

9/9/1988

OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS



State of Oregon
Department of
Environmental
Quality

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OREGON ENVIRONMENTAL QUALITY COMMISSION MEETING

September 9, 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 July 8, 1988, EQC Meeting.
- B. Monthly Activity Report for June 1988.
- C. Civil Penalties Settlement Agreements
- D. Tax Credits for Approval.
 - 1. T-2010, Smurfit Newprint Corporation for secondary particulate emission control system.
 - 2. T-2145, Roseburg Forest Products Co. for Burley wet scrubber.
 - 3. Proposed Denial of Request for Preliminary Tax Credit Certification by First Interstate Bank.

8:15 a.m. - PUBLIC FORUM

This is an opportunity for citizens to speak to the Commission on environmental issues and concerns not a part of this scheduled meeting. The Commission may discontinue this forum after a reasonable time if an exceptionally large number of speakers wish to appear.

HEARING AUTHORIZATIONS

- 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.

Noon to 12:30 p.m.: LUNCH BREAK

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

- F:* Request for Adoption of Rules to Certify Wastewater System Personnel Under a Mandatory Certification Program.
- G: Appeal of On-Site Sewage Disposal System Variance Denial by Lester W. and Norma J. Fread.
- H:* Request for Commission Approval of the FY 89 Construction Grants Management System and Priority List for Fiscal Year 1989.
- I: Request for Issuance of an Environmental Quality Commission Compliance Order for the City of Elgin Oregon.
- J: Request for Issuance of an Environmental Quality Commission Compliance Order for the City of Coos Bay Oregon for Treatment Plant No. 2.
- K:* Proposed Adoption of Remedial Action Rules for Investigation and Cleanup of Contaminated Sites, OAR 340-122-010 through 120.
- L:* Proposed Adoption of Amendments and New Rules Relating to the Opportunity to Recycle Yard Debris, OAR 340-60-015 through 125.
- M: Request for Approval of Portland Wasteshed Recycling Report, Proposed Recommendations, and Cancellation of EQC Order WR-87-01.
- N: Status of Review of Metro Solid Waste Reduction Program: Request to Show Cause.
- O:* Proposed Adoption of LRAPA Rules Title 12, "Duties and Powers of Board and Director," OAR 340-20-047.
- P:* Proposed Adoption of Amendments to the Vehicle Inspection Operating Rules and Test Procedure, OAR 340-24-300 through 24-350.

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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.

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 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 October 21. There will be a short work session prior to this meeting at 2:00 pm Thursday October 20.

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.

8/12/88 mlr

PUBLIC NOTICE

In addition to its regularly scheduled meeting on September 9, the Environmental Quality Commission will hold a work session on Thursday September 8 from 2:00 pm until 5:00 pm. The purpose of the work session will be to give Commissioners background information on some agenda items from the September 9 meeting. No final decisions will be made at the work session. The subjects of discussion for this meeting will be:

2:00-2:30

Agenda Item N

Status of Review of Metro Solid Waste Reduction Program:
Request to Show Cause

2:30-4:00

Agenda Item K

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

4:00

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

(OVER)

The following agenda items have been assigned specific times for consideration at the September 9 meeting:

9:30 am

Agenda Item G

Appeal of On-Site Sewage Disposal System Variance Denial by
Lester W. and Norma J. Fread

10:00 am

Agenda Item K

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

11:00 am

Agenda Item L

Proposed Adoption of Amendments and New Rules Relating to the
Opportunity to Recycle Yard Debris, OAR 340-60-105 through
125

1:00 pm

Agenda Item N

Status of Review of Metro Solid Waste Reduction Program:
Request to Show Cause

2:00 pm

Agenda Item R

Proposed Adoption of Rules Establishing Plan Requirement 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.

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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 July 8, 1988, EQC Meeting. *Moved Messinger passed
2nd Brill unanim.*
- B. Monthly Activity Report for June 1988.
- C. Civil Penalties Settlement Agreements *① DEB & Bernhart EC move
WW 2nd unanim.
② Markee WW move
GS 2nd unanim.*
- D. Tax Credits for Approval.

