Valley and Portland area.

Jack Walker of Walker Auto Parts in Talent felt DEQ was going about solving the tire problem backwards. He felt DEQ should first consult the people who are involved in the tire problem to determine solutions, before requiring permits and cleanup of tire sites. He thought it may be necessary to go back and change the legislation rather than just changing DEQ's rule. He commented that DEQ could create more problems by acting too hastily: tires illegally disposed of, etc.

On the reimbursement, Mr. Walker said about $.50 per tire needs to go to the person who ends up with the waste tires, for them to be able to get rid of the tires properly. With $.50/tire available, landfills would start becoming interested in buying equipment to chip the tires (per DEQ rules). He felt that it "serves no purpose" to require wrecking yards to get a waste tire storage site permit.

Mr. Walker also objected to the DEQ chipping standard for landfill disposal of waste tires. He commented that the local landfill has had no problems burying split tires. He also suggested that DEQ front the money to solid waste disposal sites to buy tire chippers to chip and landfill tires.

Larry Redler of Redler Metal Co. in Medford suggested a two-tiered incentive system: a financial incentive to people who collect the tires (he also recommended at least $.50/tire), and on the other end, an incentive (perhaps an investment tax credit) to "users" of the tires such as burners

of tire-derived fuel. He felt the concept of the incentive going to the user of the waste tire is wrong; it should go to the person who has to get rid of the tire. He also thought the incentive should take into account the cost of freight, which would be higher the further away from Portland waste tires are located.

Mr. Redler agreed with Mr. Walker that DEQ should put implementation of the program on hold until the Department gets input from the people who have to get rid of the tires. (He mentioned that disposal of appliances is a worse problem than waste tires.) He felt that the emphasis should be on recycling the tires; but if recycling isn't possible, tires should be split and buried.

Mr. Redler felt it was better for waste tires to go to a central location for collection rather than having them "in everybody's backyard". To that end, the State should encourage auto wreckers (or someone) to establish collection sites.

Mr. Redler also commented that the PUC should have exempted haulers of waste tires from PUC requirements. He also commented that DEQ should have required the Biomass plant to take tires; this could have contributed to solving the problem in this area.

Rea Forbes of Speedway Auto Parts in Central Point agreed that the State should have researched the waste tire problem "from the bottom" instead of only "from the top" (e.g. the large users of tire-derived fuel).

Gary Rigotti of Ashland Sanitary Service remarked that trying to bury whole tires in a landfill causes voids and results in compaction problems. But since Ashland started splitting tires a year or so ago, there has been no problem; split tires do not "float" up.

Lois Wenker of Ashland Sanitary asked how long it would be until a plant that could use tires was established in the area. She also noted that a different timeframe, and perhaps different rules were needed for different parts of the State, to reflect regional differences.

Robert Wenker of Ashland Sanitary commented that they now stockpile waste tires, and then bring in someone to split them for disposal.

DMC:b
SB7851

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMO

TO: Environmental Quality Commission DATE: October 19, 1988

FROM: Deanna Mueller-Crispin, Hearing Officer

SUBJECT: Public Hearing, Waste Tire Recycling Account Rule
Bend, 7:00 p.m., 8/16/88

On August 16, 1988 A Public Hearing regarding a new rule (OAR 340-62-090 through 340-62-165) to establish standards and procedures for using the Waste Tire Recycling Account was held in Bend, Oregon. Three persons attended, and one made comments for the record.

A summary of the testimony follows:

Bruce Landolt of the Four Rivers Vector Control District in Bend had several comments and questions. He noted that any tire can pose a vector problem (not just tires in lots of 100 or more), and felt that all tires should be covered by DEQ's storage requirements without the 100-tire cutoff level. He asked who would enforce the law, and how. He wondered if funds would be available only to persons who use tires, or whether costs of cleanup would also be paid. He noted that their district has a lot of abandoned tires in groups of 50 or fewer, which are hard to clean up and recover costs. He wondered whether cleanup funds would be available for those smaller sites, since they are not regulated by DEQ. He also wanted to know where the closest permitted site for tire disposal is, and what it costs.

DMC:x
ZX202

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY

INTEROFFICE MEMORANDUM

DATE: October 19, 1988

TO: Environmental Quality Commission

FROM: Deanna Mueller-Crispin, Hearing Officer

SUBJECT: Public Hearing, Waste Tire Recycling Account Rule
Portland, 7:00 p.m., 8/18/88

On August 18, 1988 a Public Hearing regarding a new rule (OAR 340-62-090 through 340-62-165) to establish standards and procedures for using the Waste Tire Recycling Account was held in Portland, Oregon. One person attended, and no one testified.

DMC:b
SB7852

Attachment VIII
Agenda Item N
11/4/88, EQC Meeting

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMORANDUM

DATE: October 19, 1988

TO: Environmental Quality Commission

FROM: Deanna Mueller-Crispin, Hazardous and Solid Waste Division

SUBJECT: Response to Public Comment
Public Hearings
Rule to Establish Guidelines for Use of Waste Tire Recycling Account

Comment: The reimbursement structure for use of waste tires should reflect the solid waste disposal hierarchy. Reuse and recycling should receive priority over incineration.

Response: The Department feels that the advantages of having an "across-the-board" reimbursement for all uses of waste tires outweigh the disadvantages of not specifically supporting the solid waste disposal hierarchy in the amount of the reimbursement. The purpose of the reimbursement is to enhance the market for waste tires. With an "across-the-board" reimbursement, all uses of waste tires will compete on an equal basis for reimbursement funds. The most economic use will be the one most used. This will result in the greatest number of waste tires reused for a given level of reimbursement. Energy recovery from waste tires shows the greatest short-term potential to use up large numbers of waste tires in Oregon.

However, the Department is proposing to give priority to reuse and recycling in the way the prorating of the reimbursement is handled. Reimbursements to persons who reuse or recycle tires would not be subject to prorating, if insufficient funds are available to handle all requests. However, energy recovery uses would be subject to proration.

Comment: "Burners of tires" such as the Marion County plant

should not be reimbursed for incinerating tires. They may cause serious air pollution problems.

Response: The statute specifically includes "energy recovery" as a use of waste tires eligible for the reimbursement. The technology exists to recover energy from waste tires by non-incineration methods (pyrolysis), but direct incineration is much less expensive. The proposed rule specifies that if incineration of waste tires would violate an air pollution control permit, that would not be eligible for the reimbursement.

The Marion County facility's solid waste permit does not allow burning of whole tires.

Comment: Local conversion of waste tires to energy should be encouraged through a comprehensive and coordinated program of user subsidy and storage cleanup grants.

Response: The reimbursement program and the use of funds for cleanup of tire dumps are based on different criteria. Both would have to meet criteria in the proposed rule before funds could be used for a particular project. If a local area has or wants to encourage a particular use of waste tires, the Department would try to coordinate any cleanup order in the area with that use.

Comment: Vector control officers should visit sites before waste tire storage site permits are issued. Their recommendations should become part of the permit.

Response: The rule under consideration does not deal with waste tire storage site regulations. However, the Department appreciates the suggestion, and will work with vector control districts, where they exist, for vector control recommendations during the permitting process.

Comment: Businesses need to be able to count on a given level of reimbursement for use of waste tires. They cannot make investment decisions without knowing for sure what level of reimbursement they can expect. If insufficient funds are available to meet all of the reimbursement requests, the available funds are to be prorated to all applicants, each receiving less that the stated $.01/pound of rubber used. This creates insecurity on the part of the investor. All applications for reimbursement should be funded for at least a year. If insufficient funds are available for that level, the

Department should request an increase in the $1.00 tire fee.

Response: The Department believes it is unlikely that the amount of requests for reimbursement will exceed the amount available for reimbursement in the Waste Tire Recycling Account. Enough funds should be available to cover even a high level of waste tire reuse, with some monies going for cleanup. About two million waste tires are generated each year in Oregon, in addition to some four million tires in known existing piles around the state. Thus, it would be mathematically impossible for more than six million tires to be used in one year. Given the time necessary for industries to gear up for the program, the Department estimates it is unlikely that more than four million tires would be reused in one year. At $.01/pound, that would require a reimbursement of about $800,000. It is anticipated that through June 30, 1989, about $1.4 million will be available for reimbursement and cleanup.

The Department is required by statute to prorate if the amount of reimbursement requests exceeds the amount available in the Waste Tire Recycling Account. The rule proposes, however, to reimburse in the following quarter any amount of reduction that was made necessary by the proration. This will make the amount of reimbursement predictable, although there may be a delay in receiving it.

The Department can at any time review the level of reimbursement and adjust it be rule if necessary. Public comment during the rulemaking procedure would give interested parties another chance to comment.

The tire fee can only be changed by the Legislature during a legislative session. The Legislature will meet in 1989, and 1991. The Department would not be able to submit a legislative proposal to the Legislature in a timely manner to cover any 1989 shortfall in the Waste Tire Recycling Account.

Comment: The Department should monitor air pollution and solid waste (such as ash) associated with the uses for which it grants reimbursements.

Response: The Department agrees with this suggestion. Direct monitoring will likely not be possible, but the Department will attempt to track the pollution associated with the levels of waste tires used in

various ways, on an annual basis, using information already routinely collected by the Department.

Comment: Funds generated from fines from non-compliance with the waste tire statute should go into the Waste Tire Recycling Account.

Response: Without statutory authority assigning them to a specific fund, all civil penalties are assigned to the General Fund. The Department cannot affect that.

Comment: The definition of "end user" (340-62-010(6)) defines who is eligible for the reimbursement. It specifically excludes a processor who produces tire chips and sells them to another person from receiving the reimbursement. But it would allow the reimbursement to go to pyrolysis plants who chip tires and produce tire by-products from them. This gives the pyrolysis plant a competitive advantage over the other processor in competing for waste tires on the market. The definition should be changed to specify that no processor of whole waste tires would be eligible for the reimbursement, only the person who buys the product produced. This would ensure that no processor receives a competitive advantage over another.

Response: The statute states that a person who uses waste tires, chips, or similar materials may apply for a reimbursement. The proposed rule specifies that the last person to "use" the waste tire, tire chip, or similar material as a waste tire, tire chip or similar material, would be the recipient of the reimbursement.

Excluding a processor of whole waste tires who makes the tire into a product that is not a "tire, chip, or similar material" would, in the Department's judgment, unfairly exclude businesses who engage in several steps in the waste tire utilization process, making whole tires into usable product. It would not follow the intent of the legislation, or result in optimum use of the reimbursement.

The real issue is not whether processors of whole tires should or should not be excluded from the reimbursement. Rather it is whether the reimbursement should go to pyrolysis operators who sell their product to the energy market, but not to tire chippers who may sell to the same market. The discrepancy results from excluding

pyrolysis oil from the definition of "similar materials."

The Department is not proposing to change its definition of "end user".

However the Department agrees that the reimbursement should not be injected at different points in the same market. Both chippers and pyrolysis plants serve principally the market for energy. In that sense, the main products of pyrolysis are "similar materials" to tire chips. The Department is proposing to add a definition of "similar materials" which would include the products of pyrolysis. This would make the person using the chips or pyrolysis products for the energy value the recipient of the reimbursement. This would eliminate the above discrepancy.

Comment: The definition of "waste tires generated in Oregon" needs to be clarified. Mills burning tire-derived fuel may burn tires that come from outside of Oregon. The reimbursement should be limited to use of Oregon tires only.

Response: The Department agrees, and that is the intent of the rule (see OAR 3340-62-120 (2)(a)(C)). In the case of a tire casing imported into the state for potential recapping, but which proves unusable for that purpose, such a waste tire is not "generated in Oregon". It became a waste tire in the state where it was decided that tire was only fit for retreading. The case is the same for waste tires brought into the state to be chipped for tire-derived fuel. These are not tires "generated in Oregon", and their use is not eligible for the reimbursement. Processors of waste tires will have to document to the Department's satisfaction that tires they process are in fact generated in Oregon. The Department does not propose to require that Oregon-generated and out-of-state generated waste tires necessarily be kept physically separated. But records will have to be kept of how many Oregon tires are accepted by a processor, and the amount of rubber from those tires noted in billings to customers (when the customer is the "end user"). Mills will only be reimbursed for that tire-derived fuel for which they have documentation from the processor of Oregon origin. Likewise, a processor who is also an "end user" will have to document to the Department's satisfaction the Oregon origin of the tires they accept for processing.

The Department is proposing a clarification to the definition of "Waste Tires Generated in Oregon" (340-62-010 (22) for recappable casings generated outside of Oregon.

Comment: Artificial reefs should not be allowed to request a reimbursement greater than $.01/pound. They should be treated the same as all other uses.

Response: The Department agrees, and is changing the rule to that effect.

Comment: Waste tires should be classified as a "renewable energy source" to qualify processors for investment capital and tax breaks from the state.

Response: The Department is exploring the feasibility of doing this. Such classification would take place outside the framework of these rules.

Comment: Why isn't tire retreading eligible for the reimbursement?

Response: Retreading is excluded by the statute from receiving a reimbursement.

Comment: Can cleanup funds be used for sites with fewer than 100 tires? It doesn't take 100 tires to cause a vector problem.

Response: Cleanup funds may be used for permitted waste tire storage sites, or sites that failed to obtain a storage site permit. The law does not make them available for sites that are not required to get permits. So the answer is no, they cannot be used for sites with fewer than 100 tires (or fewer than 1,500, if a retail tire dealer, or 3,000 if a retreader).

Comment: The Department is going about solving the waste tire problem backwards. They should first determine how best to get rid of the tires, and develop markets, and then impose permitting and cleanup requirements. The Department failed to get input from the people who are most involved in the tire problem (auto wreckers). The Department should consider a moratorium on the

permit/cleanup requirements while it figures out what to do with the tires.

Response: The statute imposes a July 1, 1988 deadline for having waste tire storage sites under permit from the Department. The Department must enforce that requirement. Because of that tight deadline, the Department chose to develop rules for the permitting part of the statute first, and then develop rules for the reimbursement and cleanup part. The Department's schedule for implementing the reimbursement for use of waste tires is early November, 1988. The Department is hopeful that that will be soon enough to begin influencing the market for waste tires as Stage I waste tire site permittees clean up their sites before the end of the year (when they would have to become Stage II sites).

The Department has no discretion under the statute to "develop a solution" to the waste tire problem. The reimbursement is the tool established by law to deal with reuse of waste tires. The Department is establishing, with its proposed rule, guidelines for use of the reimbursement. But it is up to the market to respond by coming up with proposed uses.

The Department worked closely with the Waste Tire Task Force in developing program rules and regulations. Many persons in that group are very closely involved with the waste tire problem, both from the waste tire generation side, and the reuse/recycling side. Auto wreckers were not involved with that group from its inception, but had some input to the group's deliberations beginning on March 8. There has been a representative from the auto wreckers on the Task Force since June 21, 1988.

Comment: Tires on new cars should be subject to the $1.00 tire fee.

Response: Tires on new cars were excluded by statute from the tire fee. Only the Legislature could change that.

Comment: The proposed level of reimbursement ($.01/lb) is not enough to get the job done. It should be at least twice that.

Response: The Department does not know what level of reimbursement will be required to enhance the market for waste tires.

An economic analysis done for the Department by ECO Northwest estimates that a $.01/lb. reimbursement level would absorb the existing 4 million tire backlog, and the 2 million tire annual flow in just under 8 years. The Department has the flexibility to adjust the level of reimbursement as it gains experience with the program.

Comment: The Department should not require waste tires to be chipped into pieces of 64 square inches in order to be landfilled. The Ashland solid waste disposal site has been accepting split tires for a year, and has had no problems with tires "floating" to the surface.

Response: This comment pertains to the Rule adopted by the Environmental Quality Commission on July 8, 1988. The Department was not specifically taking comments on that Rule at this time. The Department intends to submit another rule to public comment later this year covering the "economic feasibility" of reusing waste tires. At that time the Department may consider this comment.

Comment: The Department should fund tire chipping machines out of this Account so landfills can take care of tires.

Response: The statute does not allow the Department to purchase equipment out of the Account. The monies are to go to persons who use waste tires; and for cleanup of tire sites.

Comment: The financial incentive should go to persons who collect the waste tires, to help them get rid of the tires properly. They should get at least $.50 per tire. "Users" of waste tires should instead get an investment tax credit to help them purchase equipment.

Response: The statute does not allow reimbursement money to go to persons collecting waste tires. It may only go to the user of the tires. Users (likely processors) may also be eligible for other incentives such as investment tax credits, or other tax credits.

At a $.50/tire reimbursement, the Department estimates that the Waste Tire Recycling Account would probably not be able to cover all requests for funds. There are some 2 million waste tires generated each year, plus at least 4 million stockpiled waste tires.

Comment: The cost of freight (getting a tire from a tire pile to a place where it can be used) should be taken into consideration in setting the reimbursement level. The incentive should be higher the further away from Portland the waste tire is located.

Response: At present there are few waste tire reuse options outside the Portland metro area. However this could change in the future in response to the reimbursement. Tracking the level of reimbursement by the area in which the tire was generated would increase the administrative burden on both the processor and the Department. However, the Department may consider such a proposal in the future if the proposed reimbursement level does not generate a market in outlying areas. The Department does not recommend a change at this time.

Comment: An applicant should have to use at least 10,000 pounds of rubber in order to be eligible for the reimbursement. This would help keep administrative costs down by eliminating small-dollar applicants.

Response: The Department agrees, and is making that change.

agresrmb.1
10/19/88

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR COMMISSION ACTION

Agenda Item O, November 4, 1988, EQC Meeting

Request for Adoption of a Temporary Rule Amending OAR 340-61-060 to Prohibit Wastes Which are Hazardous Under the Law of the State of Origin From Being Managed at Solid Waste Disposal Sites When Transported into Oregon.

ISSUE

Federal regulations define which wastes are hazardous nationwide. However, each state may opt to classify additional wastes as hazardous. Thus, a waste managed as hazardous (at state option) in one state may be managed as solid waste in a neighboring state. The unintended result of this allowed state flexibility can be interstate transport of waste to avoid legitimate regulatory requirements.

SUMMATION

- The Department is currently facing a proposal to build an infectious waste incinerator 3 miles from the California border in Klamath County. Infectious waste is managed as hazardous waste in California but not in Oregon or adjacent states.
- Washington, Idaho, Nevada, and Alaska agree on a policy of managing waste as hazardous if, according to state law, the waste is determined to be hazardous at the point of generation.
- Options for implementing a similar policy in Oregon have been explored. Amendment of the Solid Waste rules appears to be the best option for implementation.

DIRECTOR'S RECOMMENDATION

The Department recommends that the Commission adopt a 180 day temporary rule amending OAR 340-61-060 to prohibit wastes which are hazardous under the law of the state of origin from being managed at solid waste disposal sites when transported into Oregon.

The Department also recommends that the Commission authorize the Department to proceed to permanent rulemaking.

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item O, November 4, 1988, EQC Meeting

Request for Adoption of a Temporary Rule Amending OAR 340-61-060 to Prohibit Wastes Which are Hazardous Under the Law of the State of Origin from Being Managed at Solid Waste Disposal Sites When Transported into Oregon.

Background

The Department is asking the Commission to adopt a 180-day temporary rule which prohibits waste classified as hazardous at the point of generation from being disposed of in Oregon solid waste management facilities. This policy is needed to ensure proper management of solid waste in Oregon and adequate coordination with other states in managing hazardous waste.

The federal Resource Conservation and Recovery Act (RCRA) regulates management of solid and hazardous waste nationwide. The Department is authorized by EPA to operate most of the RCRA program in Oregon. The Department also has authority to regulate hazardous waste under ORS 466 and solid waste under ORS 459.

Wastes designated as hazardous by a state may be in addition to EPA's designations under RCRA. For example, nerve agent, aluminum potliner, and some pesticide residues are classified as hazardous waste in Oregon but are not hazardous under RCRA. California has one of the most comprehensive lists of hazardous waste in the nation and has adopted special management standards for many of these waste which differ from those mandated by RCRA. Washington uses the term "dangerous waste" to define its hazardous waste.

Oregon has adopted Federal management standards for hazardous waste. Other states have different standards and different lists of hazardous waste, such that a waste designated as hazardous in one state may be regulated as a solid waste in another. Shredded waste money and food coupons are one example. In California, they are managed as a hazardous waste because of the lead content. They are not regulated as a hazardous waste by EPA or the state of Oregon and can, therefore, be disposed of in a solid waste landfill or incinerator. Other examples of wastes which are designated as hazardous by neighboring states and not Oregon or EPA are: infectious wastes, PCBs, waste oil, flyash and asbestos.

Hazardous waste is more strictly regulated, and therefore, more costly to manage than solid waste. As a result, some generators of hazardous waste will pursue ways to ship the waste to a neighboring state where it can be disposed of as solid waste, thus minimizing cost and regulatory control.

A receiving state is, therefore, at risk of becoming a "dumping ground" for designated hazardous wastes which enter the state and are managed as solid waste with less stringent requirements for tracking and disposal. Meanwhile, states where the waste is generated have difficulty assuring that the waste is managed properly when shipped to solid waste sites out-of-state.

A year ago, the state environmental department directors of Oregon, Washington, Idaho and Alaska proposed a policy that would require a waste to be managed as hazardous if, according to state law, the waste was determined to be hazardous at the point of generation. After staff review in each state, the directors informally agreed to a policy in June 1988 (see Attachment III). The state of Idaho recently implemented the policy by Executive Order (see Attachment IV). Meanwhile, the state of Nevada adopted a hazardous waste importation/disposal policy in 1985 and administrative rules in July 1988 (see Attachment V). Nevada now defines hazardous waste to include waste brought into Nevada which is designated as hazardous waste in the state where generated.

Wastes on the Federal RCRA list from a fully regulated generator are already prohibited from disposal in solid waste management facilities; the proposed rule applies to waste not regulated under RCRA but which is designated as hazardous by the state where the waste is generated. The proposed rule would not prohibit hazardous waste from coming to Oregon; it would, however, require that this waste not be disposed of at solid waste sites.

The Department is moving quickly to adopt the temporary 180-day rule to protect the integrity of our solid waste management system and to ensure adequate environmental safeguards at solid waste disposal facilities.

A particular focus of concern is disposal of infectious waste which is designated as hazardous in California but not in Oregon and other adjacent states. Because of recent national publicity, the federal government and most states are reviewing the management of infectious waste. A permit application is presently before the Department to build an incinerator for infectious waste three miles north of the California border in Klamath County. Attachment VI and VII provide background on the proposed infectious waste incinerator and Oregon's management of infectious waste. The temporary rule will enact a moratorium on disposal in solid waste facilities of infectious and other hazardous waste from outside Oregon while providing time to fully analyze the scope and impact of the rule before proposing for adoption as a permanent rule.

ALTERNATIVES AND EVALUATION

The Commission has several alternatives for regulating waste coming from another state that is designated as hazardous in that state but not as hazardous in Oregon.

1. Take no specific regulatory action.

   This alternative would allow waste classified as hazardous (or dangerous) in other states, but as solid waste in Oregon, to continue to be disposed of at solid waste disposal facilities in Oregon. Waste classified as solid waste in Oregon would be allowed to go to solid waste disposal facilities. Waste classified as hazardous in Oregon would be required to go to hazardous waste management facilities. To address concerns about a particular waste coming from another state, the Commission could consider, on a case-by-case basis, reclassifying that waste as hazardous, regardless of origin.

   Taking no action is not, however, consistent with the agreement among the environmental department directors of the four northwest states. Without regulatory control, substantial amounts of waste may be disposed of in Oregon landfills, particularly those near the California and Washington borders. This represents an increased environmental risk to the state of Oregon. Also, this alternative does not help provide assurance to the state of origin that the waste is managed properly.

2. Prohibit all hazardous waste from coming to Oregon.

   This is not a realistic alternative, according to significant legal opinion throughout the nation. Prohibiting the importation of waste could be interpreted as violating interstate commerce laws, and such attempts have been struck down by the courts.

3. Authorize a public hearing on a permanent rule prohibiting wastes which are hazardous under the law of the state of origin from being managed at solid waste disposal sites when transported into Oregon.

   This alternative would require such waste, if disposed in Oregon, to be managed at hazardous waste, not solid waste, facilities. This would reduce or eliminate the artificial economic advantage of shipping such waste to Oregon, and would therefore eliminate the problem of large amounts of hazardous waste going to solid waste facilities near the Washington and California borders. This alternative would also implement the policy in Oregon of the state environmental directors (see Attachment III).

   The public hearing process, however, does not immediately address the disposal in Oregon's solid waste management facilities of non-RCRA hazardous waste originating out-of-state. The Department believes this disposal should be prohibited immediately because it poses a threat to proper solid waste management in Oregon. The threat is tied to increased volumes of hazardous wastes, including infectious wastes, shipped to Oregon from out-of-state; inadequate authority to track all

such waste shipments into Oregon; and inadequate safeguards to prevent improper management of these wastes as solid waste in Oregon. The proposed infectious waste incinerator in Klamath County is of immediate concern.

4. Adopt a 180-day temporary rule prohibiting wastes which are hazardous under the law of the state of origin from being managed at solid waste disposal sites when transported into Oregon.

Adoption of a temporary rule allows the Department to implement the rule as quickly as possible to ensure protection of the integrity of our solid waste management system and to minimize the environmental risks at solid waste disposal sites such as the proposed infectious waste incinerator in Klamath County.

Adoption of the temporary rule would also allow the Department to consider other alternatives while moving orderly through the rulemaking process. These alternatives include specific revisions to the Oregon list of hazardous wastes, or the designation of new categories of waste (special wastes) that may require disposal regulations separate from either the hazardous or solid waste regulations. Adoption of the temporary rule will provide time for the Department to more thoroughly research and consider the additional risk posed by these wastes, and the compatibility of our present regulatory framework with the regulatory framework of other states.

DIRECTOR'S RECOMMENDATION

Based upon the findings presented in Attachment I, it is recommended that the Commission amend OAR 340-61-060 to prohibit wastes which are hazardous under the law of the state of origin from being managed at solid waste disposal sites when transported into Oregon. The proposed rule modification is contained in Attachment II. It is also recommended that the Commission authorize the Department to hold a public hearing on a permanent rule.

Fred Hansen

Attachments:
I. Proposed Findings Supporting the Director's Recommendations
II. The Proposed Temporary Rule Modification
III. The Northwest State Environmental Directors' Policy
IV. The Governor of Idaho's Executive Order
V. Nevada Rules Pertaining to Out-of-State Hazardous Waste
VI. Background on Oregon's Management of Infectious Waste
VII. Background on the Proposed Infectious Waste Incinerator in Klamath County
VIII. Rulemaking Statements

Bob Danko:b
229-6266
September 30, 1988 (ZB7883)

Attachment I
EQC Agenda Item O
11/4/88, EQC Meeting

Proposed findings in support of a temporary rule amending OAR 340-61-060 as set forth in Attachment II.

(1) ORS 459.045 provides that the Commission shall adopt "reasonable and necessary" solid waste management rules and such rules as are "necessary to carry out" the provisions of the Solid Waste Control laws and the policy established in ORS 459.015.

(2) An increasing number of states are determining that certain waste materials, in addition to those nationally identified as "hazardous wastes" under the federal Resource Conservation and Recovery Act (RCRA), pose a threat to public health, safety, welfare and the environment, and therefore, have defined these additional wastes as hazardous or special wastes in their respective states. (Examples of these types of wastes include certain biomedical wastes, wastes which exhibit toxicity characteristics based upon established state testing procedures, and categories of processed wastes not presently identified as hazardous by federal or Oregon law.)

(3) Once wastes are designated as hazardous under a state law, the storage, treatment, and disposal of these additional wastes are controlled by applicable hazardous waste management requirements in that state.

(4) The designation of certain types of wastes as hazardous by other states, where those wastes are not presently regulated as hazardous in Oregon, poses an immediate threat to proper solid waste management in Oregon. Oregon solid waste disposal facilities present an economically attractive alternative for disposal of certain out-of-state hazardous wastes.

(5) There is a present threat to the public health, safety, welfare and the environment in Oregon from increased volumes of hazardous wastes, including biomedical wastes, shipped to Oregon from out-of-state; inadequate authority to track all such waste shipments into Oregon; and inadequate safeguards to prevent improper treatment, storage, or disposal of the wastes as solid wastes in Oregon.

(6) The state of origin of a designated hazardous waste has a valid interest in assuring that the waste is managed from "cradle to grave" as a hazardous waste regardless of whether the waste is disposed of in the state of origin or in a sister state. This assurance is particularly necessary to prevent economic disincentives to waste minimization and treatment programs in the states of origin.