- 1. T-2010, Smurfit Newprint Corporation for secondary particulate emission control system.
- 2. T-2145, Roseburg Forest Products Co. for Burley wet scrubber.
- 3. Proposed Denial of Request for Preliminary Tax Credit Certification by First Interstate Bank. *WW move
WB 2nd unanim.*

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HEARING AUTHORIZATIONS

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GS 2nd
unanim.*

Noon to 12:30 p.m.: LUNCH BREAK

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Directors recommendation as modified by Sept. letter

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

G: Appeal of On-Site Sewage Disposal System Variance Denial by Lester W. and Norma J. Fread. *WW move GS 2nd > unan.*

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

I: Request for Issuance of an Environmental Quality Commission Compliance Order for the City of Elgin Oregon. *WW move WB 2nd > unan.*

J: Request for Issuance of an Environmental Quality Commission Compliance Order for the City of Coos Bay Oregon for Treatment Plant No. 2. *EC move to approve as Sage No Brittain Hutch No- WW*

K:* Proposed Adoption of Remedial Action Rules for Investigation and Cleanup of Contaminated Sites, OAR 340-122-010 through 120. *WW move WB 2nd > unan. LEC*

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

M: Request for Approval of Portland Wastashed Recycling Report, Proposed Recommendations, and Cancellation of EQC Order WR-87-01. *EC move WB 2nd > unan.*

N: Status of Review of Metro Solid Waste Reduction Program: Request to Show Cause.

O:* Proposed Adoption of LRAPA Rules Title 12, "Duties and Powers of Board and Director," OAR 340-20-047. *WW move WB 2nd > unan.*

P:* Proposed Adoption of Amendments to the Vehicle Inspection Operating Rules and Test Procedure, OAR 340-24-300 through 24-350. *WW move GS 2nd > unan.*

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EC moved
WB 2/20/89

> unanimous

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.

200 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.

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8/12/88 mlr

Approved
Approved with Corrections _____
Corrections made

MINUTES ARE NOT FINAL UNTIL APPROVED BY THE EQC

ENVIRONMENTAL QUALITY COMMISSION

Minutes of the One Hundred Eighty-Ninth Meeting
July 8, 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*

*Appointment effective July 17, 1988

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

Metro's Solid Waste Reduction Program: The EQC approved Metro's Solid Waste Reduction Plan on June 27, 1986. Metro has now submitted a biennial report on the status of the implementation plan which is currently being reviewed by DEQ staff and will be submitted to the interim legislative committee in September 1988. The report with staff recommendations will be scheduled for EQC review at the meeting following the September 9 meeting.

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There was a discussion of SW education/promotion standards--should there be performance standards in rules--this subject will be reviewed again at the September meeting.

Dave Rozell presented a slide show on waste reduction.

FORMAL MEETING

CONSENT ITEMS:

Agenda Item D: Election of Officers.

Action: It was moved by Commissioner Brill, seconded by Commissioner Castle, and unanimously passed to elect Commissioner Hutchison as chair for the Commission.

It was moved by Commissioner Brill, seconded by Commissioner Sage, and unanimously passed to elect Commissioner Castle as vice-chair for the Commission.

Chairman Hutchison introduced the members of the Commission. He noted that William Wessinger was joining the Commission at the table although he had not yet been confirmed by the Senate and would not be voting on issues at this meeting.

Agenda Item A: Minutes of the June 10, 1988 EQC Meeting.

Commissioner Sage indicated that the June 10, 1988 date appearing twice on page 3 should be April 29, 1988.

Commissioner Hutchison indicated that the reference to taping of conversations on page 7 should refer to taping of both personal and telephone conversations.

Action: It was moved by Commissioner Brill, seconded by Commissioner Castle, and passed unanimously that the corrected minutes of the June 10, 1988 meeting be approved.

Agenda Item B: Monthly Activity Report for May 1988.

Director Hansen briefly explained the nature and purpose of the activity reports and suggested further discussion at the upcoming Commission retreat.

Action: It was moved by Commissioner Castle, seconded by Commissioner Sage, and passed unanimously that the May 1988 Monthly Activity Report be approved.

Agenda Item C: Tax Credits.

Director Hansen discussed some of the basics of the tax credit program and the changes which will be effective in 1989. The program is intended to offset the cost of environmental protection equipment with a 50% credit against income over a 10 year period. In 1989 the percentage will drop to 25% and projects must be complete by 12/31/90. The program is scheduled to phase out December 31, 1990. All tax credits must be approved by the Commission.

Commissioner Castle asked how the department determined the facility to be certified under T-2297 was at 48% of cost. Lydia Taylor explained that the facility had some return on investment and that percentage allocable was established using tables in the rules.

Chairman Hutchison advised that he would abstain on application T-2104 because his law firm represented the applicant company.

Action: It was moved by Commissioner Sage, seconded by Commissioner Brill, and passed unanimously to approve the tax credits for applications T-1890, T-2297, and T-2418.

It was moved by Commissioner Sage, seconded by Commissioner Brill, and passed with 3 votes that application T-2104 be approved; Chairman Hutchison abstained.

PUBLIC FORUM

Joe Weller, American Lung Association, spoke to the Commission about daily air quality monitoring in the Bend area. He stated that during the winter (heating) season, monitoring is conducted on a daily basis. During the summer season, however, monitoring is conducted only every six days. Mr. Weller feels that this sampling schedule allows violations of particulates to occur and would like to encourage daily monitoring during both summer and winter months.

Mr. Weller also informed the Commission that they have collected more than 90,000 signatures for a "Clean Indoor Air" initiative which advocated the prohibition of smoking in indoor environments.

He urged the Commission to continue to pursue a legislative concept on this issue as a backup to the initiative measure.

Director Hansen advised that the department would explore the feasibility of additional monitoring in the Bend area and will report back to the Commission.

Gary Newkirk, private citizen, told the Commission that he has had an ongoing problem with the sewage system in Twin Rocks. Mr. Newkirk owns an historic building which is located at a point lower than the lowest point of the Twin Rocks system. As a consequence, if the system has problems, his house gets flooded with raw sewage. This has happened on seven occasions since 1980. Gary requested DEQ investigation of the 7th backup. He also requested investigation of historic building provisions of the federal grants to the Twin Rocks District. Mr. Newkirk further requested the following: an improved monitoring system (specifically for the Twin Rocks system); a report on the current status of the system; installation of an alarm system with an emergency telephone number which is always manned; and that the Commission declare a clear and present danger to Tillamook Bay and public health and do what was within its power to take corrective or enforcement action. A letter from Mr. Newkirk is made part of this meeting's record.

The department was asked to report back to the Commission on the problem.

The department was also asked to report back to the Commission regarding DEQ's responsibility under grant conditions relative to historic buildings.

Claudia Wade, private citizen, expressed her frustration with regulations which prevent her from burning blackberry bushes and other yard debris. She described the proliferation of the bushes and the problems with controlling them. She would like to see blackberry bushes included in the field burning definition.

Commissioner Hutchison told Ms. Wade that although it was not likely berry bushes could be included in field burning definitions, DEQ is taking action to make it easier to dispose of yard debris.

The Commission then proceeded to agenda Item F which was scheduled to begin at 9:00 am.

Agenda Item F: Proposed Adoption of Rules Defining Loading Capacity (LA), Waste Load Allocation (WLA), Load Allocation (LA), and Total Maximum Daily Load (TMDL) (OAR 340-41-006) and Proposed Adoption of Rules Establishing Total Maximum Daily Loads, Load

Allocations, and Waste Load Allocations for Total Phosphorus and Ammonia in the Tualatin River Basin (340-41-470).

This agenda item is about the adoption of proposed rules for the Tualatin River system which would establish Total Maximum Daily Loads (TMDLs), Waste Load Allocations (WLAs), and Load Allocations (LAs) for phosphorus and ammonia-nitrogen, and the implementation plans to achieve the loading limits. The definition of four terms--Loading Capacity (LC), LA, WLA, and TMDL--are also proposed to be added to the section on definitions.

In December 1986 the Northwest Environmental Defense Center (NEDC) filed suit in federal court against EPA to require that total maximum daily loads (TMDLs) be promulgated for those water bodies that fail to meet water quality standards as required by Section 303 of the Clean Water Act. In May 1987 the Environmental Quality Commission approved a process for the department to begin establishing TMDLs beginning with the Tualatin River basin. A consent decree was signed by EPA and NEDC in June 1987 agreeing to a schedule for adopting TMDLs on 11 water bodies over the following years, one of which was the Tualatin River.

Neil Mullane, Planning and Monitoring Manager, described the department's report on the Tualatin River Basin regarding waste load allocations. Neil stated that the proposed rules contain a definition section, concentration identifications, the load calculation process, and an implementation schedule. He further stated that the main issues involved in the study were establishing the phosphorus/ammonia criteria and a time line for implementation, identifying non-point source locations, determining load allocations, and establishing special rules and policies.