(7) It is in the immediate mutual interests of the citizens of Oregon and its sister states that Oregon recognize and effectuate the laws of the respective states with respect to hazardous waste designations, where such wastes are transported to Oregon for management.

(8) There are pending requests before the EQC and/or the Department to manage out-of-state hazardous wastes at solid waste disposal sites in Oregon. A temporary rule is necessary to address the immediate problems presented.

ZB7883I

Attachment II
EQC Agenda Item O
11/4/88, EQC Meeting

General Rules Pertaining to Specified Wastes

340-61-060 (1) Agricultural Wastes. Residues from agricultural practices shall be recycled, utilized for productive purposes or disposed of in a manner not to cause vector creation or sustenance, air or water pollution, public health hazards, odors, or nuisance conditions.

(2) Hazardous Solid Wastes. No hazardous solid wastes shall be deposited at any disposal site without prior written approval of the Department or state or local health department having jurisdiction.

(3) Waste Vehicle Tires:

(a) Open Dumping. Disposal of loose waste tires by open dumping into ravines, canyons, gullies, and trenches, is prohibited;

(b) Tire Landfill. Bulk quantities of tires which are disposed by landfilling and which are not incorporated with other wastes in a general landfill, must be baled, chipped, split, stacked by hand ricking or otherwise handled in a manner provided for by an operational plan submitted to and approved by the Department;

(c) General Landfill. Bulk quantities of tires if incorporated in a general landfill with other wastes, shall be placed on the ground surface on the bottom of the fill and covered with earth before other wastes are placed over them.

(4) Waste Oils. Large quantities of waste oils, greases, oil sludges, or oil soaked wastes shall not be placed in any disposal site unless special provisions for handling and other special precautions are included in the approved plans and specifications and operational plan to prevent fires and pollution of surface or groundwaters.

(5) Demolition Materials. Due to the unusually combustible nature of demolition materials, demolition landfills or landfills incorporating large quantities of combustible materials shall be cross-sectioned into cells by earth dikes sufficient to prevent the spread of fire between cells, in accordance with engineering plans required by these rules. Equipment shall be provided of sufficient size and design to densely compact the material to be included in the landfill.

(6) Hazardous Wastes from Other States. Wastes which are hazardous under the law of the state of origin shall not be managed at a solid waste disposal site when transported to Oregon. Such wastes may be managed at a hazardous waste facility in Oregon if the facility is authorized to accept the wastes pursuant to ORS 466.005 et seq. and applicable regulations.

ZB7883II

NEIL GOLDSCHMIDT
GOVERNOR

Department of Environmental Quality

811 SW SIXTH AVENUE, PORTLAND, OREGON 97204-1390 PHONE (503) 229-5696

June 9, 1988

POLICY:

A generator must ensure that its hazardous waste is managed at a treatment, storage, disposal or recycling facility licensed to accept hazardous waste. A generator must manifest the hazardous waste through a transporter to a designated facility. The determination that a waste is hazardous is made at the point of generation. Once that determination is made, the waste is hazardous and must be managed at a designated facility permitted to accept hazardous waste, no matter the location of the facility.

Therefore, it is the policy of the four Region 10 states to require waste to be managed as hazardous if, according to state law, the waste was determined to be hazardous at the point of generation.

ZF3160

Attachment IV
EQC Agenda Item Q
November 4, 1988

THE OFFICE OF THE GOVERNOR

EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE

EXECUTIVE ORDER NO. 88-22

DISPOSAL IN IDAHO OF WASTES DESIGNATED AS HAZARDOUS IN THE STATE WHERE GENERATED

WHEREAS, the State of Idaho is committed to proper management of hazardous and solid wastes and interstate cooperation; and

WHEREAS, a waste not regulated as a hazardous waste in Idaho may be regulated as a hazardous waste by another generating state; and

WHEREAS, existing solid waste landfills in Idaho have not been designed to safely handle large quantities of wastes regulated by other states as hazardous wastes; and

WHEREAS, a waste regulated as a hazardous waste by a generating state may pose a substantial threat to human health or to the environment if disposed in Idaho solid waste landfills; and

WHEREAS, disposal of such wastes in Idaho's solid waste landfills could cause immense cleanup liabilities;

NOW, THEREFORE, I, CECIL D. ANDRUS, Governor of the State of Idaho, by virtue of the authority vested in me by law, prescribe the following policy:

Any waste entering Idaho shall be subject to hazardous waste management requirements if such waste is regulated as a hazardous waste by the Environmental Protection Agency, the State of Idaho, or the state where the waste was generated.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho, at Boise, the Capital, the 23rd day of September, in the year of our Lord nineteen hundred eighty-eight, and of the Independence of the United States of America the two hundred thirteenth, and of the Statehood of Idaho the ninety-ninth.

Cecil D. Andrus

CECIL D. ANDRUS

BY THE GOVERNOR:

Attachment V.
EQC Agenda Item O
November 4, 1988

RICHARD H. BRYAN, *Governor*

STATE OF NEVADA

Administration 702/885-4670
Air Quality 885-5065
Construction Grants 885-5870

Groundwater 702/885-4670
Waste Management 885-5872
Water Pollution 885-4670

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

DIVISION OF ENVIRONMENTAL PROTECTION
201 South Fall Street
Carson City, Nevada 89710

September 8, 1988

Larry Edelman
Oregon Dept. of Justice
1515 SW 5th
Portland, OR 97201

Dear Larry:

Enclosed are the regulations governing hazardous waste in Nevada including the amendment to the definition to hazardous waste.

Please call me if you have any questions regarding this issue and good luck with your project.

Sincerely,

Douglas J. Martin, Supervisor
Compliance and Planning
Waste Management Program

DM/dm

Attachment VI
EQC Agenda Item O
November 4, 1988

BACKGROUND MEMO RE: INFECTIOUS WASTE MANAGEMENT

October 18, 1988

Background

Early in 1987, a number of issues related to the management of solid and liquid wastes from medical facilities, including potential exposure to the HIV (AIDS) virus of waste disposal personnel, were brought to the attention of the Oregon State Health Division (OSHD) and the Department of Environmental Quality (DEQ). A working committee was formed by the OSHD to review current practices and to develop policies and procedures for "safe" handling of solid and liquid wastes from medical facilities. Members on this working committee included representatives from the Oregon Sanitary Services Institute (OSSI), Oregon Association of Hospitals (OAH), Association of Practitioners in Infection Control (APIC), OSHD and DEQ.

The committee's task was to determine how best to minimize the exposure of persons involved with the collection and disposal of solid and liquid wastes which might contain infectious wastes.

Introduction

The spread of infections to humans requires that three factors be present:

1. A disease causing organism or agent (a bacteria or virus).

2. A susceptible person or host (a person who is not immune to that organism).

3. A way for the agent to infect that host (a mode of transmission).

In most instances, it is easiest to prevent disease by preventing transmission of the organism, although for some diseases, it is possible to immunize susceptible persons prior to exposure to the organism.

Definition of Infectious Waste

Certain waste products ("infectious wastes") have traditionally been looked upon as being more likely to carry pathogenic (disease-causing) organisms. The decisions about what is to be termed "infectious" depends on the quantity, virulence, or type or organisms that might be present. In Oregon, the items which have been classified as "infectious" and thus requiring more stringent disposal practices include the following:

* Cultures and stocks of infectious agents and associated biologicals, including:

    (1) Specimens from medical and pathology labs.
    (2) Wastes from production of biologicals (by-products from the production of vaccines, reagents in the laboratory, etc.).

(3) Cultures and stocks from clinical, research, and industrial labs, such as disposable culture dishes and devices used to transfer, inoculate, and mix cultures.

* Human blood and blood products.

* Liquid body wastes (fluid form).

* Pathological waste including, tissues, organs, body parts, autopsy, and biopsy materials.

* Contaminated "sharps" including, needles, syringes, scalpel blades, pipettes, lancets, and broken glass.

This list of infectious wastes differs from the list contained in the USEPA publication EPA/530-SW-86-014, May 1986 entitled "EPA Guide for Infectious Waste Management", in that the EPA category of isolation wastes was eliminated. The working committee eliminated this category because the Centers for Disease Control, Public Health Service, U.S. Department of Health and Human Services now recommends universal precautions be followed for all patients. In effect, universal precautions means that all patients are treated as if they are potentially infectious.

Existing Oregon Rules for Infectious Waste Disposal

Oregon Administrative Rules (OAR), Chapter 333, Division 19, Section 212, which was promulgated by the OSHD and became effective July 1, 1987 requires that contaminated sharps must be contained in impervious, rigid, puncture-resistant containers immediately after use. Any person using sharp instruments (i.e., needles, lancets, scalpels, etc.) for purposes of drawing blood, administering medication, or medical-surgical procedures on humans, shall dispose of such items in a manner that will protect any other handlers of this waste from injury. This rule applies to, but is not limited to blood banks, plasmapheresis centers, medical clinics, dental offices, outpatient care centers, inpatient care facilities, hospitals, and home health agencies.

Residential waste in Oregon is not regulated in any way to protect the handler from infectious organisms. Health care facilities, health departments, and home health agencies are obligated, however, to follow regulations of the Health Division, DEQ, any other licensing agency, and the recommendations of the CDC. (Licensed Health care facilities and home health agencies include hospitals, long-term care facilities and intermediate care facilities, but do not include doctors and dentists offices.)

The following are the regulations and recommendations for specific categories of infectious wastes. Licensed health care facilities are required to follow the recommendations of the CDC to be in accordance with state rules and regulations.

* Cultures and Stocks:

  Biological cultures and other contaminated laboratory wastes must be incinerated, or treated by steam sterilization (autoclaving) or a chemical disinfection before disposal (OSHD OAR 333-24-025(6)).

  According to guidelines developed by the CDC this means sealing the waste in an impervious bag or container before burning or autoclaving. If steam sterilization is used, exposure for up to 90 minutes at 250 degrees F(121C), depending on the size of the load and type container, may be necessary. After steam sterilization, the residue can be safely handled and discarded with all other facility waste. (2) A properly functioning incinerator should reach temperatures of at least 1800 degrees for 2 seconds or longer. (DEQ) This temperature is more than adequate to kill organisms of concern.

* Human blood and blood products and liquid body wastes

  It is recommended that all containers with more than a few milliliters of blood or other body fluids be steam sterilized, incinerated, or carefully poured down a utility sink drain or toilet (to avoid splashing). From an aesthetic (and public relations) standpoint, it would be better not to place autoclaved liquid blood or other body fluids into a compactor.

* Pathological Waste

  It is recommended that these tissue wastes be incinerated either on-site, at a neighboring hospital incinerator, or a crematorium. (Rules on this item are being reviewed by the Air Quality Division of DEQ).

At this present time, the only rules applicable to waste collection are contained in OAR, Chapter 340, Division 61, Section 070, "Storage and Collection" and Section 075, "Transportation." The committee's recommendations for protection of persons involved in the collection and disposal of wastes containing infectious materials are not included in any rules.

One problem which has not yet been addressed is the lack of any provisions for collection of sharps containers without compaction in the collection vehicles. One collection company in the Salem area is initiating separate collection of uncompacted medical facility wastes and prompt delivery to the disposal facility on a weekly schedule. This problem needs to be resolved throughout the state.

The committee's recommendation that liquid body fluids and blood and blood products or components be disposed of into sanitary sewers has raised some concerns about potential exposure of sewage treatment facilities operators.

Attachment VII
Agenda Item O
November 4, 1988

BACKGROUND ON THE PROPOSED INFECTIOUS WASTE INCINERATOR IN KLAMATH COUNTY

1. **How are medical facility wastes disposed of at this time in Klamath County and in the State of Oregon?**

Wastes which may contain pathogens (microscopic organisms such as viruses and bacteria which cause diseases) originating in medical facilities located in Klamath County and in other areas of Oregon are currently disposed of in one of several ways.

Some hospitals, including the hospital in Klamath Falls, currently dispose of those wastes containing pathogens in small pathological incinerators located at the hospital. Some hospitals in Oregon have contracted with private companies to transport these wastes to municipal waste incinerators located near Coos Bay, near Salem and near Bellingham, Washington. Other hospitals dispose of these wastes in colored plastic bags (which are marked as containing infectious wastes) which are then transported to a nearby landfill. Other medical facilities, such as doctors, dentists, veterinarians and medical laboratories, typically do not have pathological incinerators. These other medical facilities may or may not use an autoclave or chemical sterilization to render the wastes non-infectious before the wastes are transported to a municipal waste landfill for disposal.

Several waste collection firms have developed special containers (typically plastic bags inside cardboard boxes) that are distributed to medical facilities. The medical facility employees place the wastes into the plastic bags (which are inside of the boxes). When the bags are full, they are sealed. The boxes are then sealed and moved to the storage room. The waste collection firm picks the boxes up on a regular schedule, using non-compacting trucks, and transports the boxes to the disposal site. Medical facilities are not required to use these special waste handling services at this time.

2. **What specific types of wastes would the proposed Bio-Waste Management, Inc. incinerator facility be authorized to receive and what type of wastes would be prohibited by the Solid Waste Disposal Permit?**

The Department specifies the types of wastes in the Solid Waste Disposal Permit that any solid waste disposal facility is authorized to accept. For this facility, the Department intends to restrict the authorized wastes to the following:

a. Laboratory wastes and cultures (bacteria, viruses, culture plates, test tubes, pipettes, specimen containers, contaminated glassware, etc.);

b. Human materials (tissues, blood, blood products, body fluids, etc.);

c. Contaminated equipment, instruments and disposable materials likely to transmit infectious agents (IV tubing, IV bags, drainage catheters, disposable gloves and gowns, dressings, suction canisters, etc.);

d. Sharps containers, (containing needles, scalpels, lancets, etc.);

e. Human dialysis waste materials (including arterial lines and dialyzate membrane filters);

f. Any other material which is contaminated or may reasonably be expected to be contaminated with infectious agents.

No other wastes from medical facilities (such as kitchen food wastes, office waste paper or other non-infectious wastes) shall be accepted unless specifically authorized in writing by the Department.

The Department intends to add a new condition to Schedule A of this permit to specifically prohibit disposal of medical wastes which are classified as radioactive wastes.

3. **How will the Department regulate disposal of combustion residues (both fly ash and bottom ash)?**

Both combustion residue types, since they are not mixed within the facility process, must be analyzed to determine whether they are classified as hazardous wastes. The U.S. Environmental Protection Agency has specified the sampling, chemical analytical tests and the statistical analytical procedures to be used to evaluate these wastes. These procedures have been included as a permit condition.

If the combustion residues are determined to be classified as hazardous wastes, disposal must occur at a disposal facility permitted under the hazardous waste statutes and rules. Disposal of hazardous wastes at an authorized hazardous waste disposal facility is verified by a manifest system. The Department receives a copy of each manifest from the permitted hazardous waste disposal facility.

If the combustion residues are determined to be non-hazardous, but within one order of magnitude of (below) the threshold concentration for designation as hazardous waste for any contaminant, the Department will require that the residues be disposed of in a monofill. The monofill (which is a disposal facility limited to only one type of waste) must have a bottom lining system (to prevent contaminants from

entering the groundwater) and a leachate collection and disposal system. The Department will review and approve the engineering design and operational plans for the monofill before authorizing disposal of the combustion residues at the monofill. (A monofill may be constructed at an existing landfill, provided that the monofill is constructed in an area of the landfill that has not previously been used to dispose of any other solid wastes.)

If the analytical tests show that no contaminant is within one order of magnitude of (below) the concentration that would result in the residues being classified as hazardous, the Department would authorize disposal of the residues in a municipal solid waste landfill without separation (thus a monofill would not be required).

If the test results confirm that the bottom ash combustion residues are not hazardous wastes, the permittee intends to negotiate with the owner/operator of a municipal solid waste landfill for disposal of the bottom ash in a monofill at the landfill. Klamath County Solid Waste Division has indicated that no combustion residues will be accepted at any county landfill until a sufficient number of analytical results of samples from this facility are available to demonstrate that the residues are not hazardous waste.

4. **Will the Department authorize disposal of medical facility wastes generated in California (which are classified as hazardous wastes in that state) at the Bio-Waste Management, Inc. incinerator?**

The Department intends to retain the permit condition which prohibits disposal at this incinerator facility of any solid wastes which are classified as a hazardous waste by the state in which the wastes originate.

The Department does not have legal authority to prohibit disposal of medical wastes generated outside of Klamath County at this facility, provided that the wastes are not classified as a hazardous waste.

5. **How will sewage, contaminated washdown water and scrubber wastewater be managed?**

Sanitary sewage from the restrooms will be disposed of in a septic tank and drainfield on the plant property. Contaminated washdown water will be collected and used as make up water for the acid gas scrubber unit. Water contained in the scrubber unit will be evaporated and released into the atmosphere as water vapor in the exhaust gases. Discharge of contaminated water to public waters of the state will not be permitted.

The Solid Waste Disposal Permit also requires that medical waste containers and combustion residue containers be stored within fully enclosed buildings and that there be a physical barrier constructed to confine any liquids leaking from the waste or combustion residue containers and to divert uncontaminated surface water (such as rainwater discharged from roof gutters), or washdown water, and other liquids from the incinerator unit away from waste containers and ash containers. Contaminated liquids from the incinerator and from the emission control system must also be contained so as to prevent discharge to the environment.

6. **What control measures will be required to prevent vectors (such as rodents, and flies) from coming into contact with the medical wastes?**

Wastes are required to be delivered to and stored within sealed, undamaged and leak-proof containers. The waste containers are loaded into the incinerator charging chamber and pushed into the combustion chamber without being unsealed or otherwise opened. This method of handling the wastes is expected to minimize exposure of medical wastes to any vectors. The Department also requires the facility owner/operator to use bait to eliminate any rodents (field mice, rats, etc.) that might gain access into the fully enclosed building, and to use insecticides in the event that insects become a problem.

Storage of medical wastes in sealed boxes is expected to minimize the attractiveness of the wastes to rodents or insects.

7. **Will the facility be authorized to accept waste tires?**

Bio-Waste Management, Inc. has not requested, nor does the Department intend to authorize disposal of waste tires at this facility. The General Conditions and Disclaimers page (which mentions tires) that was attached to the back of the draft permit conditions is attached to every Solid Waste Disposal Permit, and does not signify that the facility will or will not store or dispose of tires. Each Solid Waste Disposal Permit contains a list of the specific types of wastes which the permitted facility is authorized to receive. The General Conditions and Disclaimers page has been amended to remove any mention of tires.

8. **What precautions will be required to minimize the risk of release of medical wastes to the environment in the event of a vehicular accident?**

Vehicles used to transport medical facility wastes from the originating facility to the Bio-Waste Management, Inc. incinerator must comply with all applicable federal, state or local governmental agencies having jurisdiction over commercial transportation within their operating

area. The Department's authority over vehicles and shipping containers is contained in Oregon Administrative Rules (OAR) Chapter 340, Division 61 "Solid Waste Management", Sections 070 and 075. These sections require that vehicles and containers used to collect and transport solid wastes be constructed, operated and maintained so as to not release the wastes into the environment.

The application for the Solid Waste Disposal Permit does contain procedures which will be followed by operators of transportation vehicles, including spill response procedures.

9. Is there a need for this particular facility?

There is a definite need for an environmentally acceptable method to dispose of pathogen containing wastes originating in medical facilities within Klamath County, as there is within other areas of Oregon. These medical facilities are not confined within a small area, but are located so as to provide medical care to the population residing within and outside Klamath County. Neither the residents nor the medical facilities that serve the residents of Klamath County are concentrated in one small area, thus there is no obviously best location for a medical waste disposal facility. This distribution of waste sources creates a need for location of the disposal facility near to the transportation system.

Although the hospital in Klamath Falls currently operates a pathological incinerator at the hospital, future revisions in emission control regulations now under consideration may result in a decision by the hospital to discontinue its operations. The Merle West Medical Center has written a letter (dated August 25, 1988) to the Department supporting the construction and operation of the proposed facility as being the only viable option for disposal of the hospital's wastes.

The proposed facility may be capable of disposing of more medical wastes than are presently generated within Klamath County, thus it is possible that bio-medical wastes from other portions of Oregon may be shipped to the Bio-Waste Management incinerator for disposal.

10. Are all medical facilities required to dispose of wastes which may contain pathogen organism at incineration facilities?

Neither federal or state statutes or rules require all medical facilities to dispose of infectious or potentially infectious wastes in incineration facilities at this time. The U.S. Congress has and is considering legislation which may require all or part of the medical community, (which includes hospitals, medical laboratories, medical and dental clinics and offices and other health care providers) to use incinerators to destroy infectious wastes.

Recent concerns about the potential for exposure of waste collection and disposal personnel to pathogen organisms in medical wastes have led to new programs being initiated in a number of locations in Oregon. These new programs require medical facilities to package infectious wastes into sealed containers for later pickup in non-compacting collection vehicles. The Department has received a number of requests from medical facilities ranging in size from small clinics to large hospitals for information on such collection services.

11. **What is the maximum length of time that wastes and combustion residues may be stored on site?**

Unburned medical wastes shall not be stored on site for more than ninety-six (96) hours, unless stored in a refrigerated building. If the incineration unit is not operational, waste deliveries must cease until the incinerator is fully operational. During incinerator shutdown periods, wastes must be diverted to an alternative disposal site. Combustion residues (fly ash and bottom ash) shall not be stored at the incinerator site longer than one month, with the residues stored in covered, leak-proof containers and inside a fully enclosed building. (Additional storage time for combustion residues is authorized because of the relatively small quantity of the residues produced each day.)

12. **Who will be responsible for cleanup in the event that the corporation owning and operating the incinerator goes out of business?**

Responsibility for cleanup and decontamination of the facility and operational equipment belongs to the owner and operator of the facility. The Department does not expect that these closure activities will be expensive.

13. **What will be done to insure that non-authorized wastes are not received at this facility?**

The Department did not include a requirement that the permittee open the sealed boxes to determine whether unauthorized wastes have been improperly loaded into the boxes, since the operators would then be exposed to potentially infectious wastes.

Department staff are currently evaluating the methods and the effectiveness of programs (such as using shipping documents which describe the wastes contained in each shipping container) to monitor for unauthorized wastes. The Department would amend the permit to add an inspection requirement if we determine that hazardous wastes are being delivered to and disposed in the incinerator.

14. **How will radioactive wastes be excluded from disposal at the incinerator?**

The Department has discussed this concern with the applicant following the August 25, 1988 public hearing, and the applicant has agreed to install a radiation sensor on the conveyor used to unload delivery vehicles. Waste containers which emit radioactive particles shall be returned to the medical facility which shipped the container(s).

AK968.A

Attachment VIII
Agenda Item O
November 4, 1988

RULEMAKING STATEMENTS

STATEMENT OF NEED

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

(1) Legal Authority

ORS 459.045 provides that the Environmental Quality Commission shall adopt "reasonable and necessary" solid waste management rules and such rules as are "necessary to carry out" the provisions of the Solid Waste Control laws and the policy established in ORS 459.015.

(2) Need for Rule

An increasing number of states are determining that certain waste materials, in addition to those nationally identified as "hazardous wastes" under the federal Resource Conservation and Recovery Act (RCRA), pose a threat to public health, safety, welfare and the environment, and therefore, have defined these additional wastes as hazardous or special wastes in their respective states. (Examples of these types of wastes include certain biomedical wastes, wastes which exhibit toxicity characteristics based upon established state testing procedures, and categories of processed wastes not presently identified as hazardous by federal or Oregon law.)

Once wastes are designated as hazardous under a state law, the storage, treatment, and disposal of these additional wastes are controlled by applicable hazardous waste management requirements in that state.

The designation of certain types of wastes as hazardous by other states, where those wastes are not presently regulated as hazardous in Oregon, poses an immediate threat to proper solid waste management in Oregon. Oregon solid waste disposal facilities present an economically attractive alternative for disposal of certain out-of-state hazardous wastes.

There is a present threat to the public health, safety, welfare and the environment in Oregon from increased volumes of hazardous wastes, including biomedical wastes, shipped to Oregon from out-of-state; inadequate authority to track all such waste shipments into Oregon; and inadequate safeguards to prevent improper treatment, storage, or disposal of the wastes as solid wastes in Oregon.

The state of origin of a designated hazardous waste has a valid interest in assuring that the waste is managed from "cradle to grave" as a hazardous waste regardless of whether the waste is disposed of in the state of origin or in a sister state. This assurance is

particularly necessary to prevent economic disincentives to waste minimization and treatment programs in the states of origin.

It is in the immediate mutual interests of the citizens of Oregon and its sister states that Oregon recognize and effectuate the laws of the respective states with respect to hazardous waste designations, where such wastes are transported to Oregon for management.

There are pending requests before the EQC and/or the Department to manage out-of-state hazardous wastes at solid waste disposal sites in Oregon. A temporary rule is necessary to address the immediate problems presented.

(3) Principal Documents Relied Upon in this Rulemaking

Oregon Revised Statutes, Chapter 459, Solid Waste Management
Oregon Revised Statutes, Chapter 466, Hazardous Waste Management
Oregon Administrative Rules, Chapter 340, Divisions 61 and 100-110
Nevada Hazardous Waste Regulations, 444.8565
State of Idaho Executive Order No. 88.22

LAND USE CONSISTENCY

The Department has concluded that the proposal conforms with the Statewide Planning Goals and Guidelines.

Goal 6 (Air, Water and Land Resources Quality): This proposal is designed to improve solid and hazardous waste management throughout the state and is consistent with the Goal.

Goal 11 (Public Facilities and Services): This proposal does not impact this Goal.

The rule does not appear to conflict with other Goals.

FISCAL AND ECONOMIC IMPACT

The proposed rule will have no direct significant fiscal impact on the Department, local governments, most private businesses or the public. The proposed rule could have an indirect fiscal impact on the state and its citizens by lessening the threat to the public health, safety, welfare and the environment caused by disposal of hazardous waste in solid waste management facilities. Problems caused by this disposal could contribute to the need for owners of solid waste facilities and the state to conduct environmental cleanup activities, sometimes at substantial cost.

The proposed rule will likely have a direct economic effect on a proposed infectious waste incinerator in Klamath County. The rule would prohibit the incineration of infectious waste generated in California. The economic affect on the proposed facility depends upon several factors, including

availability of waste in Oregon, costs of disposal at other facilities in Oregon and California, and cost of the proposed facility. Under certain circumstances, the economic affect of the proposed rule on the proposed facility could be substantial.

Other solid waste disposal facilities in the state may also be economically affected by the proposed rule. To the Department's knowledge, the affect will be minor.

There should not be an economic affect on other small businesses in the state from the proposed rule.

ZB7883.VII

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

The Environmental Quality Commission work session on November 3 will be held at the Department of Environmental Quality, 811 SW Sixth Avenue, Portland in meeting room 4. The session will begin at 2:30 pm.

Topics of the work session are:

Status of the Site Discovery Program

Proposed Criteria for Consideration of Increased Loadings Due to Expansions of Existing Sewage Treatment Plants or Industrial Sources.

EQC WORK SESSION
SITE ASSESSMENT PROGRAM
SITE DISCOVERY AND INVENTORY

I. Background
   A. Statutory Authority
   B. History of the Site Assessment Section

II. Mission of Site Assessment Section

III. Immediate Goals
   A. To develop a state-wide program to identify releases of hazardous substances (ORS 466.560(1))
   B. To develop and maintain an Inventory of confirmed releases of hazardous substances for the purpose of public information (ORS 466.577(1))
   C. To submit the Inventory and a progress report to the Governor, the legislature and the EQC by January 15, 1989

IV. Definitions
   A. Confirmed Release- Release or threat of release of hazardous substance that is verified with the following type of evidence:
      1. Observation
      2. Statement by the company
      3. Laboratory data from an environmental sample
   B. Inventory- A list of confirmed releases regardless of the status of the site and program within DEQ that may be in the lead

V. Site Discovery and Inventory Development
   A. Sources of information
      1. DEQ files
      2. Other government agencies
      3. Public input
      4. Industries with poor past practices
   B. Evidence review
   C. Approximate number of sites to date

VI. Administrative Process for the Inventory
   A. Notice letters and orders (content and number)
   B. Timeline
   C. Appeal Process
   D. Automatic Stay if Hearing Requested
   E. Delisting Rules

VII. Site Assessments
   A. Purpose
   B. Content
   C. Hazard Ranking

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

TO: Environmental Quality Commission **DATE:** November 3, 1988

FROM: Fred Hansen, Director

SUBJECT: Proposed Criteria for Consideration of Increased Loadings Due to Expansions of Existing Sewage Treatment Plants or Industrial Sources.