Jack Churchill of the Northwest Environmental Defense Center urged support of the Staff report with amendments presented by Jack Smith. He also commented that we now have enough data to make decisions. Mr. Churchill stated that the law is already established and now the polluters must either change the law or comply with it. A copy of Mr. Churchill's testimony is made a part of this meeting's record.

Jack Smith, President of the Northwest Environmental Defense Center, stated that the rules prescribe a method for calculating loads, but do not establish load allocations or guidance on distribution of allocations in overlapping jurisdictions; they only establish target standards. Mr. Smith made specific suggestions to change the rules. He also stated that while the department considers container nurseries to be non-point sources, NEDC considers them to be point sources.

Darlene Hooley, Commissioner of Clackamas County, said that she supports the standards but feels that dates of compliance need to be established, that a data base is needed for the entire basin, and that all government entities need to cooperate on this project.

Don Burdick of the Lake Oswego Corporation recommended adoption of the rules and said they will work with USA and the department to comply with and enforce the rules. A letter from Mr. Burdick is made part of this meeting's record. He noted that the Lake Oswego drainage is not part of the Tualatin River drainage and the rules may be adjusted to specifically identify the Lake Oswego drainage basin.

Gary Krahmer, Manager of United Sewerage Agency noted that all want good water quality. He expressed disappointment that USA modelling efforts and recommendations were not better considered.

Gordon Culp, consulting engineer for USA, reviewed his experience with phosphorus removal projects and stated that the success of these projects is uncertain. Mr. Culp stated that the phosphorus limitations proposed are not attainable, that models to predict algal growths are not precise, and that other factors affecting water quality should also be considered. A copy of Mr. Culp's testimony is made a part of this meeting's record.

Bonnie Hays representing Unified Sewerage Agency (USA), stated that removing phosphorus from the river will not necessarily reduce the chlorophyll which is the major reason for unclear water. Bonnie presented samples of water with various levels of chlorophyll to demonstrate what the numbers represented in the proposal. Bonnie further stated that the county and USA have already begun various processes for controlling ammonia. She feels there are problems with establishing time lines for the storm water plans as the summer of 1990. Bonnie feels that the charter of Washington County slows the process to the point where they might be unable to comply with that deadline. A letter from Ms. Hays is made part of this meeting's record.

Lorrie Skurdahl, legal counsel for USA, stated that the existing "nuisance algae rule" was not being appropriately applied to the Tualatin River, that TMDLs should be adopted immediately, that USA's proposed TMDLs are technically sound, and that limits should be applied based on calendar year plus river flow and temperature. A copy of Ms. Skurdahl's testimony is made part of this meeting's record.

In response to questions from the Commission, Mike Gearhard, EPA, advised that if the Commission fails to adopt both criteria and an

implementation plan, EPA is required to publish its own proposals in the Federal Register within 90 days.

Cal Kramer, Manager of the Tualatin Valley Irrigation District stated that the biggest issue involved in the rule process is money. He felt that the standards established are not achievable and recommended that they be delayed for five years. Mr. Kramer felt that background levels needed to be established. He further stated that agencies have been designated to address nonpoint source pollution, but that section H of the proposal was not in line with previously established designations.

Richard Barazono, a private land owner, recommended consideration of a higher level of phosphates and stated that the Lake Oswego dam should put water back into the river.

John Brooms with the Wetlands Conservancy stated that they support the proposal. He stated that the issues involved economics, wildlife, and health as well as aesthetics. He also noted that they are not asking for guaranteed results, but improvements in water quality.

Michael McKillip, City Engineer for the City of Tualatin, submitted a letter from the Mayor of Tualatin. The letter is made part of this meeting's record.

Kenneth Wright, of the Lower Tualatin Valley Home Owners Association stated that the association agreed with much of DEQ's report. He suggested focusing more attention on the problem of storm drains, silt from property development, nonpoint pollution sources, and the potential for winter flooding. A letter of his testimony is made a part of this meeting's record.

Tom Donaca of Associated Oregon Industries said that economic impact statements are necessary for rules and that without specific statements, the potential for litigation is great.

Also part of this meeting's record are a statement from Kenneth Fink, of the Stafford Lower Tualatin CPO, and a report prepared by Scientific Resources, Inc. entitled "Lake Oswego Lake and Watershed Assessment 1986-1987: Diagnostic and Restoration Analysis". *A letter from Leonard Stark is attached as well*

The Chairman then closed the public hearing on this matter.