BACKGROUND

Oregon Administrative Rule (OAR) 340-41-026(2) states: "In order to maintain the quality of waters in the State of Oregon, it is the policy of the EQC to require that growth and development be accommodated by increased efficiency and effectiveness of waste treatment and control such that measurable future discharged waste loads from existing sources do not exceed presently allowed discharged loads unless otherwise specifically approved by the EQC."

This policy statement was adopted by the Commission in January, 1977, and is one of two basic components of the Department's current water quality management strategy as it relates to the control of point source discharges. The second component is reflected in the minimum design criteria for treatment and control of wastes as stated in Oregon Administrative Rule (OAR) 340-41. These criteria are specific for each of Oregon's nineteen river basins and specify the minimum treatment design levels for both sewage treatment plants and industrial waste water sources. The treatment levels for sewage treatment plants, in part, state specific numerical criteria. For industrial sources, on the other hand, the criteria require highest and best practicable treatment and control which means that, as technology improves with time, the criteria become more stringent.

When developed, the minimum design criteria were designed to assure that projected growth during the twenty year planning period would not result in any additional waste loadings to the state's waters.

The regulations also provide that wherever minimum design criteria for waste treatment and control facilities set forth in the rules are more stringent than applicable federal standards and treatment levels currently being provided (emphasis provided), upgrading to the more stringent requirements will be deferred until it is necessary to expand or otherwise modify or replace the existing treatment facilities. (OAR 340-41-120(3)(c))

This water quality management strategy has been extremely beneficial to the protection of Oregon's water quality. It has forced the advance of treatment technology which might not have otherwise occurred. It recognizes that Oregon's water bodies have a finite capacity to assimilate wastes and

still meet water quality standards. Consequently, it has helped preserve the remaining, unused assimilative capacity of Oregon's rivers and streams by minimizing the increase of discharges into them. The strategy, however, inherently causes disparities that, over time, have become more glaring. First, because the strategy is not triggered for existing facilities until there is a need to upgrade or expand, some facilities still are only required to meet the minimum treatment level required by the Federal government.

The second disparity arises when a new sewage source is proposed for discharge. The new source may only be required to meet the basin's numerical standard for sewage treatment plants if adequate stream flow is available and uses will be protected. Theoretically, the new source could be located next to an existing source that, because of expansions due to growth, has had to progressively increase its level of treatment resulting in effluent limits much more stringent than the basin standard required of the new source.

Historically, the Department always evaluates the potential effects on water quality from proposed new or expanded sources. This evaluation, among other things, considers the dilution capabilities of the receiving stream and, in conjunction with the water quality management strategy discussed above, has represented the basic approach to controlling wastewater discharges from point sources. Admittedly, it is more of a technology-based approach than a strict water quality approach. However, it is not intended to allow loads to increase to the carrying capacity of the streams.

ISSUES

1. As discussed above, application of this strategy can create some disparities or inequities between adjacent or similar sources. The Department does not believe that rules can be written that could anticipate the potential disparities and eliminate them from arising. Consequently, the Commission will continue to be faced with requests from sources to allow increased loadings. The issue then seems to be what criteria should be used in arriving at the decisions. A list of proposed criteria is attached as Attachment A.

2. Should new municipal sources be allowed only to meet the numerical minimum design criteria if a similar source along the same river system has been forced by the strategy to meet much more stringent treatment requirements? To be comparable to the approach for new industrial sources, it may be more appropriate for new municipal sources to meet treatment requirements equivalent to the highest level currently being required on that water body.

3. To what extent should the Commission involve itself in permit issuance decisions? In most permit actions, the Commission's role is to act as an appeal board. When the strategy was adopted, the Department did not envision that the Commission would be faced with very many requests.

In fact, the Department referred only those requests to the Commission that were considered significant and dealt with the rest through the regular permit issuance procedure. The Department believes that strict application of the strategy currently required by the rules will force many minor decisions to the Commission for action. We do not believe it is a good use of Commission time to consider routine requests nor effective use of Department staff time in preparing Commission staff reports on these routine requests. We recommend that the Commission limit its review and required approval to those requests from principal dischargers as defined by EPA criteria. A list of the principal dischargers is attached as Attachment B.

DIRECTOR'S RECOMMENDATION

The Director recommends that:

1. The Commission recognize the criteria stated in Attachment A as the basis for considering requests for increased loadings under OAR 30-41-026(2).

2. The Commission direct the Department to proceed to rule-making to:

   a. Change the minimum design criteria so that new municipal sewage treatment plants must meet the most stringent treatment requirements currently imposed on other sources discharging into the same water body.

   b. Limit the sources for which the Commission would review requests for increased loadings to those defined as principal dischargers by EPA and DEQ.

Richard J. Nichols:kjc
229-5324
WJ1138

PROPOSED CRITERIA FOR CONSIDERATION OF INCREASED LOADINGS DUE TO EXPANSIONS OF EXISTING SEWAGE TREATMENT PLANTS AND INDUSTRIAL SOURCES

1. **Practicality of options to increased loads.** The review of alternatives to increased loads concludes that there are no practicable alternatives. Obviously, practicability is not easily defined and must consider costs, available technology, public concerns, and other issues such as the environmental consequences of not requiring more stringent controls. An example: A sewage treatment plant currently discharges at a level of 10 mg/l each for BOD-5 and total suspended solids (TSS) on a monthly average. Growth has caused the plant to reach its capacity and the city proposes to double the size of the plant. Summer effluent irrigation is not possible because of steep slopes. Improved treatment over 10/10 would require expensive treatment technology. The receiving stream is large and has ample assimilative capacity for additional waste loadings.

2. **Increased loading from an existing treatment plant is due to: the extension of sewers to an existing development served by on-site systems that currently cause a health hazard or groundwater contamination; the reduction of existing total loads discharged by eliminating raw sewage by-passes; or the construction of a regional plant to replace several smaller, less-efficient sewage treatment plants.** In some cases, a particular sewage treatment plant may be asked to serve additional areas outside its existing service area to eliminate a water quality or public health concern. An example of this situation would be the City of Gresham which is extending sewers into mid-Multnomah County to eliminate the use of cesspools for waste disposal as required by the Environmental Quality Commission. The Commission allowed Gresham to retain its effluent concentration limits rather than provide a higher degree of treatment when serving mid-Multnomah County. In another case, a city's sewerage system is overtaxed with extraneous water, causing the sewer system to frequently by-pass raw waste and the plant to operate inefficiently. The excess water in the system resulted from combined sanitary and storm sewers, and groundwater infiltration due to leaky sewers. To address such a problem, the City of North Bend improved its sewer system and is expanding its plant. They are being allowed to maintain their effluent concentration limits. Finally, a plant may be selected to serve as a regional facility to replace a number of nearby smaller plants that are less efficient and would otherwise need to expand. The expanded sewage treatment plant at Roseburg is a case where this has happened. The upgrade of the Roseburg plant required a higher summer treatment level to meet the Umpqua Basin treatment and effluent dilution criteria. However, they were given higher winter permitted load limits for the larger plant flow while retaining secondary treatment during the wet weather season.

3. **Environmental trade-offs may outweigh the benefits of restricting seasonal increased loadings.** In some cases, there may be environmental advantages to allowing an increased loading to a particular stream. In addition, there may be undesirable environmental effects to the "no increase" alternative. Some examples:

   a. Philomath had an old conventional sewage treatment system that discharged reasonably well-treated effluent to the Marys River year-round. The new plant is a lagoon system that stores effluent through the summer so that no discharge occurs during the critical water quality period. Thus, loadings to the river are increased in the winter, but the flows in the Marys River are much greater at that time and the impacts significantly less.

   b. Some smaller cities have few resources available to properly operate and maintain a mechanical sewage treatment plant. In such situations, it may be preferable to allow expansion of their present lagoon system resulting in increased loads during the wet weather period rather than requiring them to install a more efficient mechanical facility that cannot be reliably operated and maintained. An example would be the small sewage treatment plant at Henley School outside of Klamath Falls. The school district invariably seems to fair to put in the time and resources to properly operate and maintain its mechanical sewage treatment plant. Consequently, the plant frequently malfunctions and discharges much poorer effluent quality than would have been discharged by a lagoon which requires less operation and maintenance.

   c. Although energy considerations have seemed to dim in most peoples' minds, it should still be a high priority with DEQ. While mechanical plants can achieve much better treatment than other less "high tech" systems, they do consume greater amounts of energy compared to lagoons and other "low tech" systems. In places where land is abundant and water quality considerations are not a concern because of ample dilution, low energy systems should be preferable.

   d. High tech treatment systems also can generate secondary environmental problems that should be seriously considered. Large volumes of sludge is one example of a secondary problem that can be generated by installation of more sophisticated sewage treatment technology. In many areas west of the Cascade Mountains, the sludges may be difficult to dispose of, especially during the winter and spring, and may be of greater potential threat to public health and the environment than by allowing increased effluent loadings to the river during periods of high flow.

ATTACHMENT B

OREGON MAJOR INDUSTRIAL PERMITS AS OF APRIL 1, 1988

NAME	LOCATION	REF. NO.	TYPE
Chevron Chemical Company	St. Helens	OR000163-5	Fertilizer
Dee Forest Products, Inc.	Dee	OR000186-4	Hardboard
Evanite Hardboard, Inc.	Corvallis	OR000029-9	Hardboard
Georgia Pacific Corp.	Toledo	OR000134-1	Pulp&Paper
International Paper Co.	Gardiner	OR000022-1	Pulp&Paper
James River II, Inc.	Wauna	OR000079-5	Pulp&Paper
James River II, Inc.	West Linn	OR000078-7	Pulp&Paper
Northwest Aluminum	The Dalles	OR000170-8	Aluminum
Ore-Ida Corporation	Ontario	OR000240-2	Potatoes
Oregon Metallurgical	Albany	OR000171-1	Titanium
Pennwalt Corporation	Portland	OR000159-7	Chlorine
Pope & Talbot Pulp	Halsey	OR000107-4	Pulp&Paper
Portland General Electric	Prescott	OR002345-1	Nuc. Power
Reynolds Metals	Troutdale	OR000006-0	Aluminum
Rhone-Poulenc, Inc.	Portland	OR000174-1	Pesticide
Smurfit Newsprint	Newberg	OR000055-8	Pulp&Paper
Smurfit Newsprint	Oregon City	OR000056-6	Pulp&Paper
Teledyne Wah Chang Albany	Albany	OR000111-2	Zirconium
Tillamook County Creamery	Tillamook	OR000014-1	Cheese
Weyerhaeuser Company	North Bend	OR000211-9	Pulp&Paper
Weyerhaeuser Company	Klamath Falls	OR000254-2	Wood Prod.
Weyerhaeuser Company	Springfield	OR000051-5	Pulp&Paper
Willamette Industries	Albany	OR000044-2	Pulp&Paper

DELETIONS - Hanna Mining and Nickel OR000162-7 (Closed)
ADDITIONS - Dee Forest Products, Inc. OR000186-4 (Re-opened)

ATTACHMENT B (Continued)

MAJOR MUNICIPAL INSPECTION SCHEDULE -- FY89
July 1988 - June 1989

Source	EPA Reference No.	1st Quarter			2nd Quarter			3rd Quarter			4th Quarter		
		J	A	S	O	N	D	J	F	M	A	M	J
Albany, City of	OR-002880-1												
Ashland, City of	OR-002625-5												
Astoria, City of	OR-002756-1												
Clackamas Co. Svc. Dist. #1	OR-002622-1												
Coos Bay, City of #1	OR-002357-4												
Coos Bay, City of #2	OR-002358-2												
Corvallis, City of	OR-002636-1												
Cottage Grove, City of	OR-002055-9												
Grants Pass, City of	OR-002884-3												
Gresham, City of	OR-002613-1												
Hood River, City of	OR-002078-8												
Klamath Falls, City of	OR-002630-1												
La Grande, City of	OR-002046-0												
Lebanon, City of	OR-002081-8												
McMinnville, City of	OR-002619-1												
Medford, City of	OR-002626-3												
MWMC	OR-003122-4												
Newberg, City of	OR-002025-7												

MAJOR MUNICIPAL INSPECTION SCHEDULE -- FY89
July 1988 - June 1989

Source	EPA Reference No.	1st Quarter			2nd Quarter			3rd Quarter			4th Quarter		
		J	A	S	O	N	D	J	F	M	A	M	J
North Bend, City of	OR-002336-1												
Oak Lodge Svc. Dist.	OR-002614-0												
Pendleton, City of	OR-002639-5												
Portland, City of (Col. Blvd)	OR-002690-5												
Portland, City of (Tryon Cr.)	OR-002689-1												
RUSA (Roseburg)	OR-002258-6												
Salem, City of (Willow Lake)	OR-002640-9												
South Suburban Svc. Dist.	OR-002387-6												
St. Helens, City of	OR-002387-6												
The Dalles, City of	OR-002066-4												
Tillamook, City of	OR-002066-4												
Tri-City Svc. Dist. (Oregon City)	OR-002829-1												
U.S.A. (Durham)	OR-002811-8												
U.S.A. (Forest Grove)	OR-002016-8												
U.S.A. (Rock Creek)	OR-002977-7												
U.S.A. (Westside)	OR-002334-5												
Woodburn, City of	OR-002000-1												

ATTACHMENT B(Continued)

WJ557.2

EQC BREAKFAST AGENDA

Friday September 9, 1988

The breakfast meeting will begin at 7:30 am.

Agenda items:

A. Update on Gary Newkirk: Twin Rocks sewer system

B. Additional air monitoring in Bend

C. Future EQC meeting dates

RJN - Juvenile to Monica
9/4/88

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

JLV A
S-file
Twin Rocks
S.D.

MEMORANDUM

John Taylor returns October 3rd

TO: Environmental Quality Commission

FROM: Fred Hansen, Director

SUBJECT: Sewage backing up into a house owned by Gary Newkirk

At the Commission's July 8, 1988 meeting in Portland, Mr. Gary Newkirk appeared at the public forum portion of the meeting to discuss his problem with sewage backing up into his house located in Barview, Oregon. This was Mr. Newkirk's second appearance before the Commission on this issue. Previously, the Department had responded to Mr. Newkirk stating that the issue of sewage backing up into his home was between him and the District. The Department was working with the District to assure adequate alarms are in-place and the District's pump station is maintained adequately.

At the July 8 Commission meeting, Mr. Newkirk expressed: 1) continued frustration with Twin Rocks Sanitary District about sewage back-up incidents, 2) concern that the Department had not complied with Federal law concerning preservation of National Historic Buildings, and 3) the Department had erred in approving engineering plans and specifications for the Twin Rocks sewer system which does not work properly because sewage backs up into his home. These statements imply the Department has responsibility for resolving the sewage back-up incidents because of our involvement with construction grants and engineering plan review.

On August 11, 1988, Tom Bispham and Dick Nichols met with the Twin Rocks Sanitary District Board in Twin Rocks to discuss the issue. Much of the information concerning the District's actions in this matter as stated in this report came from that meeting. In addition, the Department reviewed the environmental assessment for the Twin Rocks construction grant project and contacted the State Office of Historic Preservation regarding listing of Mr. Newkirk's house as a national historic place.

In the 1970's, in order to solve sewage disposal problems in the Barview area, the Twin Rocks Sanitary District was formed and a sewage collection and treatment facility was installed with the help of federal construction grants. Because of the steep, uneven terrain in the area, the system has a number of pump stations in order to convey the collected sewage to the treatment plant. One of these pump stations serves the sewage collection line that collects sewage from Mr. Newkirk's house. If the pump station fails for some reason, sewage will back up and, unfortunately, the lowest point for the sewage to overflow is the shower located on the bottom floor of Mr. Newkirk's house. In the early 1980's, after one of these incidents, the Department considered installation of overflow pipe to the beach or into the bay at the pump station to protect Mr. Newkirk's property from pump station failures. However, Tillamook Bay has adopted a management plan to minimize sewage bypasses in order to protect shellfish harvesting activities. The Department, therefore, did not consider an overflow pipe to be an appropriate alternative.

Mr. Newkirk's house was built in 1908 as a U.S. Lifesaving Station. According to the State Historic Preservation Office, it was listed on the Statewide Inventory of Historic Properties in 1974, in accordance with Statewide Land Use Planning Goal 5, and may be eligible for inclusion on the National Register of Historic Places. Mr. Newkirk has not yet asked that this property be considered for such listing. One criteria for the national listing is maintenance of the property largely in its original state. The Department of Interior specifies the types of changes and modifications that may be made to a historic property eligible for the National Register.

A review of the Twin Rocks Sanitary District grant project files show that the U.S. Environmental Protection Agency prepared an Environmental Assessment prior to grant award for construction of the sewerage project. Their assessment contains review comments of the State Historic Preservation Office which states that there are no known or suspected cultural, historical or archaeological sites that might be disturbed by the proposed project.

In recent conversations, the Historic Preservation office expressed that had they known Mr. Newkirk's property was listed on a statewide inventory, they would have so indicated in their comments on the federal grant project. However, they most likely would not have indicated a concern about impacts of the proposed sewerage project. They view connection of sewer hook-ups of historic buildings to be between their owner and the entity providing sewer service. Connecting a historic building to a sewer system does not adversely impact a building's historical significance. The Oregon Office of Historic Preservation is available to provide Mr. Newkirk guidance as to whether any specific proposed or needed improvements to his property might affect its ability to be listed should he chooses to make application for the National Register.

At the August 11 meeting with Twin Rocks Sanitary District, the Department obtained the District's perspective. The District recognizes that Mr. Newkirk's shower is the lowest point in the sewage collector. They also recognize that at certain times sewage has backed up into his house. However, the actual cause and number of incidents has not been agreed to by the District and Mr. Newkirk. Apparently, the most significant incident was several years ago, when a severe rain storm caused major flooding in the area. Sewage backed up into the house and Mr. Newkirk filed a claim with the District for damages. The District forwarded the claim to their insurance company who refused to honor it because the problem, in their opinion, was caused by an act of God. Mr. Newkirk has since filed suit for damages and, apparently, the case will go to court sometime in the future.

The District has attempted to correct problems at Mr. Newkirk's house. They have offered to install, at the District's cost, a pump station at Mr. Newkirk's house which would eliminate the problem of sewage backing up into his house from the collector sewer. The District, however, would require Mr. Newkirk to be responsible for operating and maintaining this pump station. This would be consistent with how the District deals with its other constituents who, because their buildings are located at elevations below the elevation of the collector sewer, have had to use pumps to gain access to the sewerage facility. Mr. Newkirk apparently is not satisfied with this offer, citing various reasons to the District why it is not acceptable. One reason may be his contention that the district operate and maintain it.

In addition, the District has installed a check valve (backflow preventer) in Mr. Newkirk's building sewer. The check valve should prevent sewage from backing up into the house although these types of valves are not totally reliable due to clogging.

With respect to Mr. Newkirk's third concern, the Department did review and approve plans and specifications for the District's interceptor and pump station. They had been prepared by a registered professional engineer. The Department's approval of plans means the Department reviewed favorably the estimates, assumptions and design presented in the specific project plans for reasonableness and practicality consistent with process technology. The system should, if operated and maintained as proposed, work properly to convey flows to the treatment plant. However, plan approval does not negate the responsibility of the system owner to provide additional facilities if problems develop.

The Department believes that sewage backing up into Mr. Newkirk's property needs to be addressed. In addition, the Department believes the remedy should prevent both sewage back-ups and sewage discharges from the existing pump station to shellfish growing waters.

Traditionally, the Department has limited its role and authority to assuring those components of a community system are properly designed, operated and maintained. However, any liabilities due to problems, such as sewage back-ups, that may affect an individual, are strictly between the owner of the sewage system and the affected property owner. In addition, the role of the Department has been limited to areas where the Department has statutory authority to prevent and abate water quality problems of sewage discharges to public waters. In almost all cases, in fact, sewerage facility owners address sewage back-ups into individual homes and the Department is not notified.

In this situation, the District has offered a solution that would address Mr. Newkirk's problem, but the District requires Mr. Newkirk to operate and maintain the new pump station serving his property. Irrespective of installation of a pump station to resolve Mr. Newkirk's problem, failure of the District's pump station may result in sewage back-up or discharge at the next lowest point, either a sewer access hole or another house. The issue before the Commission in this regard is to what extent the Department should become involved with resolution of the sewage back-up problem. The causes of sewage back-up problems are varied and may be difficult to identify, but may be caused by improper design, construction, operation and maintenance of a community system or building sewers or blockages within the building sewer, itself.

The Department could become involved to a greater level in regard to sewage back-up problems not only in this particular case, but statewide as well. This may create public expectations which the Department may not have the resources to fulfill. Frankly, the Department remains convinced that sewage back-up problems can best be handled between the individual and the sewerage facility owner. Only when resolution may affect other aspects of the community sewerage facility or the owner is obviously neglecting the proper operation of the community system should the Department become involved to correct a problem.

In any case, the Department does consider the potential effects of pump station failure in the review of plans. High priority is given to assuring that failures do not result in sewage discharges into dwellings or other buildings. Potential failures that would lead to discharges of untreated sewage to extra sensitive water, such as Tillamook Bay, are considered and added back-up features required to reduce the likelihood of such a discharge.

Note minor change

Options:

1. Send a letter to Mr. Newkirk stating that the Department has investigated his claims, that the District has offered a solution, and that we no longer will be involved in the issue. The Department's rules concerning plan review do not preclude ownership of pump stations by individuals. Mr. Newkirk can pursue legal action against the District and the Department would refrain from becoming involved.

2. Direct the Department to re-evaluate the District's pump station to assure that sewage back-up and discharges to the Bay are prevented to the maximum extent practicable.

Director's Recommendation:

The Director recommends the Commission direct the Department to re-evaluate the District's pump station to assure that sewage back-ups (daylighting to property) and discharges to sensitive public waters are prevented to the maximum extent practicable. The Director recommends, however, that before taking this action, Twin Rocks Sanitary District and Mr. Newkirk be invited to a future Commission meeting to present their views on the issue of sewage back-up into Mr. Newkirk's property.

WJ963
FH:kjc

1988-1989

EQC SCHEDULE

August 1988

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28	29	30	31			

September 1988

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November 1988

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December 1988

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January 1989

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29	30	31				

August

22 10:00am EQC Retreat, Silver Falls
23 8:00am EQC Retreat, Silver Falls

September

5 Labor Day - HOLIDAY
8 2:00pm EQC Work Session
9 8:00am EQC Meeting

October

20 1:00pm EQC Retreat - (time ??)
21 8:00am EQC Retreat

November

3 2:00pm EQC Work Session
4 8:00am EQC Meeting
11 Veterans Day - HOLIDAY
24 Thanksgiving - HOLIDAY

December

8 2:00pm EQC Work Session
9 8:00am EQC Meeting
25 Christmas - HOLIDAY
26 Christmas - HOLIDAY

January

1 New Year's Day - HOLIDAY
2 New Year's Day - HOLIDAY
16 Martin Luther King, Jr. - HOLIDAY
19 2:00pm EQC Work Session
20 8:00am EQC Meeting

February

20 President's Day - HOLIDAY

March

2 2:00pm EQC Work Session
3 8:00am EQC Meeting

April

13 2:00pm EQC Work Session
14 8:00am EQC Meeting

May

29 Memorial Day (Observed) - HOLIDAY

June

1 2:00pm EQC Work Session
2 8:00am EQC Meeting

July

4 Independence Day - HOLIDAY
13 2:00pm EQC Work Session
14 8:00am EQC Meeting

February 1989

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March 1989

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April 1989

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May 1989

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28	29	30	31			

June 1989

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July 1989

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23	24	25	26	27	28	29
30	31					

09/07/1988

F

CITY OF PORTLAND
ENVIRONMENTAL SERVICES

Wastewater
Treatment Branch
5001 N. Columbia Blvd.
Portland, Oregon 97203
(503) 285-0205

September 9, 1988

Environmental Quality Commission
811 S. W. 6th Avenue
Portland, OR 97204

Gentlemen:

It is requested that the following comment be considered with regard to Agenda Item F scheduled for your meeting September 9, 1988, "Proposed Adoption of Rules to Certify Wastewater System Personnel in Accordance with Oregon Revised Statute (ORS) 448.405."

It is of concern to me that confusion still exists as to exactly which individuals are required by the statute and rules to be certified. Part of this is due to the apparently interchangeable use of "Shift Supervisor" and "Operator" at various points in the rule and supporting documentation. For example in the Executive Summary Item C Page 2, it states "systems having more than one daily shift (are required to) have shift Supervisors certified no less than one grade level lower than the classification of the system." Whereas on Page 10, of the summation of the Director's recommendation, (Item 5.D.) "...systems having more than one daily shift would be required to have their shift Operators certified no less than one grade level lower than the system classification. "

Proposed administrative rule in Paragraph 340-49-015 (1) requires that the system be "supervised by one or more Operators who hold a valid certificate at a grade level equal to or greater than the Wastewater Treatment System Classification." This indicates that "Operator" is the Supervisor and is required to hold a certification.

Based on this interpretation, it would be the intent of the City of Portland to designate as "Supervisors" Wastewater Operations Director, Superintendent, Manager, and Supervisors as the "Operators" (340-49-015)(5) with the designated responsiblities of supervising the operations of their wastewater system. These personnel would either be on-site or one-call for all shift operations and would be required to be certified in accordance with the rules.

I have been assured by both Mary Halliburton and Carl Andresen of the DEQ staff that the above interpretation is correct. With that in mind on behalf of the City of Portland, I support the adoption of the proposed Administrative Rules.

I further wish to commend the DEQ staff and the members of the committees that put considerable effort and energy into the process that led to developing these rules.

Sincerely,

Ross Peterson
Director Wastewater Operations

RP/slc

cc: John Lang

F

League of Oregon Cities

SALEM: Local Government Center, 1201 Court Street N.E., P.O. Box 928, Salem 97308, Telephone: (503) 588-6550 • Toll Free in Oregon 1-800-452-0338

September 8, 1988

Mr. William Hutchison, Chairman
Environmental Quality Commission
811 SW 6th Avenue
Portland, Oregon 97204

Dear Mr. Hutchison:

I am writing to express the concerns of the League of Oregon Cities regarding the Department's proposed rules governing wastewater system operators as contained in Oregon Administrative Rules, Chapter 340, Division 49.

We are particularly concerned about the possible confusion surrounding the definition of "Shift Supervisor" contained in OAR 340-49-010(14) and the general requirement of Shift Supervisors contained in OAR 340-49-015(2). We are concerned that, when coupled, the two imply that a wastewater system which operates more than one shift must have a certified operator on-site during shift operations.

When House Bill 3386, the authorizing legislation for these rules, was considered before the House Committee on Environment & Energy, the League expressed concern about the ability of small rural systems to attract enough certified personnel to have one certified operator per shift. Our concerns resulted from the limited pool of certified personnel and limited locations in Oregon which offer the training necessary for operators to achieve certification. To facilitate resolution, the Committee Chairman assigned the issue to a working group chaired by Representative Nancy Peterson. During the subsequent work session on the bill, Representative Peterson reported the working group's consensus as follows:

> This was an issue we talked about last time. The original bill reads 'all sewage treatment works, whether publicly or privately owned, used or intended for use by the public or private persons must <u>at all times</u> be under the supervision of an operator certified pursuant to Section 2 of this Act.' The concern in committee last time was (that) this means that everyone needs someone who's certified (to be there on-site). . . (What) I want to put on the record is someone must be trained and available but not on site.

We believe that both the committee's deletion of the phrase "at all times" from the original bill and Representative Peterson's explanation clearly demonstrate that the Legislature intentionally did <u>not</u> require a certified operator on every shift. Although this intent is reflected in the definition of "Supervisor" contained in OAR 340-49-010(16), it is murky in the definition of "Shift Supervisor", particularly when coupled with the requirement in OAR 340-49-015(2) that, if systems have more than one shift, the owner ". . . shall have their shift supervisor certified . . ."

To more accurately reflect legislative intent, we suggest that the Commission simply delete 340-49-015(2) and the associated definition of "shift supervisor".

Alternatively, the Commission could amend the rules as follows:

GENERAL REQUIREMENTS

340-49-015

* * *

(2) After July 1, 1989, any wastewater system owner with a system having more than one daily shift shall have their shift supervisor, if any, certified at no less than one grade level lower than the wastewater system classification.