Neil Mullane and Bob Baumgartner were asked to make a department response to the public comments.

Bob stated that of the four variables affecting water clarity, temperature and sunlight were uncontrollable while nutrients and

streamflow were controllable. The strategy proposed by USA was not adopted because chlorophyll A levels would not be reduced sufficiently to meet the target level of 15 micrograms per liter. The USA treatment options are good but have not yet been evaluated with regard to wetlands.

The suggested amendments to the proposed rules were then reviewed and considered by the Commission. The department was instructed to return later in the meeting with revisions to the rule language to incorporate a June 30, 1993 completion date, incorporate selected other wording changes recommended in testimony, and remove the implementation section for reconsideration at a subsequent public hearing.

Further consideration of this agenda item followed agenda item L.

Agenda Item E: Request for Authorization to Conduct a Public Hearing on Proposed New Administrative Rules for the Waste Tire Program, OAR 340-62: Reimbursement for Use and Cleanup of Waste Tires.

The 1987 Legislature passed a Waste Tire Bill (HB 2022) which requires regulation of waste tires, and imposes a \$1 fee on new replacement tires to create a Waste Tire Recycling Account. The account is to be used for a reimbursement program to stimulate the market for recycling of waste tires, and to provide cleanup funds for some tire piles. The department has worked with a task force of affected parties to develop administrative rules for the Waste Tire Program. This request was for public hearings to take testimony on the second part of those rules; those rules covering the use of reimbursement and cleanup program funds.

Commissioner-designate Wessinger asked how Items G and E were related.

Deanna Mueller-Krispin stated that rules to implement the waste tire program passed by the last legislature were being developed in 2 phases. Item G concerned the permitting aspect of waste tire regulation while Item E was specific to the reimbursement use of waste tire recycling program money, that is the \$1 charge per tire for new tire purchases.

Commissioner Hutchison questioned the need for an annual review.

Deanna Mueller-Krispin said that the review did not necessarily mean there would be changes to the rule, only that the process should be monitored.

Director's Recommendation: Based on the summation, it is recommended that the Commission authorize public hearings to take testimony on the proposed rule to implement the use of the Waste Tire Recycling Account, OAR 340-62, as presented.

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

Agenda Item G: Proposed Adoption of New Administrative Rules for the Waste Tire Program, OAR 340-62: Permit Procedures and Standards for Waste Tire Storage Sites and Waste Tire Carriers.

The department is going through a two-stage rule making procedure to implement the program governing storage, transportation, and disposal of waste tires. This rule deals with permitting requirement for waste tire storage sites, waste tire carries, and chipping standards for tires to be landfilled in sold waste disposal sites. Public hearings were held in Pendleton, Bend, Springfield, Medford, and Oregon City. Eighteen persons testified and nine submitted written testimony. This rule establishes permit requirements and chipping standards.

In response to a question from Chairman Hutchison, Deanne Mueller-Krispin stated that this legislation does not have a special category for auto wreckers. If they acquire over 100 tires, they become a tire storage site and need a permit.

Director's Recommendation: It is recommended that the Commission adopt the proposed new rule governing permitting of waste tire storage sites, waste tire carriers, and chipping standards for landfill disposal of waste tires in OAR Chapter 340, Division 62.

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

Agenda Item H: Proposed Adoption of Additions to Solid Waste Rules Regarding Financial Assurance at Regional Disposal Sites, OAR 340-61-010 and 029.

The 1987 Legislature passed HB 2619 which requires any regional disposal site to provide financial assurance. The law also requires the Commission to set the types and amount of financial assurance.

The department drafted rules which require, in addition to closure and post-closure funding, an additional amount of financial assurance to cover unexpected remedial action.

Commissioner Brill asked if the financial assurance required by this rule was enough to cover major cleanup projects and who would be responsible for illegal releases which occurred after 25 years.

Steve Greenwood and Bob Brown, solid waste section, responded that there would not be enough money in the financial assurance account to correct the problem. It would however fund a start on study and cleanup. Ultimately the permittee would be held responsible for correction.

Director's Recommendation: It is recommended that the Commission adopt the proposed additions to Solid Waste Rules OAR 340-61-010 and 029.

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

Agenda Item I: Public Hearing and Proposed Adoption of Temporary Rule OAR 340-60-100 for Certification of In-state Recycling Program under ORS 459.305.