* * *

DEFINITIONS

340-49-010

* * *

(14) "Shift Supervisor" means the person to whom the system owner designates authority for *[establishing and]* executing the specific practice and procedures for operating the wastewater system when the system is operated on more than one daily shift. The system owner is not required to designate a shift supervisor. A shift supervisor is not required to be on site at all times. A shift supervisor, if designated, shall be available to the system owner and to any other operator during the shift supervisor's assigned shift.

* * *

I believe that the incorporation of either of these alternatives will adequately address our concerns and eliminate any future conflict over the Legislature's intent with this program.

I regret that I am unable to personally attend the Commission meeting to indicate the significance which we attach to this issue. I hope that this letter has adequately conveyed our views and want to express my appreciation for your consideration of our concerns. Please include this letter as part of the record.

Yours truly,

Nels Hansen, President
League of Oregon Cities

NH:jr

cc: Wallace Brill, Commissioner
Emery Castle, Commissioner
Genevieve Pisarski Sage, Commissioner
William Wessinger, Commissioner
Fred Hansen, Director

POSSIBLE VARIANCE ALTERNATIVES THE COMMISSION MIGHT CONSIDER FOR THE DEVELOPMENT OF AN ON-SITE SYSTEM ON THE FREAD LOT (LOT 46, DESCHUTES RIVER TRACTS)

I. Reduce setbacks to existing wells on both Fread properties (Lots 46 and 50) and three neighboring properties. Allow the installation of either a standard, pressure or sand filter system.

Discussion

Disadvantage: With the exception of Ervin Steigman (Lot 41), the property holder immediately south of Lot 46, no other neighbors have indicated they would be willing to allow the installation of some variety of on-site system closer than 100' from their wells.

If the Commission were to favor this option and grant a variance to OAR 340-71-220 (2)(i), Table 1, Item 1 (the rule that requires the nearest portion of a soil absorption facility, including its replacement area to be 100' or more from a well), it could specify the type of on-site system to be developed on Lot 46. Possible on-site system development options include:

A. *Standard Septic Tank - Drainfield System*

A standard system would cost about $1500.00 to construct. However, at least 2200 ft^2 - 3000 ft^2 area would be required to accommodate the 300 linear feet of drainfield needed for the development of this system variety. Depending on terrain, even more area might be necessary to construct a standard system. Due to the area required for this development option, a standard system would have to located closer to existing wells than either a pressurized or sand filter system.

In addition, a standard system would be apt to provide a lower level of protection to the shallow aquifer which underlies Lot 46 and neighboring properties. Not only would a standard system be considerable closer (horizontally to wells) but it would be much more likely to allow inadequately treated septic tank effluent to descend quickly through rapidly and very rapidly drained soils and geological materials. As a consequence, wastewater may not remain in these materials long enough to facilitate sufficient treatment to occur before effluent drained to groundwater (e.g., bacteria, virus, nitrogen).

B. *Pressurized Distribution System*

A pressurized distribution system would cost about $2500.00 to construct. The area required for the development of a pressurized distribution system (two pressurized beds) would range from 1500 ft^2 to 1800 ft^2, depending on terrain. Greater horizontal separation could be maintained between a pressurized distribution system, the Fread well on Lot 50 and neighboring wells than would result with the development of a standard system. A pressurized

distribution system would cause septic tank effluent to move slowly through soil and geological materials under unsaturated flow conditions and would allow effluent to be retained long enough in these materials to facilitate a high level of bacterial and viral removal and considerable nitrogen reduction. The actual level of treatment provided by a pressurized distribution system would depend somewhat on the depth of unsaturated loamy sand beneath the pressurized distribution bed.

C. *Sand Filter System*

A sand filter system would cost about $3500.00 to construct; require considerably less area (about 1000 ft^2 for bottomless sand filter bed and replacement bed) than other on-site system varities; and its location would not be limited by irregularities in landscape. A sand filter would provide the greatest horizontal separation between wells and the system development area. In addition, because of the known characteristics of filtering media (nature and thickness of filtering sand) and the system's design and operation, a sand filter system would be likely to provide the highest level of treatment of the three on-site options listed and, thus, provide the greatest assurance that groundwater would be protected. Oregon experimental systems studies demonstrated conventional sand filters reduced BOD_5, suspended solids, total nitrogen, fecal coliform, and total coliform, 99%, 93%, 47%, 3 logs and 2 logs, respectively.

II. Reduce setbacks to the existing wells on the Fread properties (Lots 46 and 50) only. Maintain 100 foot setbacks to neighboring wells, and require the installation of a standard, pressure or sand filter system.

Discussion.

If a minimum 100' separation distance were maintained between the neighboring wells and one of the on-site system varieties described under Option I, various levels of horizontal separation from wells on Lots 46 and 50 and system development areas would occur (Figures 1, 2, and 3).

Assuming no problems in slope irregularity, a standard system could be located 25' from the existing (*inactive*) well on Lot 46 and 40' from the well serving the Fread residence on Lot 50 (Figure 1). Not only would a variance to the horizontal setback from system development areas and wells be necessary, but a variance would also have to be granted from the 10' minimum setback required between system placement areas and property boundaries (OAR 340-71-220(2)(i), Table 1, Item 10).

If landscape conditions allowed pressurized beds to be placed in areas indicated in Figure 2, a 25' separation distance could be maintained between the *inactive* well on Lot 46 and the initial system placement area while a 50' separation distance would occur between the

replacement pressure bed development area and the well located on Lot 50.

Unlike standard and pressurized distribution systems, the location of bottomless conventional sand filter systems on Lot 46 would not be limited by terrain. Bottomless sand filters would provide the greatest degree of separation between wells and on-site system development areas (Figure 3; 25' from the *inactive* well on Lot 46 and 65' from the well on Lot 50).

Relative levels of protection afforded by standard, pressurized, and sand filter systems are described under Option I.

III. Require reabandonment of the well on Lot 46 according to Water Resources Commission rules and connection of the proposed mobile home for that Lot to the Laidlaw Water District. Retain the use of the well on Lot 50 for domestic and irrigation purposes.

Discussion.

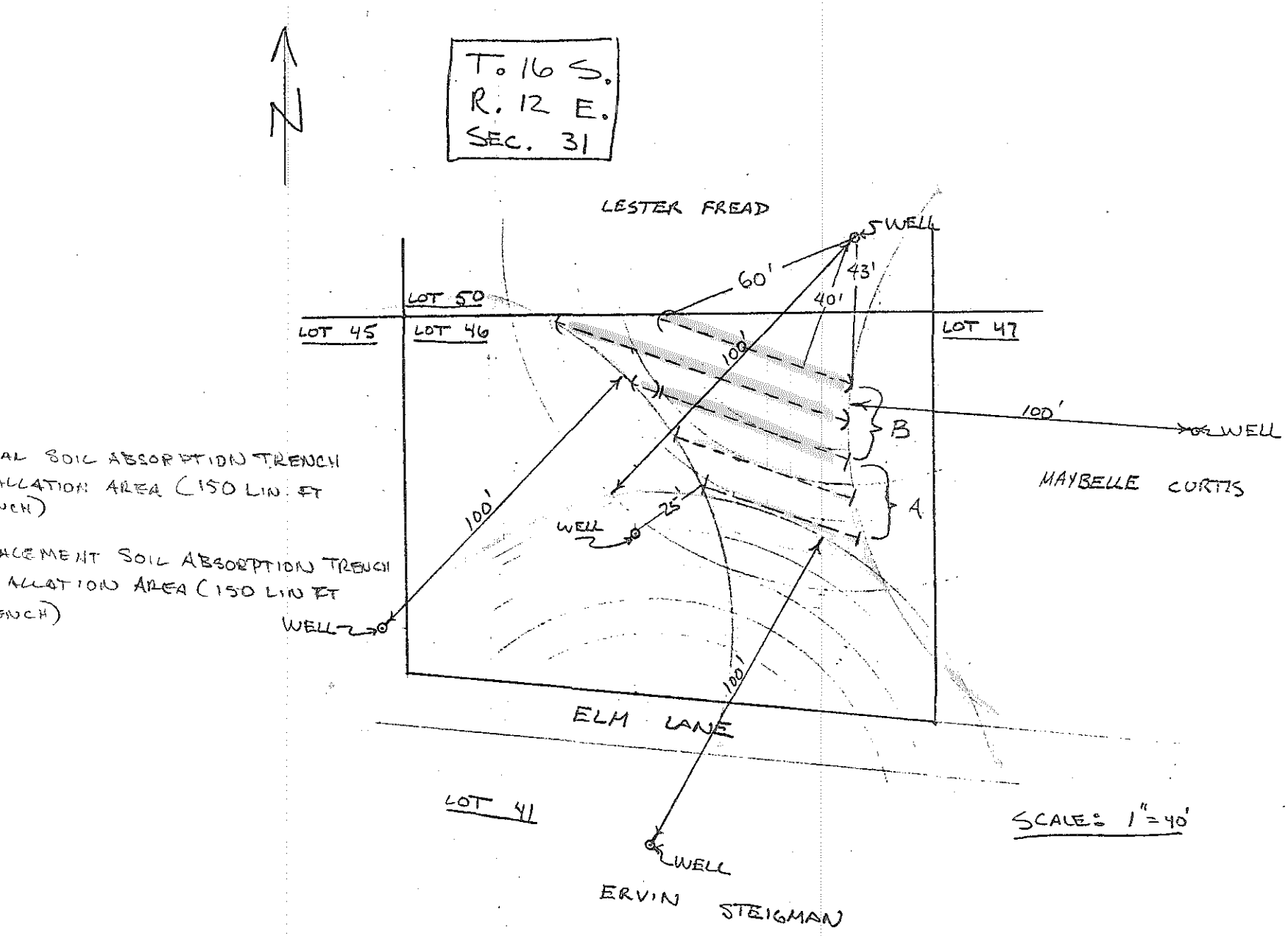
By exercising this option, minimum separation distances between system development areas and the well on Lot 50 would be 40', 50', and 65' for standard, pressurized and sand filter systems, respectively (Figures 1, 2 and 3).

Relative levels of protection offered by systems are described under Option I.

IV. Require the reabandonment of the well on Lot 46 according to Water Resources Commission rules; the connection of the proposed mobile home for that Lot and the existing residence on Lot 50 to the Laidlaw Water District; and the disconnection of piping between the well on Lot 50 and residential plumbing. Allow the well on Lot 50 to remain for irrigation purposes.

Discussion.

In exercising this option, minimum separation distances between system development areas and the well on Lot 50 and system treatment efficiencies would be as described under Option III. However, there would be somewhat less risk to the health of the Freads or their successors on Lot 50 since potable water would be provided from the Laidlaw Water District.



A = INITIAL SOIC ABSORPTION TRENCH INSTALLATION AREA (150 LIN. FT TRENCH)

B = REPLACEMENT SOIL ABSORPTION TRENCH INSTALLATION AREA (150 LIN FT TRENCH)

FIGURE 1 - RELATIONSHIP BETWEEN STANDARD SOIC ABSORPTION TRENCH SYSTEM DEVELOPMENT AREAS AND THE EXISTING WELLSON LOTS 46 AND 50

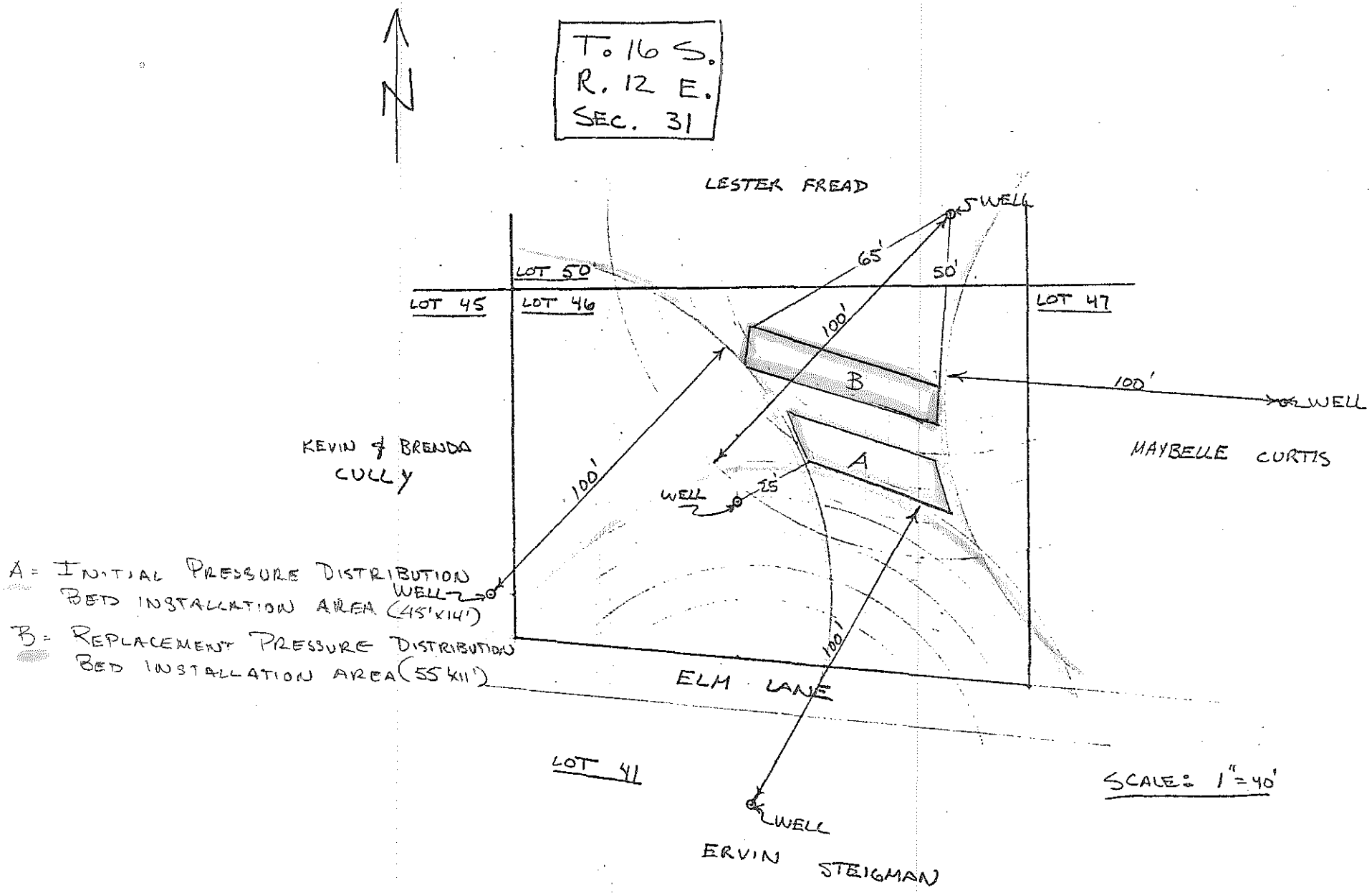
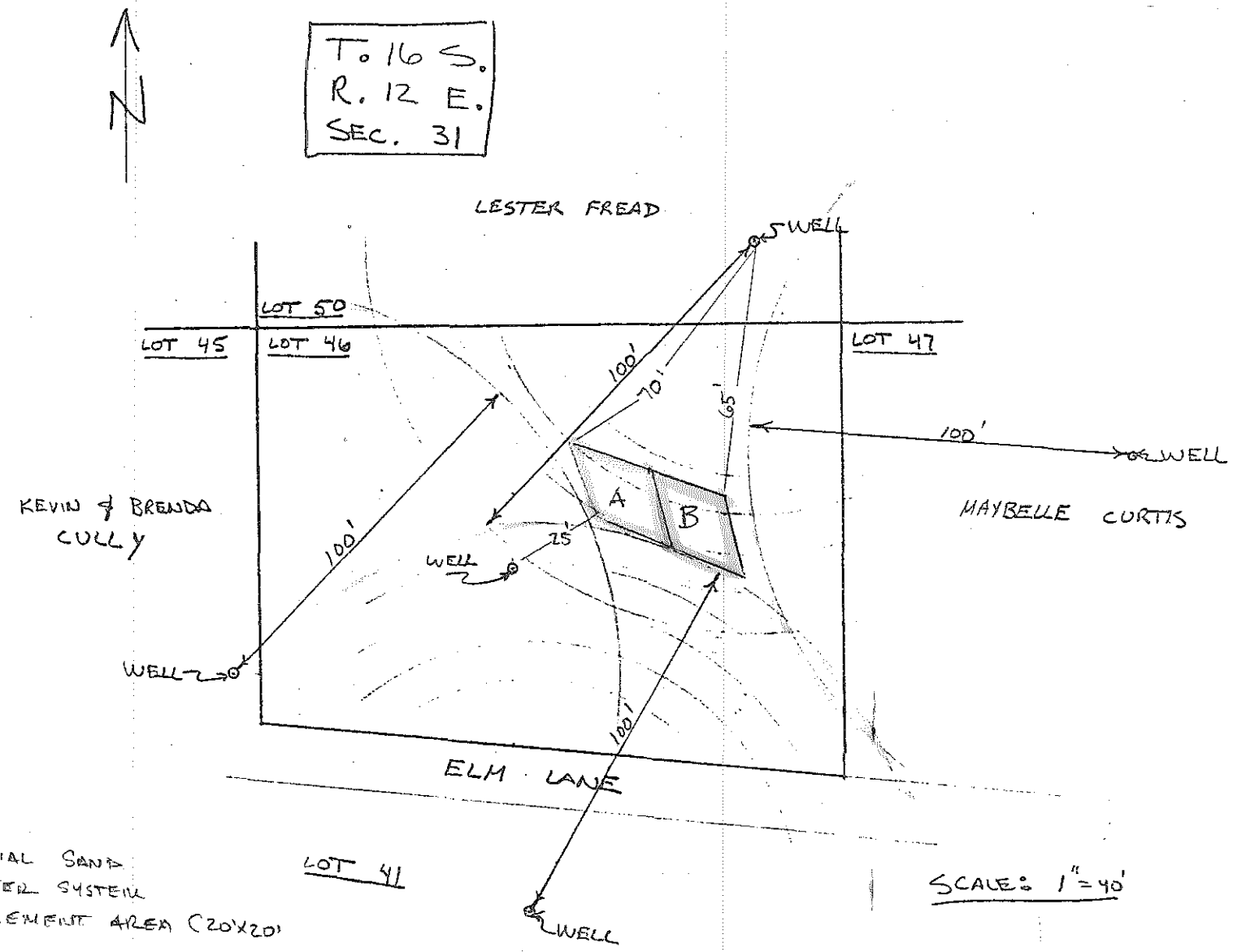


FIGURE 2 RELATIONSHIP BETWEEN PRESSURE DISTRIBUTION SYSTEM DEVELOPMENT AREAS AND THE EXISTING WELLS ON LOTS 46 AND 50



A = INITIAL SAND FILTER SYSTEM PLACEMENT AREA (20'X20')

B = REPLACEMENT SAND FILTER SYSTEM REPLACEMENT AREA (20'X20')

FIGURE 3 RELATIONSHIP BETWEEN SAND FILTER SYSTEM DEVELOPMENT AREAS AND THE EXISTING WELLS ON LOTS 46 AND 50

5

MEMORANDUM TO

DEPARTMENT OF ENVIRONMENTAL QUALITY

Ladies and Gentlemen:

I am the attorney for the Charleston Sanitary District. As mentioned at page 1, paragraph 2 of the Memorandum for Agenda, Item J, Coos Bay Treatment Plant No. 2 services the industry and population of the Charleston Sanitary District. Service is provided pursuant to a written Regional Agreement whereby Charleston paid 29.6% of the 1976 local capital cost for improvement of the Empire Treatment Plant and thereby secured a reservation of approximately 29.6% of plant capacity. Since 1976 the Charleston Sanitary District has paid the operational expenses of Plant No. 2 based upon Charleston's share of flows, BODs and suspended solids.

Plant budgets and decisions on the creation of reserves are by the Agreement supposed to be determined by a two member Operations Committee. In practice, the Committee has been ignored by the City of Coos Bay. The Committee was not consulted by Mr. Towery with respect to the August 16, 1988 stipulation which is before the Commission as Exhibit E.

Since 1985 Charleston has made repeated efforts to resolve it's differences with Coos Bay on management issues including budget issues, the need for accurate flow measurement, plant maintenance needs and expense, restoration of plant equipment to the as built conditions, cost issues and the need for I & I work by the City of Coos Bay in accordance with Coos Bay's comprehensive sewerage program of 1971.

With such a plethora of issues and little real hope for successful cooperative future operation and development of the Regional Treatment Plant, the Sanitary District has decided to consider the alternative of an independent Charleston treatment facility.

D E Q has narrowly focused it's efforts on expansion of a twenty-four (24) year old Empire treatment facility servicing a failed regional concept.

Space is at a premium at the existing plant site.

Repair of the Empire Plant may approach the cost of a total rebuild.

The focus should be broadened to include the possibility that the area's sewage treatment needs would be better met by two (2) independent, cooperatively linked treatment facilities; one operated by the Charleston Sanitary District and one operated by the City of Coos Bay.

The Charleston Sanitary District asks that removal of Charleston flows from the Coos Bay system be considered in connection with Plant No. 2 issues and asks that the Environmental

Quality Commission open the door to Charleston Sanitary District participation in the process. Specifically, we ask that the Environmental Quality Commission make two (2) modifications to the stipulation and final order, neither of which add to the burden of the City of Coos Bay. We ask that proposed Exhibit E to Agenda Item J be amended as follows:

1. At page 4 of paragraph 8 (A)(2) after the words "plant 2 improvements" add:

"or acceptable substitutes thereto"

2. At the end of paragraph 8 (A)(2) add the following parenthetical:

"(The Charleston Sanitary District may also submit alternatives by March 1, 1989)"

I have prepared a revised copy of page 4 showing these interlineations and I thank you for your courtesy in allowing me to speak to you.

Sincerely,

CHARLESTON SANITARY DISTRICT

By: Lynn H. Heusinkveld

Lynn H. Heusinkveld
Attorney for Charleston
Sanitary District

violation of any interim effluent limitations set forth in Paragraph 5 above. Furthermore, this Stipulation and Final Order is not intended to limit, in any way, the Department's right to proceed against Respondent in any forum for any past or future violations not expressly settled herein.

NOW, THEREFORE, it is stipulated and agreed that:

8. The Environmental Quality Commission shall issue a final order:

A. Requiring Respondent to comply with the following schedule:

(1) By November 15, 1988, certify completed installation and startup of approved chemical feed and flow measurement equipment.

(2) By March 1, 1989, submit an approvable draft facilities plan supplement for Plant No. 2 improvements or an acceptable substitute thereto, including analysis of 1987-89 infiltration-inflow investigations, and advertise public hearing (The Charleston Sanitary District may submit an alternative by March 1, 1989).

(3) By April 1, 1989, arrange for local funding and notify the Department in writing when such has been accomplished.

(4) By May 1, 1989, select and designate an engineer for final design, and authorize start of design.

(5) By November 1, 1989, submit final design documents for approval.

(6) On February 1, 1990, July 1, 1990, and February 1, 1991 submit progress reports.

(7) By April 15, 1991, certify completion of construction.

(8) By May 15, 1991, certify attainment of full operational level and met all waste discharge limitations of the

NEIL GOLDSCHMIDT
GOVERNOR

Forestry Department
OFFICE OF STATE FORESTER
2600 STATE STREET, SALEM, OREGON 97310 PHONE 378-2560

September 8, 1988

Fred Hansen, Director
Oregon Department of Environmental Quality
811 S.W. 6th Avenue
Portland, Oregon 97204

Dear Fred:

I have just recently been informed that the Department of Forestry is to be included in the Tualatin River Total Mean Daily Load (TMDL) reduction program. Our first involvement in this process was attendance at the September 1 meeting in Durham. At that time, we received a draft of the "Special Policies and Guidelines (340-41-470) rules. Section (h) of these rules states that a Memorandum of Agreement between our agencies will, as we understand it, include a program plan for TMDL (phosphates and ammonia-nitrogen) control.

The Department of Forestry regulates forest operations through the Forest Practices Rules, which are Best Management Practices. We are aware of no scientifically valid models that can be used to determine expected TMDL associated with forest practices. We are not aware of any evidence to suggest that significant phosphate or ammonia-nitrogen loadings originate from forest lands. Analysis of most water samples from forest lands indicates very low phosphate or ammonia-nitrogen loadings. I understand that DEQ's own sampling from upper tributaries of the Tualatin River also shows this.

We have been actively working with DEQ on meeting requirements of Section 319 (Water Quality Act of 1987). Based on our attendance at the September 1 meeting in Durham, there appears to be little tie between the 319 and the TMDL processes. I feel that it would be far more effective for OSDF to work at consistent water quality protection through Section 319, rather than trying to implement a quasi-point source approach that appears to have no scientific validity.

(Clinical) Juniper Council

Since we were informed of a potential for forestry involvement only one week ago, we have had no opportunity for input into the draft rule.

Fred Robinson has already discussed this situation with Dick Nichols. I suggest that you and I also discuss it. At the present time, I object to including forestry in Section (h) in your administrative rule (340-41-470).

Sincerely,

James E. Brown
State Forester

JEB:KM:na
cc: Gail Achterman
Bob Buchanan

CITY OF OREGON CITY

Incorporated 1844

Environmental Quality Commission
811 S.W. Sixth Ave.
Portland, Oregon 97204

Dear Sirs:

Last evening our Clackamas County Cities Association held our monthly meeting to discuss issues of common concern. After a discussion of the proposed rules relating to the opportunity to recycle yard debris, I was selected to represent the association here today to address our concerns about implementation. The Clackamas cities represented are Canby, Lake Oswego, Milwaukie, Oregon City, West Linn, Wilsonville, Tualatin, Molalla and Happy Valley.

We are primarily concerned with the implemention of the program.

Simply stated the market can only absorb a small fraction of the mandated yard debris that would be generated. McFarlanes in Clackamas County can't accept further product per D.E.Q. Grimms in Washington County can only accept the debris from approximately four cities the size of Oregon City. The obvious problem the cities are then faced with is a D.Q.Q. mandate that is unsupportable. This mandate would add significant costs above the removal, and would essentially force the cities into the yard debris product business, or send it to Metro for landfill. Our suggestion is to please abate the performance standards setting them over from July 1, 1989 to a date when a processor can reasonably be expected to handle the product.

We in Oregon City have had a model yard debris pick up program for many years. Gladstone and Oregon City lead the state in this program area. Please do not jeopardise our program by mandating implementation of standards that will create a surplus of product that could choke off our processor and thus our program.

Yours very truly

Kenneth M. Mitchell Mayor

Kenneth M. Mitchell

L & N

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

TESTIMONY

RENA CUSMA

EXECUTIVE OFFICER

METROPOLITAN SERVICE DISTRICT

FRIDAY, SEPTEMBER 9, 1988

MEMBERS OF THE COMMISSION:

I APPRECIATE THE OPPORTUNITY OF APPEARING BEFORE YOU ON TWO OF THE ITEMS ON YOUR AGENDA: YOUR PROPOSED RULES FOR YARD DEBRIS RECYCLING AND THE METRO WASTE REDUCTION PLAN.

I HAVE GREAT CONCERNS ABOUT BOTH OF THESE TOPICS. WASTE REDUCTION IN GENERAL AND YARD DEBRIS RECYCLING SPECIFICALLY ARE VITAL TASKS.

I OFFER THESE COMMENTS IN FULL RECOGNITION OF THAT FACT. I ALSO OFFER THEM IN RECOGNITION OF THE FACT THAT PROBLEMS OF THIS SCOPE NEED WORKABLE SOLUTIONS. THE PUBLIC IS NOT WELL SERVED BY HAVING GOVERNMENT SPEND ITS PRECIOUS RESOURCES ON PROGRAMS THAT HAVE LITTLE CHANCE OF WORKING.

WITH THAT, LET ME ADDRESS THE DEPARTMENT'S RECENT REPORT ON METRO'S IMPLEMENTATION OF THE WASTE REDUCTION PLAN WHICH THIS COMMISSION ADOPTED IN 1986.

MOST OF YOU WERE NOT ON THE COMMISSION WHEN THAT PLAN WAS ADOPTED NOR HAD I BEEN ELECTED. NONETHELESS, I BELIEVE WE CAN ALL AGREE THAT THE GOAL OF THAT PLAN -- AND THE GOAL OF OUR SOLID WASTE POLICIES IN THIS STATE -- IS TO REACH THE MAXIMUM FEASIBLE REDUCTION OF WASTE GOING TO LANDFILLS.