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's units have been certified by the department as having implemented an opportunity to recycle that satisfies the requirements of the Oregon Recycling Opportunity Act.

For out-of-state wastes, because of a possible conflict with federal law regarding interstate commerce, the department is waiting guidance from the Oregon Attorney General before proceeding with rule adoption. The proposed temporary rule regards only in-state waste, and uses the existing system for recycling report approvals as the method for determining certification.

Director Hansen stated that the proposal is for a temporary rule, and that the department is working with the attorney general to draft the best possible permanent rules for implementing the recycling certification program required by the 1987 legislature.

David Rozell responded to a question by stating that we expect to

bring a proposal for permanent rules governing Recycling Certification to the next EQC meeting.

Director's Recommendation: It is recommended that the Commission adopt the proposed temporary rule OAR 340-60-100.

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

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

This is the third in a series of proposed rule-makings which the department has scheduled over a period of approximately two years. The department is proposing the adoption, by reference, of a group of new federal hazardous waste management rules.

The department proposes to repeal an existing state rule which is more stringent than federal rules. It is also taking this opportunity to propose amendments to the existing state reporting requirements for hazardous waste generators and management facilities. Some of these amendments are more stringent than federal requirements.

Commissioner Castle asked if the survey requirement provided reliable information.

Gary Calaba stated that the information improves the data base. He also stated that there have been changes in federal rules and that the proposed amendments were aimed at bringing our rules into compliance with federal rules.

Director's Recommendation: To maintain authorization equivalency with the federal program, it is recommended that the Commission adopt the proposed amendments to the hazardous waste management rules, OAR Chapter 340, Divisions 100, 102, and 104.

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

Agenda Item K: Appeal of On-Site Sewage Treatment and Disposal System Variance Denial by Lester W. Fread 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.

At the director's recommendation, the commission, by consensus, elected to defer action the Fread variance denial appeal until its September 9, 1988 meeting. This action was taken to assure Mr. and Mrs. Fread had an opportunity to review the Staff Report containing the director's recommendation to the Commission and to be sure the Fread's were given ample opportunity to appear before the Commission. Action on the Agenda Item was deferred when Mr. Fread advised staff (via telephone conversation immediately before the Commission was to consider the Agenda Item) that he had not received a copy of the Staff Report.

Agenda Item L: Review of amendments to Portland's Assessment Deferral Loan Program.

Portland submitted amendments to the EQC approved assessment deferral loan program. The department found the amendments provide a workable program consistent with the requirement of the rules and statutes related to Assessment Deferral Loan programs.

Director's Recommendation: It is recommended that the Commission approve the proposed amendments to Portland's Sewer Assessment Deferral Loan program.

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

The Commission then returned to agenda item F regarding the Tualatin. The department provided wording for proposed rule amendments showing changes from the initial director's recommendation.

Action: It was moved by Commission Castle, seconded by Commissioner Sage and passed unanimously that the Commission adopt additional definitions in OAR 340-41-006 as presented in the initial director recommendation and new rule language OAR 340-41-470(3)(a)-(e) as presented in revision to the director's recommendation.

It was further moved by Commissioner Castle, seconded by Commissioner Brill, and passed unanimously that the balance of the proposal dealing with implementation be taken back to public hearing with amendments as necessary to be consistent with the adopted rules and Commission discussion.

It was moved by Commissioner Sage, seconded by Commissioner Brill, and passed unanimously that the further rules be

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returned for adoption at the next Commission meeting
scheduled for September 9, 1988.

mlr

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Approved _____
Approved with Corrections _____
Corrections made _____

MINUTES ARE NOT FINAL UNTIL APPROVED BY THE EOC

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 0: 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.

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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/reasons
7. Interdependence with other programs (implicit or explicit?)

Criteria for not accepting delegation:

1. Does the program cost too 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 contaminants? 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 exists 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 vice versa.

Consensus on Followup Actions: -- 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 is 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 issues 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

EQC Emergency Call
August 12, 1988
Page 4

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 Buchanan 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.

EQC Emergency Call
August 12, 1988
Page 5

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.

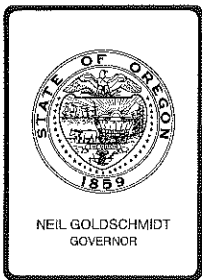
Commissioner Sage seconded the motion and the motion passed unanimously.