METRO HAS MET THAT RESPONSIBILITY HEAD-ON. IN OUR ANNUAL MEASUREMENT OF RECYCLING, COMPLETED IN AUGUST, WE HAVE DETERMINED THAT RECYCLING IN OUR REGION HAS RISEN FROM 18 TO 25 PERCENT IN THE LAST THREE YEARS. IT HAS RISEN 3 PERCENT IN THE LAST YEAR ALONE.

THE REGION HAS REACHED THIS LEVEL OF RECYCLING -- A LEVEL THAT IS CONTINUING TO GROW -- BY MANY EFFORTS: EFFORTS BY INDIVIDUALS, BY BUSINESSES, BY LOCAL GOVERNMENTS AND BY METRO.

BUT, I AM ADDRESSING THIS ISSUE TODAY BECAUSE THE DEPARTMENT OF ENVIRONMENTAL QUALITY HAS INFORMED THE METROPOLITAN SERVICE DISTRICT THAT IT HAS NOT COMPLIED WITH ITS OWN WASTE REDUCTION PLAN.

ASSUMING THAT THE WASTE REDUCTION PLAN IS A DETAILED LIST OF ALL THE PROGRAMS METRO WILL IMPLEMENT, THEN THE DEPARTMENT IS CORRECT. BUT ASSUMING THAT ANY LONG RANGE PLAN -- SUCH AS THE WASTE REDCTION PLAN -- IS DYNAMIC AND MUST CHANGE WITH CIRCUMSTANCES OVER TIME, THEN THE DEPARTMENT IS INCORRECT.

EITHER WAY THE PLAN IS VIEWED, IT'S IMPORTANT TO NOTE THAT METRO IS IMPLEMENTING THE VAST MAJORITY OF THE PLAN -- EFFECTIVELY AND ON SCHEDULE. FOR EXAMPLE:

* METRO IS IN THE FINAL STAGES OF NEGOTIATING FOR A FIRST IN THE NATION COMPOST PLANT THAT WOULD REDUCE THE AMOUNT OF GARBAGE GOING TO LANDFILLS BY 100,000 TONS A YEAR.

* METRO IS PROMOTING YARD DEBRIS COMPOST AND HELPING DEVELOP COMPOST MARKETS -- AND COMPOST PROCESSING HAS INCREASED FROM 21,000 TONS A YEAR TO 31,000 TONS IN THE LAST YEAR.

* METRO IS FUNDING A PILOT PROGRAM IN PLASTICS COLLECTION IN OREGON CITY AND GLADSTONE.

* METRO IS CURRENTLY AWAITING RESPONSES TO AN RFP FOR A RECYCLING CONTAINER PROGRAM TO BE CONDUCTED IN PART OF ALL THREE METROPOLITAN COUNTIES.

* AND METRO HAS STARTED A $300,000 PER YEAR GRANT PROGRAM TO ENCOURAGE RECYCLING -- OUR "ONE PERCENT FOR RECYCLING" PROGRAM.

* OTHER ACTIVITIES INCLUDE A COMPREHENSIVE MEASUREMENT OF WHAT COMPRISES OUR GARBAGE SO THAT WE CAN DEVELOP PROGRAMS TO RECYCLE THE MOST WASTE; AN AWARD WINNING PROMOTION EFFORT ON TELEVISION AND RADIO AND IN NEWSPAPERS; IMPLEMENTATION OF A

RECYCLING CURRICULUM IN COOPERATION WITH THE DEQ AND INCREASED STAFFING OF OUR RECYCLING INFORMATION CENTER THAT NOW HANDLES MORE THAN 2,000 CALLS A MONTH.

IT IS FAIR TO SAY THAT THE WASTE REDUCTION PLAN HAS ACTED AS A ROADMAP FOR METRO'S EFFORTS TO INCREASE RECYCLING AND DIVERT WASTE FROM THE LANDFILL. BUT, THERE HAVE BEEN DEPARTURES FROM THE PLAN. I WILL DISCUSS THREE SPECIFICALLY.

FIRST, METRO HAS NOT IMPLEMENTED THE CERTIFICATION PROGRAM. THE CERTIFICATION PROGRAM WOULD HAVE HAD METRO ACT AS THE REGULATORY AUTHORITY FOR COLLECTION OF RECYCLABLES IN THE REGION. IN SHORT, METRO WOULD HAVE BEEN REQUIRED TO SUPERSEDE THE AUTHORITY OF CITIES TO MONITOR COLLECTION OF GARBAGE.

HOWEVER, METRO HAS NO AUTHORITY TO PERFORM THIS FUNCTION. IT WAS NEVER INTENDED THAT METRO BE RESPONSIBLE FOR THE COLLECTION OF OUR REGION'S GARBAGE. RATHER, THAT IS APPROPRIATELY A LOCAL FUNCTION, AND AS A LOCAL FUNCTION, IT HAS WORKED WELL.

THE ONLY AUTHORITY METRO WOULD HAVE HAD TO ENFORCE THE CERTIFICATION PROGRAM WOULD HAVE BEEN THROUGH IMPOSING FINES IN THE TIPPING FEES PAID AT THE LANDFILL. IN AN ERA OF HISTORIC INCREASES IN THE COST OF DISPOSING OF GARBAGE, I CAN TELL YOU THAT I AM NOT ANXIOUS TO INCREASE THE COST OF GARBAGE SERVICE TO CONSUMERS BY PENALIZING THEIR HAULERS.

SECOND, METRO HAS ADOPTED SOME, BUT NOT ALL, RATE INCENTIVE PROGRAMS IN THE WASTE REDUCTION PLAN.

CURRENTLY, METRO HAS SEVERAL DIFFERENT RATE INCENTIVES.

* METRO PROVIDES A LOWER RATE AT THE LANDFILL FOR CLEAN LOADS OF YARD DEBRIS THAT IS THEN HAULED TO YARD DEBRIS RECYCLERS.

* METRO ADOPTED A DIVERSION CREDIT FOR WASTE PAPER PROCESSED BY MATERIAL RECOVERY CENTERS.

* METRO PROVIDES A DISCOUNTED DISPOSAL RATE FOR RESIDUALS FROM MATERIAL RECOVERY CENTERS.

* AND METRO PROVIDES LOWER RATES TO SELF HAULERS WHO BRING IN RECYCLABLES.

HOWEVER, METRO HAS CHOSEN NOT TO IMPLEMENT DISPOSAL ACCOUNT CREDITS. METRO HAS FOUND NO EQUITABLE, WORKABLE WAY TO IMPLEMENT SUCH A BROAD RATE INCENTIVE.

THIRDLY, METRO HAS CHOSEN NOT TO IMPLEMENT THE "WASTE AUDIT" PROGRAM. THIS PROGRAM WAS INTENDED TO ASSIST INSTITUTIONS OR COMPANIES DESIRING TO IMPLEMENT WASTE REDUCTION PROGRAMS OF THEIR OWN. METRO HAS CHOSEN NOT TO IMPLEMENT THIS PROPOSED PROGRAM BECAUSE WE FIND THAT IT IS HAPPENING QUITE EFFECTIVELY IN THE

PRIVATE SECTOR WITHOUT METRO'S ASSISTANCE.

HAULERS, THEIR CUSTOMERS AND MATERIALS RECOVERY CENTERS ARE WORKING TOGETHER TO FIND WAYS TO CUT THEIR BILLS -- AND THEREFORE RECYCLE MORE WASTE.

WITH THESE EXCEPTIONS, METRO IS USING THE WASTE REDUCTION PLAN TO GUIDE ITS WORK. BUT, IT IS SIMPLY NOT REALISTIC TO EXPECT METRO OR ANY GOVERNMENT TO BE ABLE TO FOLLOW A LONG RANGE PLAN TO THE LETTER WHEN THAT PLAN IS AS DETAILED AS THE WASTE REDUCTION PLAN.

METRO HAS ALSO DISCOVERED THAT THE LACK OF A STATE-APPROVED "FUNCTIONAL PLAN" FOR SOLID WASTE HAS RESULTED IN OUR INABILITY TO SITE FACILITIES AND IMPLEMENT PROGRAMS. THAT IS WHY I SET IN MOTION LAST YEAR A PROCESS TO REVISE OUR SOLID WASTE PLAN.

LIKE ANY OTHER ADMINISTRATOR, I WOULD RATHER IMPLEMENT THAN PLAN. BUT THE LACK OF A FUNCTIONAL PLAN HAD REAL CONSEQUENCES SUCH AS THE INABILITY TO SITE A TRANSFER STATION IN WASHINGTON COUNTY OR MANAGE THE AMOUNT OF TONNAGE GOING THROUGH OUR METRO SOUTH STATION. THIS UPDATED PLAN WILL MAKE METRO MORE CAPABLE OF REACHING THE GOALS THAT TOGETHER WE SET.

YOUR STAFF IS COOPERATING WITH METRO AND ALL LOCAL JURISDICTIONS IN THE REGION TO PUT THIS PLAN TOGETHER. I AM EXCITED BY THE PROGRESS WE HAVE MADE AND AM PLEASED TO ANNOUNCE THAT WE WILL HAVE A POLICY FRAMEWORK ADOPTED BY OCTOBER. THAT FRAMEWORK CALLS

FOR METRO, DEQ AND LOCAL JURISDICTIONS TO SIT DOWN AT THE SAME TABLE AND PRODUCE A UNIFIED WORK PLAN ON AN ANNUAL BASIS.

THIS PLAN WILL ALSO INCLUDE A NEW CHAPTER ON WASTE REDUCTION. THE ENTIRE PLAN, INCLUDING THE NEW WASTE REDUCTION CHAPTER, WILL BE SUBMITTED FOR YOUR APPROVAL. THIS NEW WASTE REDUCTION CHAPTER WOULD SUPERSEDE THE CURRENT PLAN.

I WOULD WELCOME THE OPPORTUNITY FOR MY STAFF TO COME BACK AND EXPLAIN ELEMENT BY ELEMENT METRO'S ACTIONS ON THE WASTE REDUCTION PLAN AND BRING YOU UP TO DATE ON THE FORMATION OF OUR NEW SOLID WASTE FUNCTIONAL PLAN.

FINALLY, I WOULD LIKE TO ADDRESS THE PROPOSED ACTIONS ON YARD DEBRIS RECYCLING THAT YOU HAVE BEFORE YOU.

THE ESSENCE OF MY REMARKS TODAY IS THAT WE MUST SPEND OUR ENERGY ON THE MOST FEASIBLE METHODS OF WASTE REDUCTION. TOGETHER, WE MUST WORK TO FIND WAYS THAT ARE GOING TO CREATE A REAL REDUCTION IN THE AMOUNT OF WASTE WE BURY -- AND DO SO WITHOUT THE POSSIBILITY OF CREATING CHAOS IN OUR WASTE MANAGEMENT SYSTEM.

THAT IS WHY I STRONGLY URGE THE COMMISSION TO DELAY A FINAL ACTION ON YARD DEBRIS RECYCLING. THE COMMISSION SHOULD WAIT FOR THE RESULTS OF THE COMPOST MARKET STUDY ON WHICH METRO AND THE CITY OF PORTLAND ARE COLLABORATING.

THE MEMORANDUM YOU HAVE ON YOUR VARIOUS CHOICES MENTIONS THAT METRO INTENDS TO DO THIS STUDY. WHAT IT DOES NOT STATE IS THAT THIS STUDY IS CURRENTLY UNDERWAY AND THE RESULTS WILL BE AVAILABLE BEFORE OCTOBER 1.

PROCEEDING TO ESTABLISH A YARD DEBRIS RECYCLING PROGRAM BEFORE THIS INFORMATION IS AVAILABLE WOULD BE PREMATURE.

METRO'S MUNICIPAL WASTE COMPOST PLANT WILL ALMOST DOUBLE THE AMOUNT OF COMPOST AVAILABLE AND NEEDING A MARKET. IN ADDITION, THE CITY OF PORTLAND IS DEPENDENT ON MARKETING SEWAGE SLUDGE COMPOST AS A METHOD TO DISPOSE OF ITS SEWAGE SLUDGE.

IF WE SUDDENLY DOUBLE OR TRIPLE THE AMOUNT OF YARD DEBRIS AVAILABLE TO COMPOST, THE IMPACT WILL BE FELT IN OTHER WASTE REDUCTION PROGRAMS. THIS BEGS THE QUESTION OF WHETHER YARD DEBRIS PROCESSORS WOULD EVEN BE ABLE TO HANDLE THE INCREASED MATERIAL. AND I THINK IT'S DOUBTFUL THEY CAN. IN FACT, ONE OF THE REGION'S THREE YARD DEBRIS PROCESSORS -- MCFARLANE'S BARK -- RAISED ITS RATES FROM $3 TO $4 A CUBIC YARD THIS AUGUST. THEY TOOK THAT ACTION TO CUT THE VOLUME OF YARD DEBRIS THEY WERE ACCEPTING AND THUS MEET THE TERMS OF A CONSENT DECREE THEY HAD ENTERED INTO WITH THE DEQ.

FOR THESE REASONS, I URGE THE COMMISSION TO AWAIT THE RESULTS OF OUR STUDY -- THAT LOOKS AT THE MARKET NICHES FOR ALL THESE MATERIALS -- BEFORE ADOPTING ANY RULES.

FURTHER, I WOULD STRONGLY URGE THE COMMISSION NOT TO ADOPT YARD DEBRIS RECYCLING RULES WHICH DISREGARD THE ROLE OF THE YARD DEBRIS COMPOST MARKET. SIMPLY DESIGNATING YARD DEBRIS A "PRINCIPAL RECYCLABLE" DOES NOT MAKE YARD DEBRIS RECYCLABLE.

METRO HAS CONTENDED FROM THE VERY BEGINNING OF THIS RULE MAKING THAT THE ABILITY TO RECYCLE YARD DEBRIS IS DRIVEN BY THE MARKET FOR YARD DEBRIS COMPOST. TO SET ARBITRARY GOALS FOR RECYCLING YARD DEBRIS -- GOALS UNRELATED TO THE SIZE OF THE MARKET FOR THE FINISHED PRODUCT -- WOULD CREATE CHAOS AND THREATEN THE FRAGILE, GROWING MARKET FOR THIS PRODUCT.

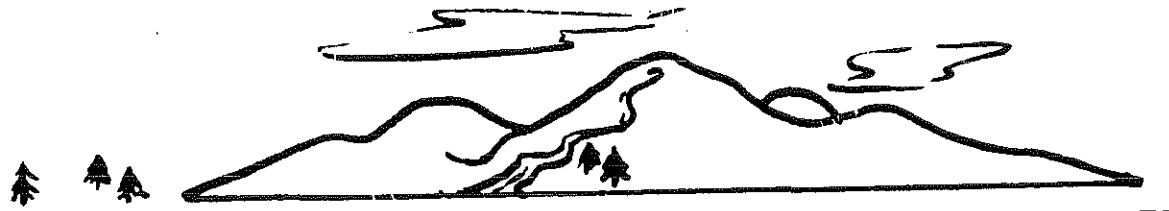
I WANT IT TO BE CLEAR THAT I CANNOT RECOMMEND TO METRO'S COUNCIL THAT THEY ADOPT A YARD DEBRIS RECYCLING PROGRAM THAT MUST MEET ARBITRARY GOALS FOR AMOUNT OF DEBRIS RECYCLED. NOR CAN I RECOMMEND TO THE COUNCIL THAT THEY ESTABLISH A PROGRAM THAT WOULD MAKE METRO RESPONSIBLE FOR COLLECTING OR REGULATING COLLECTION OF YARD DEBRIS. METRO DOES NOT HAVE ANY AUTHORITY OVER COLLECTION AND I DO NOT BELIEVE IT SHOULD ASSUME ANY.

NOR AM I INTERESTED IN SEEING METRO RATEPAYERS SADDLED WITH PROGRAMS THAT ARE COSTLY AND INEFFECTIVE. I BELIEVE WE MUST KEEP FOREMOST IN OUR MIND THAT ANYTHING WE DO IS ULTIMATELY PAID FOR BY THE GARBAGE RATEPAYER.

STATE AND FEDERAL REGULATIONS ARE ALREADY GOING TO DRIVE-UP THE COST OF DISPOSAL TO LEVELS UNPRECEDENTED IN THIS REGION. THOSE COSTS WILL PAY FOR ENVIRONMENTALLY SAFE DISPOSAL OF GARBAGE, AN ENVIRONMENTALLY SOUND CLOSURE OF THE ST. JOHNS LANDFILL ALTERNATIVE TECHNOLOGY PROJECTS AND WILL HELP INCREASE RECYCLING. BUT THEY WILL ALSO BE DIFFICULT FOR MANY TO BEAR. PEOPLE WITH LOW INCOMES OR ON FIXED INCOMES AND NON-PROFIT AGENCIES WILL BE HARD-PRESSED TO MEET THE INCREASED COST OF DISPOSAL.

THAT IS WHY WE MUST BE EXTREMELY CAREFUL NOT TO INAPPROPRIATELY PUSH UP THE COST OF DISPOSAL. I LOOK FORWARD TO WORKING WITH YOU AND THE DEPARTMENT TO BOTH CONTROL THESE COSTS AND DO THE JOB THAT'S GOT TO BE DONE: REDUCE OUR WASTE AND DISPOSE OF IT SAFELY.

MR. RICH OWINGS, METRO'S SOLID WASTE DIRECTOR, AND I ARE AVAILABLE TO ANSWER YOUR QUESTIONS.



RECYCLING ADVOCATES

To: Environmental Quality Commission
From: Jeanne Roy, Chairman, Recycling Advocates
Date: September 9, 1988
Re: Review of Metro Solid Waste Reduction Program

I think it will be a waste of time to go through a show cause hearing for the whole Waste Reduction Plan. DEQ should prepare an order for Metro to implement specific parts of the Waste Reduction Plan which are most needed now to increase recycling.
Metro and the public should be allowed to respond to the proposed order.

I suggest that the following parts of the Work Plan be included in the order:

1. RECYCLE -- 405 MATERIALS. Action is needed to increase residential recycling of plastics and scrap paper. This could done under "C. Local Collection Service Certification" or "F. Grants and Loans: Targeted to local governments, businesses and/or recyclers to support waste reduction and recycling programs." (Work Plan, p. 12)

2. RECYCLE -- YARD DEBRIS. A yard debris processing facility is needed in the northern part of the Region. Metro should be ordered to establish a facility (A, p. 16) or to provide grant money to private processors for capital expenditures (C, p 16). An alternative would be establishment of a yard debris receiving area with transport of the material to a private processor.

Rate incentives to encourage separation or yard debris rather than mixing it with other waste are essential. Two weeks ago Metro Council passed a new rate ordinance which eliminated the lower rate at St. Johns for yard debris delivered by commercial haulers. If a hauler is too far away from Grimms he will have no incentive to keep drop boxes containing yard debris uncontaminated; nor will he be able to offer curbside collection of yard debris at a reasonable cost. Metro should be ordered to implement either "G. Rate Incentives" (p. 16), "H. Local Collection Service Certification" (p. 17), or grants to cities (RATE INCENTIVES, B.b. (p. 39). If rate incentives are used, they should be lower than mixed waste rates but higher than the private processors rates so that they do not draw yard debris away from the processors.

3. POST-COLLECTION RECYCLING/MATERIALS RECOVERY. Action element C. Waste Auditing and Consulting Service is desperately needed before new rates go into effect in November. Metro should be ordered to implement this service. As a part of the service, it should contract with a company to design recycling systems and provide containers for large generators of high-grade office paper.

4. CERTIFICATION FOR LOCAL COLLECTION SERVICES. Since Metro does not have jurisdiction over collection, this one of the few tools it has

to encourage more source separation. It can reward those local governments which add new materials such as yard debris or expand their recycling collection programs into apartments and businesses. If Metro and DEQ are convinced this is unworkable, DEQ should recommend legislation to require local governments to meet recycling performance goals. The legislation should provide funding.

5. RATE INCENTIVES. When materials recovery centers take in mixed wastes, they are not required by Metro to charge the regional User Fee and Transfer Charge. However, the differential in rates this allowed has not been adequate to attract more high-grade loads to the centers. According to the Work Plan, evaluation and modification of the rate incentives should occur periodically. However, this has not been done. Metro should be ordered to implement A.2. Rate Differential for Materials Recovery Facilities (p. 36). Diversion credits could be offered either to the haulers or to the processors.

6. MATERIALS' MARKETS ASSISTANCE PROGRAM. Markets for waste paper need to be developed. Metro should be ordered to implement H. Grants and Loans (p. 41) so that money could be targeted for research into new methods of utilizing waste paper.

UNIFIED SEWERAGE AGENCY

EQC Hearing

Friday, September 9, 1988
2:00 p.m.

PARTICIPANTS

Bonnie Hays	Chair, Washington County Board of Commissioners
Gary Krahmer	General Manager, Unified Sewerage Agency
Mike Bracken	CH2M Hill
Robert Gerhard	Full Professor, Department of Environmental Resources Engineering, Humboldt State, Arcata, California
Bruce Warner	Director, Washington County Land Use and Transportation
Larry Cole	Mayor, City of Beaverton
Ed Gormley	Mayor, City of McMinnville
Shirley Huffman	Manager, City of Hillsboro
Steve Rhodes	City Manager, City of Tualatin
Jack Orchard	Sunset Corridor Association
Jeff Sackett	I-5 Corridor Association
Pat Ritz	Tualatin Valley Economic Development Corporation
Steve Vulysteke	President, Washington County Visitors Association
Jack Nelson	Associated General Contractors
Dennis Derby	Homebuilders Association
Tom McCue	Tektronix
Burt Gredvig	Oregon Graduate Center
Representative Delna Jones	State Representative, District 6, Washington County
Representative Al Young	State Representative, District 4, Washington County

R

EXHIBIT "A"

CITY OF HILLSBORO

COMPREHENSIVE STORM DRAIN MASTER PLAN STATUS UPDATE

In April of 1987, the City of Hillsboro commissioned U.R.S. Consultants of Portland, OR., at a cost of $65,000, to prepare a Comprehensive Storm Drainage Master Plan. This plan was guided by a 19 member advisory committee which included representatives from local government, elected and technical staff, U.S.A., D.E.Q., Chamber of Commerce and interested citizens. The primary goals were to:

Protect City residents and businesses from flooding;
Protect streams from impacts of urbanization;
Protect water quality and beneficial uses of surface waters.

Approach to Plan

The detailed engineering analysis included an inventory of existing facilities, field reconnaissance, staff inteviews, computer modeling with identification of existing and future capacity problems, examination of alternative solutions, and a recommended capital improvement plan. The financial analysis looked at existing and potential revenue sources for an enchanced program meeting the desired goals. The institutional analysis focused on existing and pending regulations, operation and maintenance, public education and design criteria for new developments.

The Comprehensive Plan is now in the final document printing stage and due for disbursement and Council action early this Fall. The capital improvement program (five year) anticipates a need for $1,045,322 in facility (structural) improvements. In addition, the plan recommends expansion of the existing maintenance program at an estimated annual cost of $360,000. Non structual recommendations include an increased public education program, and an added staff position to work strictly in the storm water field.

This plan will be a dynamic "working" document for this community.

EXHIBIT "B"

CURRENT SITUATION

CITY OF HILLSBORO STORM WATER MANAGEMENT

The City of Hillsboro utilizes a multi-faceted approach to storm water management. This approach is briefly described for you.

Facilities Design, Review and Construction

All developments are required to submit for design review, a storm drain plan. This plan is reviewed by key staff to determine adequacy of service. It is our function to maintain the natural drainage areas in conformance with the goals set forth in the City's Comprehensive plan. The subsequent construction plans are reviewed in depth, and must be approved prior to construction. The City then performs in-field inspections of all facilities to insure the finished product meets the intent of the approved plans. This City utilizes a unique method for the construction of storm drain facilities. This is the use of an open joint system, which we feel assists in recharging the ground water supply rather than directing 100% of the flows to receiving streams.

System Maintenance

The City Public Works Department performs regular inspection and maintenance of the street, catch basins and storm system to eliminate as much debris, silt and other material from reaching the receiving stream as possible.

Planning for The Future

The City is a member of the U.S.A. Storm Water Management Project, currently in the start-up phase. The goal is to provide funding for and uniform maintenance of facilities to handle storm water beyond normal jurisdictional boundaries.

The City of Hillsboro Storm Water Master Plan is nearly completed by U.R.S. Consultants. Additional information is provided.

The City is working actively on the Jackson Bottom System Study with other jurisdictions. This project meshes wildlife, recreation and water quality enhancement as common goals. Additional information is provided.

EXHIBIT "C"

CITY OF HILLSBORO

JACKSON BOTTOM CONCEPT MASTER PLAN

On July 22, 1988 the City of Hillsboro entered into a contract with Walker & Macy, consultants to prepare a concept master plan for Jackson Bottom, a large floodplain and wetland area located south of Hillsboro between the Hillsboro and Rock Creek sewerage treatment plants. The Unified Sewerage Agency and the Oregon Department of Fish & Wildlife are the major participants in this study.

The purpose of the concept master plan is to develop a coordinated strategy that will use the natural processes of the wetland areas to treat wastewater and storm drainage flows before these flows enter the Tualatin River. While water quality is a primary goal of this project, wildlife enhancement and recreation opportunities are also major components of the study.

The Jackson Bottom area is currently used by the Unified Sewerage Agency to treat wastewater. Spray irrigation of sewage effluent on cropland has occurred for the last several years. Sewage effluent is also used to provide a summertime water source for wildlife ponds constructed by the Department of Fish & Wildlife. The Unified Sewerage Agency also has a million gallon holding pond for sewage effluent located in Jackson Bottom.

The concept master plan seeks to blend the existing uses of Jackson Bottom into a multi-purpose resource for public benefit. By improving water quality and, at the same time, enhancing wildlife and recreation opportunities, the concept master plan will serve as a prototype for other similar projects along the main stem of the Tualatin River and its tributaries. The plan is scheduled for completion on October 22, 1988 and will outline future implementation phases.

Testimony

To

The Oregon Department of Environmental Quality

On The

Tualatin River Phosphorus Management Plan

By

R. A. Gearheart, Ph.D., P.E.
Humboldt State University
Arcata, CA 95521

Testimony DEQ - Portland

Introduction

My name is Robert Gearheart I reside at 613 Park Ave., Arcata, California and am a Professor of Environmental Engineering at Humboldt State University in Arcata, California. I have a BS in Biology and Math, a MS in Environmental Engineering, and a Ph.D. in Environmental Engineering. I have been a researcher and a professor in water quality management for twenty years. I did my Ph.D. dissertation on the Criticality of the Nitrogen and Phosphorus Ratio to Aquatic Microorganisms. I have been actively involved in eutrophication research in Oklahoma, Arkansas, Utah, and California. For the last 13 years I have been actively involved in wetland treatment research with the Arcata project.

I appreciate this opportunity to meet with the Department of Environmental Quality and testify in support of the need to establish a realistic schedule for the implementation of the phosphorus management plan in the Tualitin River.

Water quality management has developed significantly in the period of time in which I have been actively involved, 1965-present. PL-92-500, the Clean Water Act has demonstrated its utility in the 23 years which it has been implemented. One of the overriding philosophies of the Clean Water Act was the need for water reuse and reclamation utilizing treated effluents. Somehow this major element of the act has been down graded to be considered only under conditions of limited water or as alternative-innovative consideration. Nevertheless, the wisdom of the act in terms of reclamation and reuse is more apparent than ever.

The strategy to focus on point source control of oxygen consuming waste, suspended solids, and dissolved toxic compounds was certainly an appropriate first step.

Now, with the majority of these issues resolved, the focus is on nutrients in effluent and non-point source pollutants. I would like to share with you a case study in which a community in California had to deal with the full range of water quality issues listed about while breaking new ground on a state policy which was rigorous and untested in terms of technical capability. While the specific technical issues are not the same as in the case of the Tualitin River issue they are very similar in terms of process and technical requirements.

In 1969 the Porter-Cologne Water Quality Control Act established a statewide program for control of all the waters of the state. It created the State Water Resources Control Board (SWRCB) and nine regional Water Quality Control Boards (RWQCB) responsible for coordination and control of water quality in California.

California voters supported this program with the passage of the 250 million dollar Clean Water Bond Act (1970) which, in conjunction with federal law, made combined Federal-State grants-in-aid available for construction of new sewage facilities.

Any proposed municipal project would be eligible if it was included in a state formulated basin-wide plan for pollution abatement. In 1971 an interim water quality control plan for the North Coastal Basin was adopted, and in 1972 work commenced on the draft of a final plan.

During the same time period in 1972 the United States Congress passed Public Law 92-500 or the 1972 Amendments to the Federal Water Pollution Control Act. This legislation set urgent time-tables for elimination of pollution including the requirement for full secondary treatment of all municipal waste discharges. It also provided up to 75% federal grant money for construction of treatment facilities which, with the 12.5% offered by state grants, made 87.5% grants-in-aid for eligible project construction.

The contents of the final Basin Plan draft were presented for public comments in meetings during late 1972 and in 1973. This Northern Coastal Basin Plan contained a recommendation that the cities of Arcata and Eureka consolidate their treatment operations in one location and discharge to the ocean. In 1973 when Eureka was given notice that California's 1973-74 grant priority list included grant funds for such a regional plan, Eureka and Arcata agreed to jointly prepare a project report for construction of a consolidated secondary treatment plant. The report was prepared in late 1973 and early 1974 by the environmental engineering firm of Metcalf and Eddy, and submitted for approval under the grant program. Eureka, as lead agency, began environmental impact proceedings.

Then in May 1974, the SWRCB adopted the Enclosed Bays and Estuaries policy which prohibited discharge into Humboldt Bay after July 1977 unless the discharger could prove that bay water quality was being enhanced.

Concurrent with these events the McKinleyville Community Services District had a report prepared for a grant funded project to serve that community. The report recommended joining the regional system. Also, the prohibition of discharge into the bay meant the elimination of the three small oxidation pond treatment facilities of County Service Area No. 3 (CSA No. 3) and the College of The Redwoods treatment plant. It would now be necessary for these systems to consolidate with the regional system in order to meet the ocean discharge requirement. Separate ocean outfalls would just be too costly.

State and local staffs and governing boards of the local agencies were engaged in a great deal of discussion and negotiation during this period of time in an attempt to create a regional agency to govern the development of such a regional project.

The major pressures for organizing and moving ahead quickly with the project were moratoriums on construction in McKinleyville and the South Bay Area (CSA No. 3), as well as the knowledge that more building bans would be imposed by the state if an acceptable regional project was not begun immediately. In addition to the building moratoriums, the state could impose legal fines of up to $26,000 per day for each discharge into the bay in violation or permit conditions.

On January 8, 1975 a Joint Powers Authority (Humboldt Bay Wastewater Authority) was signed by the City of Arcata, City of Eureka, the Humboldt Community Services District (HCSD), the McKinleyville Community Services District (MCSD) and the County of Humboldt.

By September 1976, the Humboldt Bay Wastewater Authority (HBWA) had plans for a system which would bring wastewater from McKinleyville and Arcata in two separate interceptor lines down both sides of Humboldt Bay. The Arcata wastes would join those of Eureka and the unincorporated areas and be pumped under the bay to a 40 million gallon per day (MGD), complete-mix, activated sludge treatment plant on the Samoa peninsula. All the regional wastes would be treated there and disposed of through an ocean outfall line a mile offshore. Several alternatives were considered in the planning phases of the project besides the ocean discharge from a regional treatment plant. All alternatives which required an effluent discharge to Humboldt Bay were eliminated because of the State's Bay and Estuary Policy. This policy was based on the PL-92-500 language which allow states to have more stringent requirements within their state if conditions required. The Policy stated that effluent would not be released to an enclosed bay or estuary unless it could be shown that no existing beneficial uses were lost or degraded and that new beneficial uses were added or existing uses were enhanced. The Policy was generated because of the problems in San Francisco Bay, political pressure by discharges in the Bay excluded San Francisco Bay from the policy. The City of Arcata was the first community in California to challenge the enhancement requirement in the Bay and Estuary Policy.

The regional plant was never built. Delayed for several years by a number of lawsuits and much controversy over the cost and appropriateness of the facility, the plan was dropped and each individual community adopted their own alternative to waste water treatment.

Harbor pilot fought renewal of a permit for the trans-bay sewer line, claiming it would be subject to damage from shipping and thus cause them liability problems.

But in 1976 the regional treatment system seemed inevitable. The project then cost about $50 million, with the local share about $11 million. Federal and state funds supplied the balance. The HBWA board voted unanimously to authorize revenue bonds for the project.

Opposition to the regional system came in a referendum drive to force a public vote on the bonds. Leaders of the Committee for a Sewer Referendum came from two camps. Environmentalists from Arcata feared the sewer interceptor on the east side of the by would encourage growth of a "strip city" in the farmlands between Arcata and Eureka. Representatives of the Manila Community Services District, a small community on the Samoa Peninsula, were worried that they would have to connect into a regional system costing more than they would pay to solve their sewage problems on their own.

Their referendum drive, hastily organized, ended when petitions were turned in on the last possible day--to the wrong office. A subsequent lawsuit forced HBWA to accept the petitions, which then turned out to have too few valid signatures. That question also went to the courts. Although the HBWA won the legal fight in 1979, by that time the regional plan was on its way out.

In the interim, two more lawsuits were filed by a group called Concerned Citizens for Development of Humboldt Bay. It represented timber industry interests which wanted to build a woodburning power plant on the same land proposed for the sewer plant. A fifth lawsuit challenged the project environmental impact report.

The City of Arcata, always a reluctant participant in the project, kept up its own fight to have the state bays and estuaries policy changed. City officials wanted from the beginning to look into the low-energy marsh alternative which demonstrated nutrient cycling in aquaculture and use of treated effluent in a created freshwater wetland. But the RWQCB was not receptive to requests for flexibility in the bay discharge requirements. The State Water Resources Control Board eventually approved a marsh pilot project which is now successfully concluded and serves as the basis for inclusion of a wetland treatment process in Arcata's new treatment plant.

The key was forcing the state to reevaluate the bays and estuaries policy. With the state policy as a given, the only way to be eligible for the available grants was to join the regional system with one ocean outfall.

But opponents of the regional system, alarmed a the prospect of high user fees and inflated capital costs for the regional plant itself, did challenge the basic assumption that there was no alternative to ocean dumping. With the referendum lawsuit delaying the project indefinitely, they raised questions about high project costs, energy consumption, the enhancement requirement, safety of the trans-bay pipeline and land use issues associated with the interceptors.

Early in 1979, the new local assemblyman, Doug Bosco, introduced legislation that would remove the bays and estuaries restriction from Humboldt Bay. This action is perhaps what prompted the State Water Resources Control Board to acknowledge that there were serious political problems with the regional system.

It scheduled a two-day hearing in April in Eureka on the issue. The end result, after 15 hours of testimony from diverse factions of the communities, was an order acknowledging that the bays and estuaries policy should apply to Humboldt Bay, but that sewage disposal through a marsh treatment program or other method could meet the state requirement that bay waters be "enhanced" by the treatment method. State officials conceded that nutrients from the waste effluent might benefit rather than harm the oyster beds, and that the marsh wetlands would be of positive benefit to the birds. While they still preferred the regional approach, it was clear that the project as a political reality was untenable.

They gave the five communities 90 days to come up with acceptable alternatives to the regional plant that could go into operation by 1983. Arcata moved ahead with its marsh treatment proposal. McKinleyville developed a four million dollar plan for pond treatment and disposal of waste in the Mad River. Eureka and the two service areas decided to build a single secondary plant which would discharge on the outgoing tides at the mouth of the bay rather than through an ocean outfall line. Manila is now developing a long-term plan based on the interim community leach field system which was installed as a two-year temporary measure until tie-in with the regional plant was possible. All of these proposals have been grant eligible.

Receiving Water Considerations

The critical pollution issue in Humboldt Bay is that of bacterial contamination. A survey of beneficial uses of Humboldt Bay revealed that present water uses include fish and wildlife propagation and habitat; shellfish culture; water-oriented recreational activities including swimming, wading, boating and fishing; industrial water supply and navigation.

The primary recreational activities are bank fishing and clamming. The port is a major point of export for wood products and the Bay is an important habitat area for hundreds of water fowl. Over 90% of commercial oysters grown in California come from Humboldt Bay (California Department of Public Health, 1966).

Water Quality Plans and Regulations

Water quality problems in Humboldt Bay, most notably elevated coliform levels due to non-point sources and releases of unchlorinated, raw, primary and secondary wastewater, have been recognized since the early 1960s. In 1967, the SWRCB set limits on bacterial levels for treated wastewater discharges and required disinfection systems for all treatment plants around the bay. In 1970, the Comprehensive Basin Plan was initiated in response to the Porter-Cologne Act. The Comprehensive Basin Plan was adopted by the SWRCB in April, 1975 and incorporated into the Bays and Estuaries Policy. This policy, as it applies to Humboldt Bay, states:

"It is the policy of the State Board that the discharge of municipal waters (exclusive of cooling water discharges) to enclosed bays and estuaries, other than the San Francisco Bay Delta system, shall be phased out at the earliest practicable date. Exceptions to this provision may be granted by a Regional Board only when the Regional Board finds that the wastewater in question would consistently be treated and discharged in such a manner that it would enhance the quality of receiving waters above that which would occur in the absence of the discharge."

Humboldt Bay Wastewater Authority

The Comprehensive Basin Plan recommended that all facilities discharging into the bay be abandoned and a regional secondary treatment facility that would discharge into the ocean be built. The estimated cost of the project in 1975 was $25 million. Arcata reluctantly joined the Humboldt Bay Wastewater Authority (HBWA) which was formed to implement the plan.

In addition to concern over the project cost, Arcata saw other potential adverse impacts of the proposed regional plant. These impacts included increased energy use for pumping wastewater over long distances, damage to agricultural lands where trunk lines would be buried, increased growth along the main interceptor line connecting Arcata to the plant, and the possibility of breaks in the line that crossed the bay.

The loss of wastewater as a potential resource, brought about by the regional plant, was another major concern for Arcata. The city had been conducting fish hatchery experiments raising salmon in nutrient-rich secondarily treated wastewater effluent. The city intended to integrate a wastewater treatment system with a full scale salmon ranching operation (Allen and Gearheart, 1978).

In April 1979, as a result of local controversy over the HBWA regional system, the SWRCB held a two-day public hearing to receive input concerning the compatibility of the Bays and Estuaries Policy and the proposed regional project for Humboldt Bay. Following the public hearing, the regional board issued an order which revised the schedule for regional compliance with wastewater discharge requirements, and ordered the members of HBWA to submit their alternate solutions to the water quality problems of Humboldt Bay within 90 days. In promulgating this order, the Board upheld the Bays and Estuaries Policy, but concluded in this manner:

"...there is a reasonable probability that those entities currently discharging into the Bay could demonstrate that the discharge of secondarily treated, disinfected, and dechlorinated effluent would adequately protect the bacterial quality of the Bay. It is further concluded that projects such as the Arcata marsh treatment process may enhance Humboldt Bay waters as required by the Bays and Estuaries Policy."

Enhancement, as it is presently defined by the SWRCB, requires two things:

> "...1) full uninterrupted protection of all beneficial uses which could be made of the receiving water body in the absence of all point source waste discharge along with, 2) a demonstration by the applicant that the discharge, through the creation of new beneficial areas of fuller realization, enhances water quality for those beneficial uses which could be made of the receiving water in the absence of all point source water discharges."

As specifically applied to Humboldt Bay, the Board interprets the enhancement provision of the Bays and Estuaries Policy to require the following.

1. full secondary treatment with disinfection and dechlorination of sewage discharges'

2. compliance with any additional NPDES permit requirements issued to protect beneficial uses; and

3. the fuller realization of existing beneficial uses or the creation of new beneficial uses either by or in conjunction with a wastewater treatment project.

The existing beneficial uses of Humboldt Bay, as listed in the Comprehensive Basin Plan, are as follows:

1. Scenic Enjoyment

2. Fish and Wildlife Habitat
    a. Fresh Water Habitat
    b. Marine Habitat
    c. Fish Spawning
    d. Fish Migration

3. Water Oriented Recreation
    a. Water Contact Recreation
    b. Non-Contact Water Recreation

4. Commercial Fishing

5. Shellfish Harvesting

6. Navigation

7. Industrial Water Supply

8. Educational Study

At the April 1979 SWRCB hearing held in Eureka in response to the public concern and controversy over proper waste water management in the Bay area, the Board found the testimony conflicting regarding the dilutional capability and flushing action of bay waters. Data introduced by the Regional Board suggested that there is rapid dispersion but slow flushing of pollutants in the Bay. The testimony also indicated the lack of a long-term data base on water quality in Humboldt Bay. The State Board felt that the Bay should be afforded the special protection of the Bays and Estuaries Policy, but that sufficient evidence had been presented a the hearing to find that there was a "reasonable probability that the discharge of secondary, disinfected and dechlorinated effluent into Humboldt Bay, together with a treatment process which either creates new beneficial uses or results in a fuller realization of existing beneficial uses, such as the marsh treatment process proposed by Arcata, could enhance the receiving water quality" (State Water Resources Control Board, 1979).

Although the evidence presented at the hearing on the issue of the water quality in Humboldt Bay was conflicting, several scientists from Humboldt State University testified, on behalf of the City of Arcata, that the diversity of species and the numbers of organisms in the Bay were representative of a healthy, thriving bay ecosystem, despite the fact that several treatment facilities were discharging wastewater into the Bay. Further, with respect to the bacteriological quality of bay waters in particular, the California Department of Health testifies that the bacterial count in the Bay in the dry season, in the absence of a treatment plant upset or overflow, was virtually undetectable. Evidence was introduced to indicate that the primary source of bacterial contamination in the Bay was non-point source runoff in the wet season from both nearby agricultural lands and areas with failing septic tanks.

The State Board concluded, based upon the evidence presented at the hearing, that the risk of bacterial contamination to commercial and recreational shellfish beds from the discharge of properly treated effluent from sewage treatment plants would be minimal, provided that the plants were consistently and reliably providing secondary treatment and disinfection, and that the plants were appropriately sized to handle wet weather flows.

Current Wastewater Treatment Practices

With the SWRCB decision on the "enhancement" issue and the 90-day deadline for submitting alternative plans to the regional project, the Bay communities began to move forward with their individual plans for wastewater treatment. Today most of these projects are in operation or about the begin operation.

Arcata's alternative consists of adding a wetland area to the existing oxidation pond. The Wetland Project was created in 1979 to demonstrate that wetlands could further treat wastewater from the oxidation pond and that the wastewater could meet discharge requirements and enhance freshwater wetlands. It consists of 12 artificial wetlands, each 20 feet wide and 200 feet

long. The project was funded by the EPA and State Water Resources Control Board. Nineteen water quality parameters were monitored over a two-year period. At the conclusion of the Wetland Project in 1982, the data indicated that wetland treatment was an effective alternative. The system will serve a population of 12,400.

Another phase of the Wetland Project involved exploring the feasibility of harvesting aquatic plants from wastewater treatment marshes and utilizing them as an energy source. The California Department of Food and Agriculture provided a grant for this study which concluded that the rhizomes from cattails could be used to increase methane production in the City's anaerobic digester. The methane produced could be used to heat the distillation process for the alcohol which could then be used by city vehicles.

Arcata Pilot Project

In the spring of 1977, Arcata proposed an alternative to the HBWA regional project consisting of a marsh treatment process with a discharge to Humboldt Bay. Arcata contended that the alternative would comply with the Bays and Estuaries Policy in that the effluent would enhance Humboldt Bay. In their system, effluent from a 55-acre oxidation pond (which receives primary treated municipal wastewater) would flow through three marshes having a total area of 36 acres before entering a 17-acre recreational lake. The beneficial uses which could be enhanced by the use of marshes in the wastewater treatment train and continuation of in-bay disposal are items 1, 2, 3, 5 and 8 listed above. The impact on items 6 and 7 will be insignificant since, in the vicinity of the discharge, the Bay is too shallow for navigation and there is no present or projected industrial use of Humboldt Bay water.

The wastewater project will meet the reclamation policy in that it reuses wastewater for the creation of the marsh and in addition, the aquaculture project would use invertebrates from the oxidation ponds as supplemental fish food. The recreation lake water will continue to provide nutrients for enrichment of the mudflats of Humboldt Bay and food for juvenile salmonids planted in the lake as part of the ocean ranching project. The SWRCB felt that the alternative project had potential for reclamation as well as cost and energy savings and ultimately funded a three year pilot study to explore the feasibility of a full-scale project.

Objectives of the Pilot Project

The California Regional Water Quality Control Board, North Coast Region, stated that the Pilot Project must establish the following:

1. "that the system 'treats' to the necessary degree;

2. that an enhancing nutrient component is produced; and

To meet these overall objectives, specific objectives were established to determine the following:

1. the effluent quality from a marsh treatment system which uses treated oxidation pond effluent as a water source;

2. the variability and reliability of a marsh treatment system as a wastewater treatment process;

3. the practical range of marsh management practices in the use of wetlands as wasstewater renovation and reclamation systems;

4. the hydraulic, organic, and nutrient loading rates for the marsh treatment system resulting in optimal effluent quality; and

5. specific ecological relationships in a marsh treatment system which uses oxidation pond effluent as its input.

Task Analysis of Project Elements

The marsh pilot project was completed on schedule with 100 percent completion of all tasks associated with data collection necessary for determining wetland treatment design criateria and elements to be included in a marsh management plan, Table I-1. Tasks were reduced in two project elements, number 6 (determination of nutrient removal efficiency and nutrient budget) and number 9 (removal and uptake of heavy metals). In the first case, certain nitrogen forms - organic nitrogen and nitrites - were found to be insignificant or were highly variable. Ammonia and nitrate values appeared to be good indicators of the nitrogen cycle in the marsh cells with the occasional need for a spot check on organic nitrogen and nitrites. Tasks were also reduced in Project Element 9 when sufficiently reduced concentrations of heavy metals were found to be in Arcata effluent and lower values were found leaving the experimental marsh cells.

Tasks were added to project elemenst when possible to increase the utility of the project without significantly changing the original experimental design. For example, project Element 14 was expanded to include new study items to assist in developing the marsh management plan. In Project Element 7 (die-off rates and removal rates of public health significant indicator organism), certain biochemical testing techniques, API, were incorporated into the routine testing program. Parallel membrane filter and multiple tube dilution studies were made on marsh effluent to assist in evaluating data and assay techniques. Project Element 11 was expanded to include intensive static bioassays on the marsh effluent and the inclusion of in-stream dynamic bioassay, using mosquito fish, of the marsh effluent beginning in spring of 1982.

Arcata's aquaculture facility is funded by sewer fees, and young fish (salmon, steelhead and cutthroat trout) are raised in a mixture of nitrogen-rich wastewater and seawater. In addition to Arcata's fish culture program, the city owns 1,500 acres of tidelands which is home for some of the last remaining

Table I-1: Project Elements for City of Arcata's Marsh Pilot Project

Phase I (1 Year)

1. Construction of experimental marsh plots
2. Establishment of marsh
3. Data storage and retrieval system
4. Development of a marsh operation plan

Phase II (2 Years)

5. Determination of BOD and COD removal efficiency
6. Determination of nutrient removal efficiency and nutrient budget
7. Die-off rates and removal rates of public health-significant indicator organisms
8. Non-filterable residue production levels in marsh effluent and qualitative distribution of phytoplankton and zooplankton populations
9. Removal and uptake of heavy metals through the marsh treatment system
10. Periphyton and vascular plant types, numbers and rates of biomass production
11. Bioassay of marsh effluent

Phase III (6 Months)

12. Organic and hydraulic loading rates for experimental marsh for optimal BOD and NFR removal
13. Nitrogen and phosphorous loading rates for optimal removal of nutrients
14. Development of a marsh management plan

Phase IV (2 Years)

15. Design full scale wetland system
16. Develop a wetland management plan for AMWS
17. Develop and implement a monitoring program

native California oysters in the state. Because of the importance of this species, Arcata is also engaged in California oyster biological research and cultivation.

Eureka's solution to wastewater treatment uses a combination of trickling filters and solids contact. The solids contact is an innovative modification of the activated sludge process where the trickling filter effluent is aerated on its way to secondary clarification. This produces a more easily settled floc (often a problem in trickling filter systems) and therefore a consistently higher quality effluent than with trickling filters alone.

Sludge from the two anaerobic digesters goes to two facultative lagoons and then to subsoil injection in pastureland. Effluent is discharged near the mouth of the bay on outgoing tides. The plant is also involved in the reclamation of wetland in the Elk River area where the plant is located in order to comply with the enhancement provision under their grant.

The Eureka system serves about 25,000--County Service Area No. 3, several small communities south of the city and the city itself. It has a record of consistently good effluent quality.

McKinleyville now operates a 37-acre faculative lagoon and discharges to percolation ponds adjacent to the river during high winter flows. The effluent percolates through the river gravels before entering the river, which constitutes further treatment. Although it hasn't been done yet, a number of farmers in the area are receptive to the idea of irrigating their pasture lands with treated effluent during the summer months.

Manila has selected a community leach field facility for treatment of its wastewater. This concept for disposal of wastewater is classified as an Innovative/Alternative project by the State Water Resources Control Board. As such, the project is capable of receiving grant funding for 97.5% of the capital costs. This is an especially economical proposition because the land which is usually not grant eligible is a part of the treatment system and therefore eligible in this instance. Operation and maintenance costs are also very low on this type of system which is only appropriate for a small population like Manila's (1300).

PL92-500: Implementing Water Quality Goals

The 1972 Federal Water Pollution Control Amendments (PL92-500) provided a changed strategy for implementing water pollution control in the United States. The philosophical position before the 1972 Act was human-centered, seeking to adjust pollution control levels to those necessary to maintain water quality suitable for particular human uses. By aiming to restore the "integrity" of the aquatic ecosystem, the Act adopted a philosophy of relying on nature's ability to maintain clean waters, rather than on man's technological ability to "manage" them in some partially degraded state (Westman 1977).

The legislation aimed to eliminate discharge of wastes wherever possible, through the use of closed-cycle technology or land disposal of wastes. Treatment of discharges had to meet certain standards. In the case of publicly owned treatment works, secondary treatment was to be accomplished by 1983.

In fact, the speed of preparation of proposals for construction of treatment works and the small number of consulting engineers familiar with alternative technologies and management strategies for wastewater treatment have resulted in a reliance on a conventional technology. One can see the Humboldt Bay Regional Plan as an example of this phenomenon. When the project failed because of the controversy it generated, the variety of solutions sought by each community was a testiment to the individual needs of each area: a marsh treatment for Arcata, facultative lagoon in McKinleyville, community leach field in Manila, and a regional trickling filter/solids contact plant for the Eureka communities. The goals for secondary treatment are being met in each instance and in Arcata's case, the idea of a closed-cycle technology is being realized.

Summary

The past 10 years of research and demonstration projects in Humboldt Bay has resulted in an improvement in the water quality of the bay and has added several new beneficial uses of the water while minimizing the cost of wastewater treatment to the various communities.

The ten years of activity has produced an award winning wastewater treatment system the Arcata Marsh and Wildlife Sanctuary. Information from this project and the wetland pilot projects has been used by other communities in California and other states to meet water quality objectives while reusing reclaimed treated effluent, Table 1 and Table 2.

Data collected in the pilot project has been used to justify the use of fecal coliform as the indicator of choice in shellfish growing waters for the California Department of Health Services, Table 3.

The ten years of activity in Arcata has allowed a more comprehensive perspective of wastewater, wetlands, urban stream and aquaculture to form into land use planning and recreation planning policies. The time was needed to integrate the immediate problem and its set of solutions into complimentary activities both spatially and functionally, Table 4.

The ten years of activity has allowed for a community consensus to be developed and center around the broader issue of reuse of reclaimed wastewater and wetland creation rather than just the issue of wastewater treatment.

The efforts and results to-date have been used to show how local communities through citizen advisory groups can play an important role in identifying and implementing innovative treatment and reuse options which are appropriate to their particular environmental setting.

The results of the AMWS has supplied some of the necessary information to th California Department of Fish and Game for their use in encouraging the use of reclaimed water to create wetlands or to enhance degraded wetlands in California.

Table 1 - Wastewater Treatment Technology

Elements Receiving Increased Understanding	Management Policy or Administration Affected
1. Local control and responsibility in meeting wastewater treatment needs	1. Direct involvement of city staff in planning, design and operation of wastewater treatment and reuse system
2. Use of wetland to polish oxidation pond effluents	2. Multiple-objective planning facilitated by project
3. Relative risk of various treatment technologies for protection of water quality for bivalve production	3. Identification of differing personnel qualifications based on system functions
4. Differences in ability of freshwater and estuarine waters to assimilate treated effluents	4. Increased ability of Public Works personnel to function effectively with agencies managing coastal zone resources
5. Co-generation of electricity and methane production from plant biomass	
6. Use of a wastewater treatment technology that fostered reuse and reclamation	

Table 2 - Humboldt Bay Estuarine Ecology

Elements Receiving Increased Understanding	Management Policy or Administration Affected
1. Nutrient transport and recycling	1. Method of applying Bays and Estuary Policy in Humboldt Bay regional basin plan for water quality protection
2. Circulation and mixing of bay waters	2. Rationalizing various state water reuse policies with Item 1
3. Seawater buffering of ammonia toxicity	3. Strengthening need for adequate monitoring of oyster harvest
4. Non-point pollution impacts on water quality	

Table 3 - Aquaculture and Fisheries

Elements Receiving Increased Understanding	Management Policy Or Administration Affected
1. Development of an anadromous salmonid run based on wastewater uses	1. Actively engaging in non-profit non-state and non-federal agencies salmon enhancement program
2. Meeting PL 92-500 mandate for revenue generation by using wastewater based ocean-ranching aquaculture	2. Supporting program to realize potential contribution to ocean fisheries of small urban drainages
3. Urban salmonid stream rehabilitation	3. Development of ocean ranching technology not in conflict with existing salmon user groups
4. Urban lake trophy trout fishery development	4. Use of wastewater in aquaculture in manner not in violation of FDA and EPA regulations
5. Shellfish growing waters	5. Use of fecal coliform as an indicator organism other than total coliform

Table 4 - Land Use Planning

Elements Receiving Increased Understanding	Management Policy Or Administration Affected
1. Compatibility of a Local Coastal Plan with Arcata municipal land use plan	1. Innovative and experimental program has made municipal government receptive to considering alternative approaches to other city problems
2. Growth inducing nature of interceptors associated with a regional treatment system	2. Both strengthened and increased priorities to renewable natural resources benefits in land use planning
3. Relative values in the allocation of coastal zone lands to various uses	
4. Use of space to reduce energy costs in a municipal sewage treatment system	
5. Need for awareness and appreciation of land use planning complexities	

Appendix - Bibliography

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APPENDIX C: CHRONOLOGY

1969 The Porter-Cologne Act was passed by the California legislature, replacing the former Dickey Act. The new law required that basin plans be prepared for each region, and it changed the philosophy of water quality control in the state. Under the former law the water quality control boards were required to find that an adverse effect was in fact occurring and that the discharge was an unreasonable use of receiving waters. The Porter-Cologne Act states that:

> "No discharge of waste into the waters of the State, whether or not such discharge is made pursuant to waste discharge requirements, shall create a vested right to continue such discharge. All discharges of waste into waters of the State are privileges, not rights."

10-18-72 The Water Pollution Control Act Amendments of 1972 (PL92-500) were passed by the U.S. Congress, requiring secondary treatment of municipal wastewater by 1977. Provisions of the act also included the Clean Water Grant Program which authorized funds for a 75% federal share in projects designed to implement the Act.

1-14-74 The California State Water Resources Control Board (SWRCB) held a public hearing on the proposed "Water Quality Control Policy for the Enclosed Bays and Estuaries of California" (Bays and Estuaries Policy). The Mayor and Public Works Director of the City of Arcata testified in opposition to the prohibition of discharge into Humboldt Bay. The Eureka/Arcata regional wastewater treatment plan was in the final stages of completion, and by discharge was to be recommended.

5-16-74 SWRCB adopts the "Water Quality Control Policy for the Enclosed Bays and Estuaries of California." The salient element of this policy is the prohibition of all waste discharge into enclosed bays and estuaries (with the exception of the San Francisco Bay) unless enhancement of bay waters could be shown.

10-1-74 The Arcata City Council met with Ron Robie (SWRCB Chairman), Larry Walker (SWRCB, Grants Division Chief), Dr. David Joseph (RWQCB Executive Officer), two SWRCB staff members, and two Board members of the RWQCB. The purpose of the meeting was to discuss Arcata's opposition to the Bays and Estuaries policy and the proposed North Coast Basin Plan 1B which included the need for a regional sewage collection and secondary treatment system with ocean discharge:

At issue were:

1. the environmental impacts of ocean discharge.
2. the use of enhancement as the only criterion for modifying the prohibition of bay discharge.
3. the costs involved in constructing a regional collection and treatment system.
4. Arcata's ability to control development in areas presently used for agriculture and open space, particularly on the east side of the bay between Arcata and Eureka.
5. Arcata's ability to independently explore experimental sewage treatment processes in the future.

10-2-74 A letter was sent to the California Regional Water Quality Control Board, North Coast Region (RWQCB (North Coast)) from Roger Storey, Arcata City Manager, requesting a definition of the term "enhancement" as used in the Bays and Estuaries Policy.

10-21-74 A letter was sent to Dr. David Joseph, RWQCB (North Coast) Executive Officer, from Bill B. Dendy, SWRCB Executive Officer, defining the term "enhancement" as used in the Bays and Estuaries Policy. A definition of the term enhancement had been requested by the City of Arcata from the RWQCB (North Coast).

3-20-75 The Water Quality Control Plan for the North Coastal Basin of California (Basin Plan 1B) was adopted by the RWQCB (North Coast).

4-14-77 A letter was sent to RWQCB (North Coast) from the City of Arcata requesting a hearing on an exemption from the Bays and Est Estuaries Policy and the North Coastal Basin Plan 1B. This letter was accompanied by a report entitled City of Arcata (Draft) Wastewater Treatment, Water Reclamation and Ocean Ranching.

4-19-77 A letter was sent to Mayor Alexandra Fairless, City of Arcata, from David Joseph RWQCB Executive Officer, stating that 1) neither the 4-14-77 letter or draft report addressed the Bays and Estuaries Policy requirements, especially the enhancement requirement for exemption from the Policy, 2) that policies applicable to the San Francisco Bay are not relevant to the Humboldt Bay although Arcata's proposal assumes the opposite, 3) that as a result the RWQCB staff could not recommend setting a public hearing for an exemption tot he North Coastal Basin Plan, 4) that the RWQCB staff

urged Arcata to renew its commitment to HBWA and 5) that the RWQCB staff would encourage non-discharging reclamation uses of the existing Arcata treatment plant.

4-28-77 The RWQCB (North Coast) met and heard presentations by the City of Arcata during the public forum portion of its meeting with regard to the City's request for a public hearing on its proposal to construct a wastewater reclamation project as an alternative to participating in the HBWA project.

5-5-77 A request was sent to William Attwater, chief counsel, SWRCB, from David Joseph, RWQCB, for a legal opinion on four questions about Arcata's alternative proposal:

1) would a discharge as described constitute a waste discharge pursuant to Water Code 13260 and 13376?

2) is the waste discharge subject to the provisions of the Water Control Policy for the Enclosed Bays and Estuaries?

3) does compliance with the Policy and Action Plan for Water Reclamation obviate the need to comply with the Bays and Estuaries Policy?

4) can the Regional Board exempt a waste discharger from the provisions of the Bays and Estuaries Policy other than on the basis of "enhancement"?"

5-17-77 A letter was sent to the RWQCB from William R. Attwater, chief council SWRCB, stating that:

1) a discharge from Arcata's alternative proposal would constitute a waste discharge.

2) the water discharged from the proposed marsh and lake would be subject to the provisions of the Bays and Estuaries Policy.

3) the project must comply with both the Bays and Estuaries and Water Reclamation policies as they are consistent.

4) enhancement is the only criteria for exemption from the Bays and Estuaries Policy.

5-26-77 The RWQCB met. On the agenda was a request by the City of Arcata for a public hearing on their proposal to build a biological wastewater treatment system as an alternative to participation in the HBWA project. The request for a public hearing was granted by the Board contrary to the staff recommendation.

6-24-77 The RWQCB held a special public hearing on Arcata's request for consideration of an alternative wastewater treatment project and adopted resolution 77-6, indicating that waste discharge requirements should not be issued because Arcata failed to show that the project would comply with the Bays and Estuaries Policy. (appealed to the SWRCB)

9-22-77 SWRCB decision on Arcata's appeal of the RWQCB (North Coast) resolution number 77-6.
1) upheld the RWQCB's action and
2) stated that the SWRCB would seriously consider an application by the City of Arcata for funding a pilot project to explore the proposed biological treatment alternative.

11-8-77 Arcata submitted a pilot wastewater treatment project proposal to the SWRCB for treating 100% of Arcata's wastewater flow. SWRCB staff requested that Arcata submit a revised proposal for approximately 10% of the total municipal wastewater flow, as a more feasible scale for a pilot project.

12-16-77 Arcata submitted a second pilot project proposal to the SWRCB.

1-27-78 Dr. George Tchobanoglous, Professor of Civil Engineering, UC Davis, sent an evaluation of Arcata's pilot project proposal to the SWRCB as requested. In general, the proposal was seen to be based on insufficient data for an adequate evaluation. Four specific comments were made with suggestions for improvement. The additional comment was made that, "Potentially, the results of this project could contribute significantly to an understanding of... marsh systems, specifically those used in conjunction with wastewater treatment facilities.

2-7-78 A letter was sent to Roger Storey (Arcata City Manager) from the SWRCB Clean Water Grant Program commenting upon Arcata's proposal for the pilot wastewater reclamation project. This letter was based upon the review by Dr. George Tchobanoglous (above). The SWRCB indicated encouragement for the project assuming that the proposal be rewritten along the lines indicated.

3-3-78 Joint letter from John Bryson, SWRCB; Bill Press, Office of Planning and Research; and Sim Van der Ryn, Office of Appropriate Technology, was sent to Arcata clarifying the state's position on the proposed sewage treatment projects in the Humboldt Bay region:

- Bays and Estuaries Policy is important and should not be weakened;

- HBWA project should proceed;

- City of Arcata should be awarded a grant for a pilot project to demonstrate innovative wastewater management.

3-14-78 A letter was sent to Kenneth R. Buell, California State Department of Health, from James Nakada, regional director for compliance U.S. Food and Drug Administration, reporting that "the sewage treatment plants are unable to protect public health with respect to the consumption of shellfish from Arcata Bay." Detailed findings were made during a joint State of California -- U.S.F.D.A. sanitary survey taken February 1-16, 1978.

3-23-78 A meeting was held (in Arcata) to review the proposals by Arcata to the SWRCB for a pilot study on the wastewater reclamation, marsh restoration and ocean ranching project. Those attending included Roger Johnson (SWRCB, Engineer), Dr. George Tchobanoglous (UC Davis), and the Arcata Task Force.

6-6-78 A meeting was held in Sacramento between SWRCB staff and the City of Arcata to discuss Arcata's pilot study grant proposal for the wastewater reclamation and ocean ranching project. Further development of the proposal was discussed and the SWRCB willingness to fund a maximum of $200,000 to $300,000 for the project was reiterated.

9-15-79 Pilot projects funded, construction and implementation of the 12 pilot project was started.

9-1-80 Two year pilot project started.

10-1-82 Pilot project completed.

4-1-83 Final Report - Volume I - The City of Arcata Marsh Pilot Project - Effluent Quality Results - System Design and Management - SCWRCB Project No. C-06-2270.

4-1-84 North Coast Regional Water Quality Control Board accepts Arcata's arguments that a marsh receiving system will meet the State's Bay and Estuary Policy by enhancing the bay.

TESTIMONY

BY

THOMAS C. MCCUE
ENVIRONMENTAL PROGRAMS MANAGER
TEKTRONIX, INC.

RE: Tualatin River Basin Plan Requirements and Implementation Compliance Schedules, Environmental Quality Commission meeting, September 9, 1988

Tektronix has opposed the passage of both the 15 ug/l chlorophyl "a" action level standard and the proposed implementation schedule in advisory committees and in public hearings. Our opposition has been based on the feasibility of obtaining the stated action level in Tualatin River basin and not an opposition to improving water quality.

The standards for phosphorus loadings adopted for the Tualatin basin approach the natural background levels leachable from the native soils found at the head waters of the river system according to one expert. It appears that the intention of the commission is to obtain either a "zero discharge" into the Tualatin River or to change "Mother Nature".

Obtaining a "zero discharge" will cause considerable economic upheaval and take time to solve particularly for agricultural and land management activities, storm sewer runoff from cities, and of course municipal treatment plants. Changing "Mother Nature" may be a little harder.

Unified Sewerage Agency recognizes the difficulty of the task they are asked to perform. USA has accepted the concept and intends to comply with all components of the Tualatin River Basin Special Policies Guidelines. The time line for compliance however, are not practical for any agency or municipality to meet.

In the proposed rule, 340-41-470 (3)(i) the Commission has the ability to revise the June 30, 1993 compliance date. Tektronix recommends that the Commission extend the compliance deadline to June 30, 1998 before adoption and leave opportunity to review and revise submitted compliance plans as needed. Further, Tektronix volunteers to participate as a technical resource to USA or others in an effort to arrive at equitable and workable solutions to the Tualatin River issues.

Thank-you for the opportunity to testify.

5200 N.E. Elam Young Parkway
Hillsboro, OR 97124-6497
(503) 681-8080

intel

September 6, 1988

Bonnie Hayes, Chairman
Washington County Board of Commissioners
150 North First Avenue
Hillsboro, OR 97124

Dear Bonnie:

This letter is directed as support for your proposal of examining the time frames for the compliance schedule for achieving the Total Maximum Daily Loads (TMDLs) set for ammonia-nitrogen and total phosphorous for the Tualatin River Basin. We understand a Hearing is to be held on September 9, 1988 by the Environmental Quality Commission to discuss this schedule and we concur with your assessment of aligning multi-jurisdictional governmental agencies, business, educational and political forces to solve this problem.

We also concur with a policy that allows public involvement, adherence to existing land use laws, input from users and providers alike, and a reasonable approach to compliance schedules that allow for responsible evaluation of all alternatives. We seek a long-term, environmentally sound solution to the cleaning up of the Tualatin River Basin as you do, and are willing to do whatever is necessary to achieve that goal.

This is an extremely complex issue and one that needs our full attention. We are very willing to work with your office, the United Sewerage Agency (USA), state and local governments or whomever else you desire, to reach a solution to this matter.

Sincerely,

Robert R. French
Manager, Public Affairs

RRF:sak

cc: John R. Harland, Senior Environmental Engineer

WASHINGTON
COUNTY,
OREGON

August 23, 1988

William P. Hutchinson
Tooze, Marshall, Shenker, Holloway & Duden
333 S.W. Taylor Street
Portland, Oregon 97204-2496

Dear Bill:

At the September 9, 1988, Environmental Quality Commission Hearing, you will be considering the compliance schedule for achieving the Total Maximum Daily Loads (TMDLs) set for ammonia-nitrogen and total phosphorous for the Tualatin River Basin. This discussion is critical to the long-term environmental and economic viability of Washington County, the Portland Metropolitan Region and our State.

We, Washington County government, the Unified Sewerage Agency, our cities and the business community have pledged our support to the clean up of the Tualatin River. Recently, at the Department of Environmental Quality Hearings, held on August 17 and 18, 1988, an unprecedented coalition presented testimony advocating a reasonable and rational time table for the planning and implementing of a comprehensive clean up plan for the basin.

The purpose of this correspondence is to personally request that you examine the record and work with us for a positive, comprehensive solution to this very difficult problem. The recommended compliance schedule simply will not allow for the responsible evaluation of all alternatives and the implementation of an environmentally sound solution. You, the EQC, have the unique opportunity to form a constructive partnership dedicated to cleaning up this basin-I hope you seize this opportunity.

We have suggested compliance schedules to the Department of Environmental Quality that will allow for all alternatives to be evaluated and solutions initiated. The political and business leadership of our region supports our concepts and I would hope you will to. It will be a matter of the EQC adopting a process that will allow for public involvement and that all laws, especially land use laws, are complied with. This is a multi-jurisdictional issue that will have far ranging impacts.

150 North First Avenue
Board of County Commissioners
Hillsboro, Oregon 97124
Phone:503 / 648-8681

As this is an extremely complex issue, I would suggest two items. First, I would like to meet with you, and other members of the EQC if possible, to directly brief you on our proposals which includes timelines and alternatives. Second, I would like to provide you, and the other members, a tour of the Tualatin River. I recognize this will take time from busy schedules but, several Commission members are relatively new and not from this area, thus first hand knowledge will be beneficial and essential.

When the EQC, on July 8, 1988, adopted phosphorus standards as restrictive as you did, your demand for immediate and expansive attention to the Tualatin River was felt. However, when you began to discuss adopting the five year timetable, suggested for the first time at the meeting, we began to question how these ambitious goals could be met and if met, who would pay the bill. When you adopt timelines we want you to understand who will be affected, how, and at what levels. Most important, we want these timelines to facilitate a solution not act as a tool of obstruction.

There is no question the leadership in the region is ready, willing and able to attack this problem with vigor. It may not be the manner in which a small number of individuals want, but it will be comprehensively planned, environmentally sound and fiscally achievable. Equally important, it will move toward the clean up of this basin and allow for the economic engine of our state to continue its forward momentum.

Attached for your information and perusal are the Unified Sewerage Agency and Washington County recommended compliance schedules. We have also taken the liberty of including a graphic display of the DEQ proposed compliance schedule.

I will be in touch soon to set up a meeting.

Sincerely,

Bonnie Hays

Bonnie Hays, Chairman
Washington County Board of Commissioners

c: Environmental Quality Commission members
Fred Hansen, Director, Department of Environmental Quality
Washington County Commissioners
City Mayors
Gary Krahmer, Unified Sewerage Agency
Charles Cameron, Washington County Administrator

HUTCHIN/br

R

2780 S.E. HARRISON, SUITE 102
PORTLAND, OREGON 97222

(503) 653-TREE

Oregon Association of Nurserymen, Inc.

September 2, 1988

Ms. Genevieve P. Sage
2834 Yvonne
Medford, OR 97504

Dear Ms. Sage:

The Oregon Association of Nurserymen (OAN) asks that you vote to regard container nurseries as agricultural operations under Agenda Item R. at the September 9 meeting of the Environmental Quality Commission. It is impossible for us to cite a rule provision of staff report recommendation, since the draft rules and D.E.Q. Staff Report will not be complete until late on September 6.

OAN asks that you support the following provisions in your Tualatin Basin Water Quality Rules:

(a) That container nurseries are agricultural operations. (We use agricultural land, agricultural water rights, farm labor, and are considered a farm use in all applicable Oregon statutes;)

(b) That container nurseries be regulated, if needed, under the rules for non-point sources;

(c) That the designated agency for evaluating rule compliance for container nurseries remain the Oregon Department of Agriculture, Soil and Water Conservation Division.

With these provisions in the Tualatin Basin Water Quality Rules, OAN would support the proposals under Agenda Item R. before the EQC on September 9. Thank you.

Sincerely,

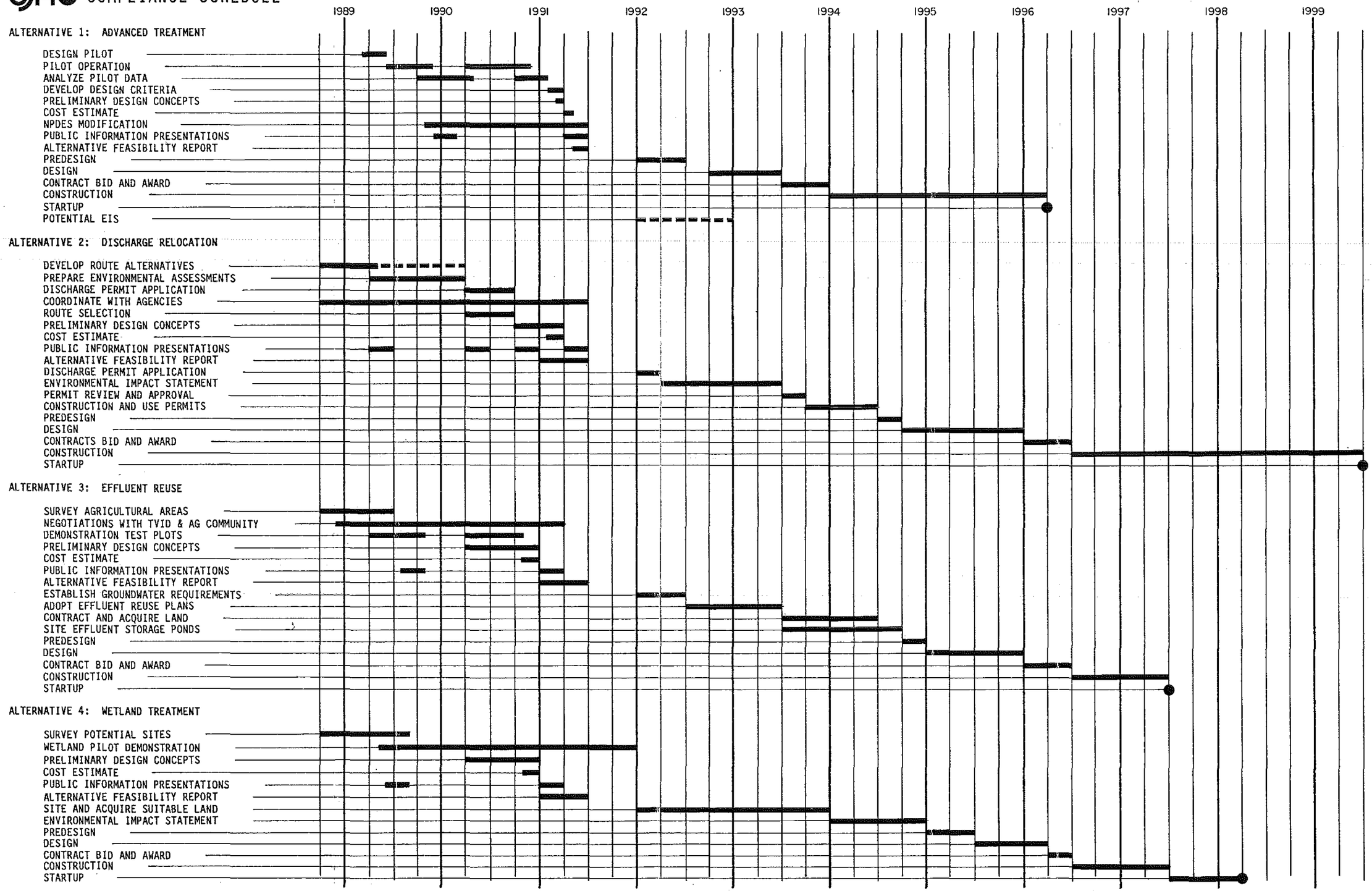
William H. Egan

William Egan
President OAN

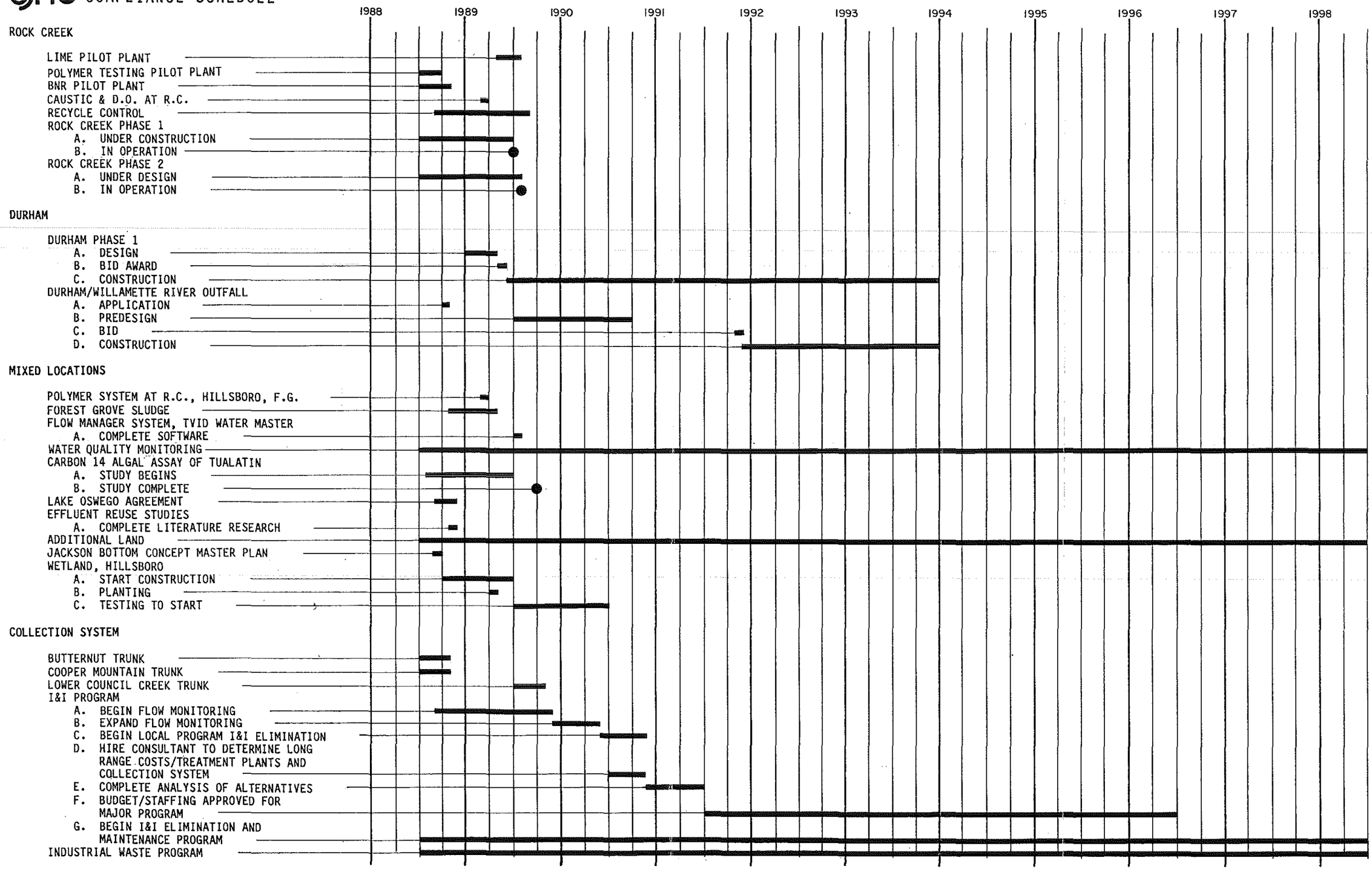
Encl:
cc: State Senator Lenn Hannon
State Representative George L. Gilman
State Representative Eldon Johnson
State Representative Nancy Peterson

R

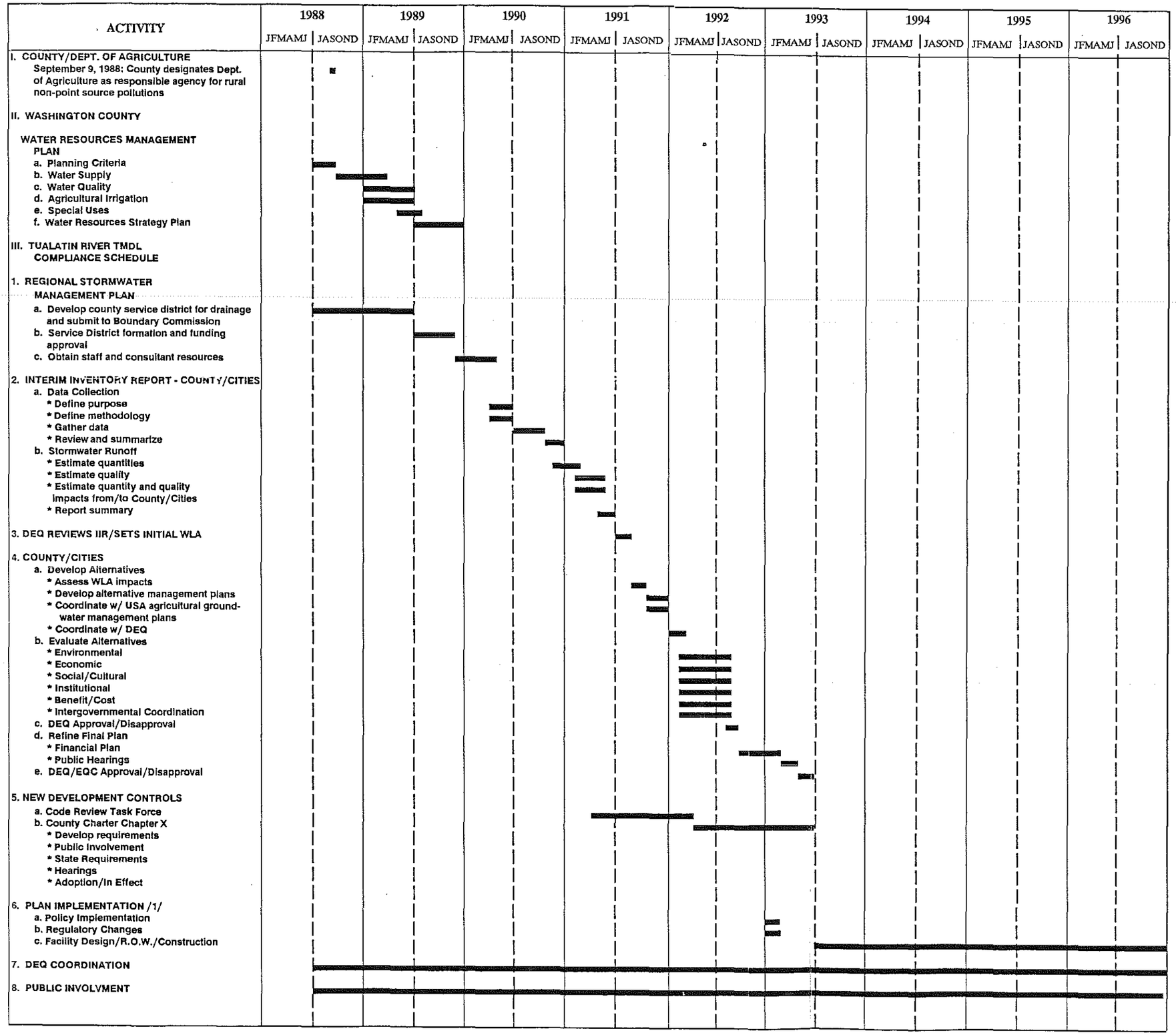
USA COMPLIANCE SCHEDULE



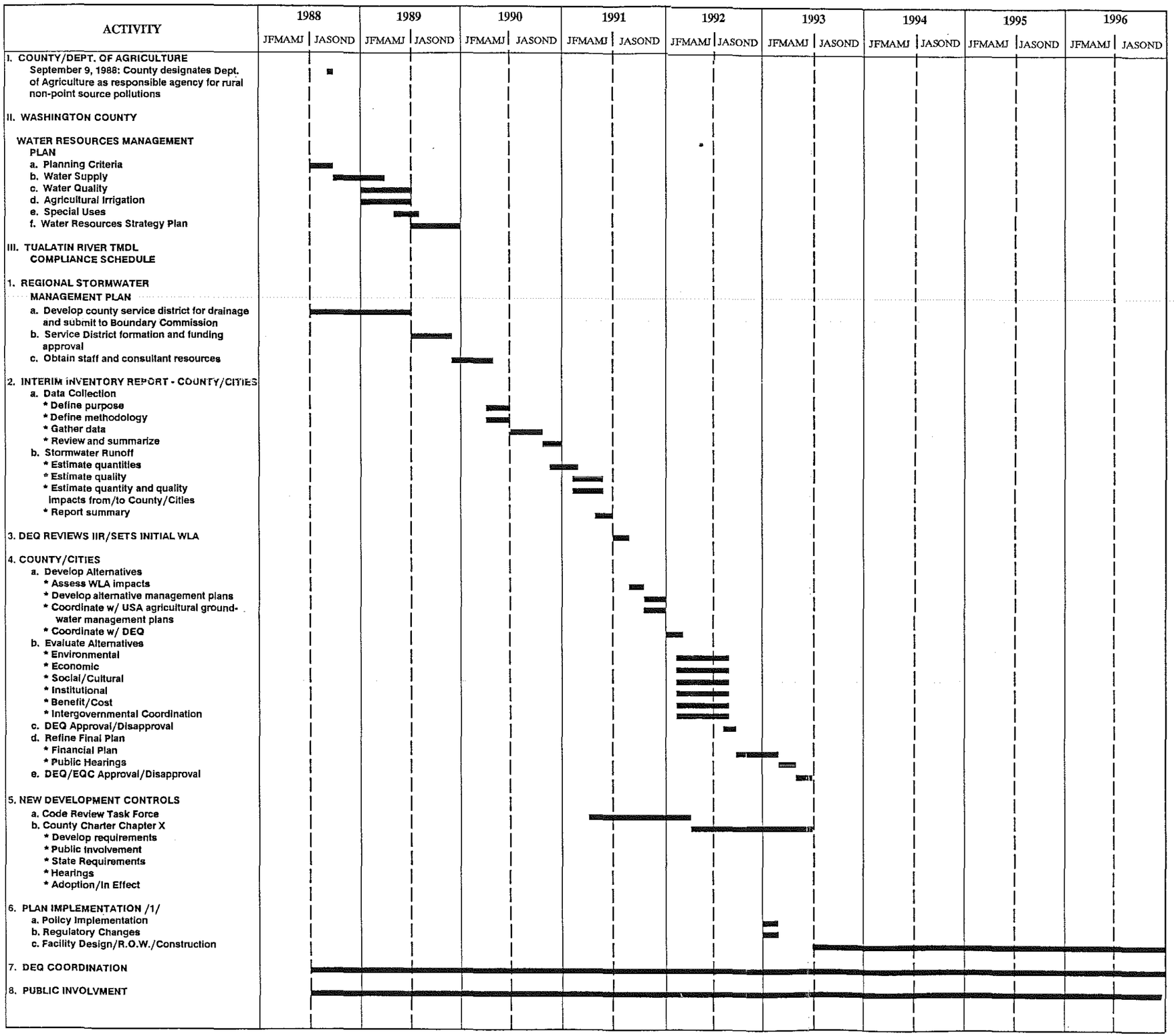
USA COMPLIANCE SCHEDULE



WASHINGTON COUNTY PROPOSED COMPLIANCE SCHEDULE FOR ACHIEVING AMMONIA-NITROGEN AND TOTAL PHOSPHORUS TOTAL MAXIMUM DAILY LOADS (TMDL'S)



NOTES: /1/ Assumes management plans for point source pollution, agricultural irrigation and groundwater are compatible and are being implemented.



WASHINGTON COUNTY PROPOSED COMPLIANCE SCHEDULE FOR ACHIEVING AMMONIA-NITROGEN AND TOTAL PHOSPHORUS TOTAL MAXIMUM DAILY LOADS (TMDL'S)

NOTES: /1/ Assumes management plans for point source pollution, agricultural irrigation and groundwater are compatible and are being implemented.

DEQ PROPOSED
COMPLIANCE SCHEDULE FOR ACHIEVING AMMONIA-NITROGEN AND TOTAL PHOSPHORUS TOTAL MAXIMUM DAILY LOADS (TMDLs) IN TUALATIN RIVER (TR) BASIN

ACTION ITEM	1988 JFMAMJ	1988 JASOND	1989 JFMAMJ	1989 JASOND	1990 JFMAMJ	1990 JASOND	1991 JFMAMJ	1991 JASOND	1992 JFMAMJ	1992 JASOND	1993 JFMAMJ	1993 JASOND
1. EQC ADOPTS RULES FOR SPECIAL POLICIES & GUIDELINES FOR TUALATIN BASIN WITH STANDARDS SET FOR AMMONIA-NITROGEN AND TOTAL PHOSPHORUS FOR T-RIVER AND MAJOR TRIBUTARIES W/O COMPLIANCE SCHEDULE TO ACHIEVING NEW STANDARDS.		* 7/8/88										
2. EQC AUTHORIZES DEQ TO DEVELOP ADD'L RULES WITH COMPLIANCE SCHEDULE & TO HOLD HEARINGS (8/17,18) & COMMENTS DUE 8/19.		=										
3. EQC ADOPTS ADDITIONAL RULES CONTAINING PROPOSED COMPLIANCE SCHEDULE.		=										
4. INTERIM INVENTORY REPORT (IIR)												
a. COUNTIES/CITIES SUBMIT												
1) DESCRIPTION OF URBAN LAND AREAS & LAND USE ZONING DESIGNATIONS		=== 90 days										
2) EST'D QUANTITIES OF STORMWATER RUNOFF FROM URBAN DRAIN. SUBBASINS TO TR & TRIBUTARIES		=== 90 days										
b. COUNTIES SUBMIT:												
1) DESCRIPTION OF AG. LAND AREAS, CROPS & LOCATION		=== 90 days										
2) EST'D QUANTITIES OF AGRICULTURAL RUNOFF TO TR & TRIBUTARIES		=== 90 days										
c. COUNTIES/CITIES IDENTIFY:												
1) DRAINAGE FLOWS ONTO AND/OR THROUGH COUNTY OR CITY DISCHARGED FROM ANOTHER COUNTY OR CITY		=== 90 days										
5. DEQ REVIEWS IIR & SETS INITIAL WASTE LOAD ALLOCATIONS (WLA) & LOAD ALLOCATIONS FOR NPS (3(h) (COUNTIES/CITIES USE INITIAL WLA/LA TO DEVELOP FINAL IMPLEMENTATION PLANS.)		= = 60 days										

DEQ PROPOSED
COMPLIANCE SCHEDULE FOR ACHIEVING AMMONIA-NITROGEN AND TOTAL PHOSPHORUS TOTAL MAXIMUM DAILY LOADS (TMDLs) IN TUALATIN RIVER (TR) BASIN

ACTION ITEM	1988 JFMAMJ	1988 JASOND	1989 JFMAMJ	1989 JASOND	1990 JFMAMJ	1990 JASOND	1991 JFMAMJ	1991 JASOND	1992 JFMAMJ	1992 JASOND	1993 JFMAMJ	1993 JASOND
6. COUNTIES/CITIES SUBMIT:												
a. PLANS/TIME SCHEDULES TO CONTROL URBAN NPS TO MEET QUALITY STANDARDS,(3(g)).		====|	======|	== 12 months								
b. EQC APPROVES/DISAPPROVES URBAN NPS PLANS				====| 120 days								
c. PLAN IMPLEMENTATION,(3(k)					=======| 1/90	=======|	=======|	=======|	=======|	=======|	=======| 6/93	
7. DEQ DEVELOPS RULES TO EQC FOR ISSUING STORMWATER DISCHARGE PERMITS FOR NEW DEVELOPMENT FOR 5 ACRES OR GREATER. RULES PROVIDE GUIDANCE TO COUNTIES/ CITIES TO DEVELOP URBAN NPS PROGRAM		====|== 180 days										
8. AGRICULTURAL NPS RUNOFF (3(i))		===										
a. COUNTIES RECOMMEND AGENCY(IES) TO CONTROL		90 days										
b. DEQ REVIEWS/REJECTS/ FORWARDS TO EQC FOR APPROVAL		= 30 days										
c. DESIGNATED AGENCY SUBMITS PLAN/TIME SCHEDULE TO EQC TO ACHIEVE RULES			=======| 180 days									
d. EQC APPROVES/DISAPPROVES 1) AGENCY DESIGNATION			==== 120 days									
2) AGRICULTURAL NPS PLANS				==== 120 days								
e. PLAN IMPLEMENTATION				==| 11/89	=======|	=======|	=======|	=======|	=======|	=======|	=======| 6/93	

* Conflict with Action Item #6. Question: how does a county develop plans/time schedules to control urban NPS to meet standards while DEQ is still developing rules to provide guidance to counties/cities in developing their urban NPS program?

Name	Orall Date	Written	Compliance Schedules	Final Date	Time of Application	Nonpoint Source Agency	Container Nurseries	Oswego Lake Sub-basin	New Loads	Others
Kinen, Norbert		X	X	X		X	X			
Krahmer, Cal	2		X	X		X				
Krahmer, Gary	2	X	X	X	X					
LeSieur, Stanton		X			X					
Marsh, Kevin	1					X				
Mast, Ted	2						X			
Mckenzie, Stuart	1		X	X						
Morrison, Rosalie	2	X		X					X	
Nelson, Jack	2	X		X						
Nelson, Mike	2		X							
Ott, Gary	2	X								Cost-benefit analysis has not been done
Parmenter, Jerry	2	X	X	X						
Phinney, Eleanor	1									Tualatin can be clean again
Rapp, James		X	X	X						
Schut, Don		X	X	X						
Scott, Michal	2	X	X							
Smith, J.D.	2		X							DEQ has not lived up to consent Decree
Stark, Leonard	2	X	X							
Thielke, Luanne	2	X	X					X		
USEPA, Burd, Robert		X		X						DEQ must provide actual allocations
Walker, Richard	1		X							
Warner, Bruce	1	X	X	X						
Westlake, Richard	1		x							
Wright, Ken	2	X	X	X						

HOUSE OF REPRESENTATIVES
SALEM, OREGON
97310-1347

Environmental Quality Commission

Testimony

Prepared By:

State Representative Delna Jones

In accordance with your stated desire to expedite the testimony on this most critical issue, the Tualatin River Basin, I wish to submit this statement for the record.

This issue is not new. Washington County's legislative delegation has taken the protection and enhancement issue to both bodies of the Oregon Legislature. We, on a bipartisan basis, are willing to initiate aggressive action on this topic again next session.

Your consideration today will have a tremendous impact on both the environmental and economic base of the region and our state. As you deliberate, please account for this. You can provide the leadership to ensure the protection of this resource and, at the same time, provide the elected leadership within the County the flexibility to implement a reasonable solution.

As a portion of the overall solution, legislative action may be an ingredient. The delegation has already demonstrated its willingness to act as a partner for progress. We want to see a positive solution that maintains the environmental and economic balance. You can assist in that goal.

In your deliberations, please allow for the proper amount of time, as requested by Washington County, and help us work for a solution that we all know will work.

WASHINGTON COUNTY, OREGON

PRESS RELEASE

Release date: September 9, 1988

Contact: Wendy E. Hughson, 241-8383

WASHINGTON COUNTY SHOWS STRONG LEADERSHIP FOR TUALATIN RIVER CLEANUP

Hillsboro, OR -- Washington County is showing a unified front on the Tualatin River cleanup issue. That 'front' meets today to testify at an Environmental Quality Commission hearing.

"Everyone in the County is standing together to show their commitment to cleaning up the river," says Gary Krahmer, General Manager of Unified Sewerage Agency (USA), the service district that collects and treats wastewater for the more urban portions of Washington County.

Krahmer says the USA Board is prepared to take the lead in forming the environmental partnership necessary to comply with new EQC orders to limit the amount of phosphorus going into the river. "The Board proposes a Tualatin River Water Quality Team which will represent those groups and organizations that have a stake in the river cleanup," says Krahmer.

Krahmer noted that last July, the EQC adopted stringent phosphorus limitations for the Tualatin River. "We are committed to complying with the new guidelines," says Krahmer, "but today we plan to provide EQC commissioners with testimony that supports a more reasonable and rational time line to meet those standards."

- more -

Department of Land Use And Transportation, Administration
150 North First Avenue Hillsboro, Oregon 97124 Phone:503 / 648-8761

According to Krahmer, the Board of County Commissioners (the governing body for Washington County and USA) is prepared to move deliberately and forcefully with their partners to meet the new standards. "However, meeting those new standards will require large capital expenditures and that process could take a few years," he says.

Krahmer concluded by saying that the process will take about 10 years -- to collect data, evaluate alternatives, obtain funding and implement solutions. "The Board knows it can be done in 10 years," says Krahmer. "It also knows it cannot be done in five."

USA has received four water quality awards over the past 10 years and has been recognized nationally for energy savings and groundskeeping at its Durham facility. Last year, the Durham facility received the Governor's Energy Innovation Award for a project that saves about $250,000 each year.

In addition to serving the more urban portions of Washington County, USA also serves small portions of Multnomah and Clackamas counties, Lake Oswego and Portland.

For more information, contact Gary Krahmer, Unified Sewerage Agency, 150 N. First Avenue, Hillsboro, OR 97124, 648-8621.

- end -

Tualatin timing important

A test of rain water last winter registered 0.0756 milligrams per liter of phosphorus. That statistic is higher than the level of phosphorus proposed to be the allowable limit in the Tualatin River.

The point is not that the Oregon Environmental Quality Commission should give up on the 0.07 target Friday when it is to set standards for the river. It is rather that the commission ought to allow enough time to be sure that the standards can be met in an economical manner.

The one test may prove inconclusive. Still, the possibility that more phosphorus is contained in water in its purest form than is to be permitted in the river indicates how much remains to be learned about how to rid a slow-flowing stream of the green slime of summer.

The challenge to the commission is to grant enough time to do the job well, but not enough for further procrastination. The proposed five years might result in inefficient haste, but 10 to 15 should be ample.

River cleanup, debris recycling on panel's agenda

A Tualatin River cleanup plan, Metro's solid-waste reduction program and proposals for yard debris recycling are on the state Environmental Quality Commission's crammed schedule starting at 8 a.m. Friday.

The five-member citizen panel will meet in the Executive Building fourth-floor conference room, 811 S.W. Sixth Ave., Portland.

Also on the agenda will be a proposed revolving loan fund to replace federal construction grants that have financed millions of dollars worth of new or upgraded sewage-treatment facilities in the past decade.

Oregon expects to receive $30 million under the grant program this year, said Carolyn Young, public affairs director for the Department of Environmental Quality. Then the federal government will phase out the grants, but it has urged states to set up revolving loan funds, she said.

The 1987 Legislature authorized DEQ to develop a loan program, which will mean new costs for communities needing sewage-treatment projects, Young noted. However, the interest rates are expected to be lower than commercial loan programs, she said.

The EQC will be asked Friday to approve a priority list for using the final grants to correct documented water quality problems, she said. The list includes 131 proposed projects, but the money expected from the U.S. Environmental Protection Agency may cover only about 40 proposals, Young said.

At the top of the list are projects in Albany, Oregon City, Coos Bay, North Bend, Toledo, Vernonia, Elgin, the Brooks-Hopmere Sanitation District, the Cove-Orchard Sanitation District, Happy Valley, Brookings and Port Orford.

In efforts to clean up the Tualatin River, the commission will consider how local governments can reduce pollutants to meet goals set in August.

At its meeting last month, the commission set a goal of reducing summer loads of pollutants by three-fourths within five years.

The river suffers from excessive ammonia from sewage-treatment plants and nutrients from treatment plants, agricultural practices and urban water runoff, Young said. The nutrients feed nuisance algae in the water.

In other business, the DEQ will recommend that the commission ask the Metropolitan Service District to show cause why it shouldn't be ordered to carry out a program for reducing solid waste.

More than half the elements in Metro's approved waste-reduction program are behind schedule or haven't been followed, according to DEQ staff reports.

Bob Applegate, a Metro public information officer, said his agency would tell the commission that the plan was intended to be carried out over several years. Metro staff members believe the goals are being met, he said.

In another waste-related problem, the commission will be asked to adopt new rules to require local governments in the Portland area to provide yard debris recycling.

The proposals say local governments should arrange for curbside or other convenient pickup of yard debris, which can be composted for ground cover or a soil additive.

Hazardous waste cleanup will be discussed when the commission reviews proposed rules for Oregon's new superfund program.

The philosophy behind the proposals is to return sites to "background" level, or their condition before pollutants were released, explained Beverly Thacker-Morgan, public affairs representative for DEQ's environmental cleanup division.

The Oregonian

HILLSBORO, FOREST GROVE, CORNELIUS, ALOHA THURSDAY, SEPTEMBER 8, 1988 4M H-MW1

Plan charted for Jackson Bottom wetlands

☐ A Portland consulting firm is considering how to use the land for a wildlife and recreation center and also a wastewater treatment center

By CONNIE POTTER
Correspondent, The Oregonian

HILLSBORO — A Portland consulting firm is finishing up work on a master plan for turning Jackson Bottom wetlands south of the city into a wildlife viewing and recreation area as well as a wastewater treatment center.

Walker and Macy, an urban design and landscape architectural firm, expects to complete a first draft of a concept master plan by Sept. 22 and make the plan final by the end of October.

The city and the Unified Sewerage Agency are picking up the bulk of the $38,000 cost of the study.

The Greater Hillsboro Area Chamber of Commerce and Washington County Soil Conservation District each are contributing $4,000.

The project is expected to be developed in phases over about a 20-year period.

Among the possibilities are creation of wildlife viewing areas, fish ponds, hiking and walking trails, and an educational/environmental center along the lines of the High Desert Museum in Bend.

Another option would be some sort of agricultural production, such as producing fish for cat food as a way to make the project self-sustaining.

The city and the sewerage agency, along with the Oregon Department of Fish and Wildlife, Audubon Society and other agencies, have coordinated efforts for 10 years to develop a water quality and resource management plan for Jackson Bottom, which is south of the city within the Tualatin River floodplain.

Efforts so far have been piecemeal, said Winslow Brooks, the city's planning director.

The purpose of the study is to form a more far-sighted and detailed plan for improving the quality of water in the Tualatin River, while at the same time improving wildlife habitat and allowing related recreational opportunities.

"Our belief is that you can do all of those things in the area," said Brooks. "The master plan will give us direction on which way we want to go."

The bottom already is host to large flocks of migratory birds in the winter and a variety of other wildlife, including red-tailed hawks and coyotes and rodents. Seven to 10 acres have been developed as wetlands wildlife habitat, and an additional 5 to 10 acres will be developed as wildlife habitat this summer.

Most of the wildlife viewing is from Oregon 219 south of the city.

Now, spring and summer use by waterfowl and other wildlife is minimal because there is not enough surface water to support a diverse wildlife population.

The wetlands is generally south of Hillsboro along Dairy Creek, Rock Creek and the Tualatin River. It extends as far as River Road on the east and Southwest 328th Avenue on the west.

Funding for the project is expected to come from several sources, including the sewerage agency, the city and wildlife interest groups.

About 420 acres of the bottom already are in public ownership and include two parks, one at the end of Southeast Seventh Avenue and one behind the K mart store on Tualatin Valley Highway, near the western edge of the wetlands.

Those and other parks that might be included in the bottom lands are not the kind with picnic tables and playground equipment.

"This kind of park will have a different characteristic," said Brooks. "Access will be around the periphery in order to protect the wildlife."

"This kind of park will have a different characteristic. Access will be around the periphery in order to protect the wildlife."

— Winslow Brooks, Hillsboro planning director

Brooks believes the project could be a major tourist draw for Hillsboro, tying in well with other projects that the city is promoting, including the extension of light rail to Hillsboro and construction of a convention center.

The project also ties in to the state's efforts to boost tourism, which is one of Gov. Neil Goldschmidt's priorities, he said.

"It's exciting," said Brooks. "It ties in well to the quality of life we're trying to create in Hillsboro. There's a tremendous variety of things that go on here."

Opinion

River needs second dam

The evidence is in. The Oregon Environmental Quality Commission (EQC) will decide the fate of the Tualatin River Friday and, in a greater sense, the future of water management in Washington County.

Whether the commission gives Washington County five years or 50 to clean up the Tualatin River doesn't really make much difference. Washington County needs a long-term solution to the problem — a second dam on the Tualatin River.

The EQC's stringent new standards for the river already make several points clear:

1) Washington County's Unified Sewerage Agency can no longer release treated effluent into the river at current flow levels.

2) Washington County can no longer allow stormwater from urban areas and erosion from new development to flow into the river unchecked and untreated.

3) Washington County farmers and nursery growers can no longer allow agricultural runoff from their lands to seep into the river to fertilize algae growth.

A second dam on the Tualatin River would address all of these concerns by increasing river flow during summer months to essentially flush pollutants out of the river.

The project would carry a hefty $175 million price tag, but that's not much higher than the quick-fix alternatives.

Building two pipelines to carry effluent from the Unified Sewerage Agency's Durham and Rock Creek treatment plants to the Willamette and Columbia rivers would cost an estimated $110 million to $120 million, not including operating costs.

Once built, the pipelines would do precisely that — carry sewage effluent — and nothing else.

Treatment facilities for stormwater, such as settling basins or wetlands, would have to be built separate from existing sewage treatment plants, and using the same pipeline to carry both types of effluent would dramatically increase design and construction costs.

No one knows how much agricultural runoff seeps into the Tualatin, let alone how much it would cost to build facilities to control it.

In addition to supplementing river flow, a second dam on the Tualatin at Cherry Grove would provide irrigation for farming and a potential site for another state park like the one being proposed at Hagg Lake.

Unfortunately, the proposal would also put portions of Cherry Grove under more than a hundred feet of water. But people have been moving into western Washington County's Patton Valley for years with the full knowledge it could be the future site of a second dam.

As the fastest-growing county in the state, Washington County is standing on the cusp of history in its efforts to deal with such issues as water management, criminal justice and transportation.

In the area of transportation, county officials have wisely passed over band-aid answers in favor of long-term solutions. Instead of merely improving existing highways, the county's transportation plan calls for a westside bypass and light-rail transit to address transportation needs *beyond* the year 2000.

Washington County officials' backs are against the wall regardless of the outcome of Friday's EQC meeting. They should use long-term thinking again and explore plans for a second dam on the Tualatin River.

POSITION STATEMENT FOR
U.S.A. AND WASHINGTON COUNTY

The Board of County Commissioners, the governing body for Washington County and the Unified Sewerage Agency (USA), is committed to compliance with the load limits set by the EQC for the Tualatin River.

- USA expects to meet the standards for ammonia nitrogen at its Rock Creek facility by November of next year.

- USA has undertaken a number of activities, such as development of the Jackson Bottom wildlife refuge, which are designed to enhance the aesthetic qualities of the Tualatin River.

- The board is prepared to take the lead in forming the environmental partnership necessary to comply with the EQC's order. That is why the board is proposing formation of a Tualatin River Water Quality Team. The team will represent those who have a stake in the clean-up of the Tualatin River -- local governments, state agencies and Washington County businesses. The board recognizes that the support of these groups is necessary to meet EQC's challenge.

The Board of County Commissioners is prepared to move deliberately and forcefully with our partners to meet these new standards. But, the time frame to meet the standards must be realistic and achievable.

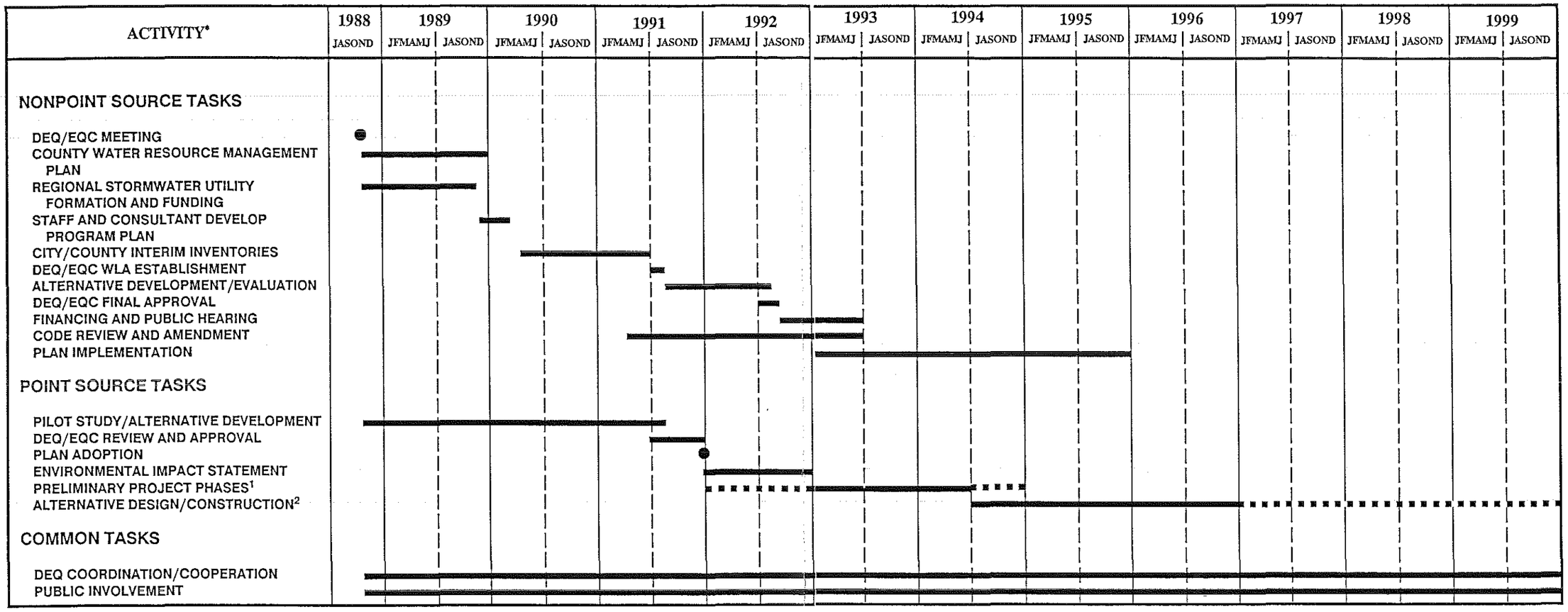
- There is no instant money machine for public agencies. Meeting the new standards will require large capital expenditures. The speed with which a government agency can move to issue revenue bonds or general obligation bonds is limited by state law. If voter approval is necessary (a requirement for general obligation bonds), even more time is required. While the board is prepared to mount an aggressive effort to obtain voter approval, if necessary, the EQC must recognize that the process may extend over many years.

- It also takes time to put the organizational structure in place. Although Washington County cities have joined forces with the county to study urban stormwater problems, it could take at least a year, depending on challenges raised during the approval process, to form a service district to implement solutions.

Washington County is at the vanguard of the Oregon Comeback. Business is coming to our county. The threat of a moratorium, or even a major controversy involving a key part of our infrastructure, would hurt the Washington County and Oregon economy. That is why we are prepared to make an all out effort to achieve compliance as soon as possible.

Although the revised proposed regulations have addressed many of our concerns, we do not believe the June 1993 compliance date is realistic. The standards are tough; and in the nonpoint source pollution area, we are starting almost from scratch. It will take at least 10 years to collect data, evaluate alternatives, obtain funding and implement solutions. The board knows it can be done in 10 years; it also knows it cannot be done in 5 years.

WASHINGTON COUNTY
PROPOSED COMPLIANCE SCHEDULE FOR ACHIEVING AMMONIA-NITROGEN AND TOTAL PHOSPHORUS TOTAL MAXIMUM DAILY LOADS (TMDL'S)



[1] Preliminary project phases are highly dependent on the effluent disposal alternative selected.

[2] Design and construction durations will vary according to the alternative selected and other factors.

* Alternatives assume financing is immediately available and that no litigation is brought against the project.

UNIFIED SEWERAGE AGENCY

ENVIRONMENTAL ACCOMPLISHMENTS

1. Awards

   - Municipal Water Protection Award -- 1977 and 1985 -- given by the Water Pollution Control Federation.

   - Permit Compliance Award -- in 1987 for Durham and Hillsboro facilities -- given by the Association of Metropolitan Sewerage Agencies.

   - Governor's Energy Innovation Award -- in 1987 for mechanical changes at Durham facility -- given by the State of Oregon.

2. USA's industrial waste regulation program is used as a national model.

3. USA is helping build and will maintain a wildlife habitat in Jackson Bottom Wildlife Area.

4. USA is planning to build a wetlands/wildlife habitat in Beaverton in conjunction with Oregon Fish and Wildlife.

5. USA has continually monitored the Tualatin River for water quality since 1970.

6. USA ensures continual water flow during low water months by providing up to one-third the volume of river water.

UNIFIED SEWERAGE AGENCY

CURRENT ENVIRONMENTAL ACTIVITIES

Rock Creek

- Pilot plant to determine how to reduce phosphorous from waste water.
- 45-acre pilot wetlands project under construction to determine ability of wetlands to remove nutrients from treated sewage effluent.

Durham

- Designing new facility to eliminate wet weather overflows.

Mixed Locations

- Continuous river monitoring.
- Investigating recycling opportunities for treated wastewater for irrigation purposes.

Collection System

- Two separate projects under construction to eliminate wet weather overflow situation -- Cooper Mountain and Butternut Creek Trunk. New staff will begin monitoring program to determine most serious system failures and will then repair system as necessary.

PROPOSED TUALATIN RIVER WATER QUALITY TEAM

Unified Sewerage Agency

Washington County

Oregon Economic Development Agency

Washington County cities (8)

Homebuilders Association

Associated General Contractors

Soil Conservation District

Washington County Water Districts (4)

Tualatin Valley Irrigation District

State Water Resources Department

State Fish and Wildlife Department

Department of Environmental Quality

Major Washington County businesses and associations