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



Department of Environmental Quality

811 SW SIXTH AVENUE, PORTLAND, OREGON 97204-1390 PHONE (503) 229-5696

EXECUTIVE SUMMARY

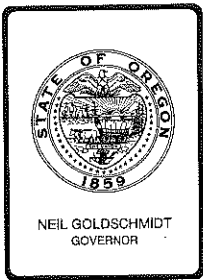
To: Environmental Quality Commission

From: Director *Myrcia Taylor*

Subject: Agenda Item B, September 9, 1988, EQC Meeting. June and July, 1988 Activity Reports

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.

FH:y
MY7492



Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director *Rylee Taylor*

Subject: Agenda Item No. B, September 9, 1988, EQC Meeting

June and July, 1988 Activity Reports

Discussion

Attached are the June and July, 1988 Program Activity Reports.

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

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

The purposes of this report are:

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

Recommendation

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

Fred Hansen

MY7494

DEPARTMENT OF ENVIRONMENTAL QUALITY

Monthly Activity Report

JUNE AND JULY

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DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

June 1988
(Month and Year)

SUMMARY OF PLAN ACTIONS

	Plans Received		Plans Approved		Plans Disapproved		Plans Pending
	<u>Month</u>	<u>FY</u>	<u>Month</u>	<u>FY</u>	<u>Month</u>	<u>FY</u>	
<u>Air</u>							
Direct Sources	12	92	4	87	0	0	20
Small Gasoline Storage Tanks Vapor Controls	-	-	-	-	-	-	-
Total	12	92	4	87	0	0	20
<u>Water</u>							
Municipal	14	110	17	159	0	0	29
Industrial	3	67	7	65	0	0	5
Total	17	177	24	224	0	0	34
<u>Solid Waste</u>							
Gen. Refuse	5	29	1	12	0	4	31
Demolition	-	2	-	-	-	2	1
Industrial Sludge	2	11	-	8	1	3	13
	-	2	-	1	-	-	2
Total	7	44	1	21	1	9	47
<u>GRAND TOTAL</u>	36	313	29	332	1	9	101

MY7495

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
12	0022 BLUE MTN FOREST PRODUCTS	GRANT	05/23/88	COMPLETED-APRVD	06/15/88
18	0006 JELD-WEN INC.	KLAMATH	02/29/88	COMPLETED-APRVD	05/20/88
18	0013 WEYERHAEUSER COMPANY	KLAMATH	05/23/88	COMPLETED-APRVD	06/02/88
26	1902 MCCLOSKEY CORPORATION	MULTNOMAH	06/14/88	COMPLETED-APRVD	06/20/88

TOTAL NUMBER QUICK LOOK REPORT LINES 4

02

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division
(Reporting Unit)

June 1988
(Month and Year)

SUMMARY OF AIR PERMIT ACTIONS

	Permit Actions Received		Permit Actions Completed		Permit Actions Pending	Sources Under Permits	Sources Reqr'g Permits
	<u>Month</u>	<u>FY</u>	<u>Month</u>	<u>FY</u>			
<u>Direct Sources</u>							
New	3	32	5	35	16		
Existing	0	15	3	21	5		
Renewals	25	106	22	95	60		
Modifications	1	72	14	102	10		
Trfs./Name Chng.	<u>7</u>	<u>7</u>	<u>0</u>	<u>0</u>	<u>1</u>		
Total	36	232	44	253	92	1398	1422
<u>Indirect Sources</u>							
New	1	12	2	15	2		
Existing	0	0	0	0	0		
Renewals	0	0	0	0	0		
Modifications	<u>0</u>	<u>6</u>	<u>0</u>	<u>5</u>	<u>0</u>		
Total	<u>1</u>	<u>18</u>	<u>2</u>	<u>20</u>	<u>2</u>	<u>286</u>	<u>288</u>
<u>GRAND TOTALS</u>	37	250	46	273	94	1684	1710

Number of
Pending Permits

Comments

11	To be reviewed by Northwest Region
15	To be reviewed by Willamette Valley Region
11	To be reviewed by Southwest Region
6	To be reviewed by Central Region
3	To be reviewed by Eastern Region
14	To be reviewed by Program Operations Section
19	Awaiting Public Notice
<u>13</u>	Awaiting end of 30-day Public Notice Period
92	

MAR.5
AA5323 (7/88)

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	0029	ASH GROVE CEMENT WEST INC	BAKER	00/00/00	PERMIT ISSUED	05/18/88	MOD
C	2159	EVANITE FIBER CORPORATION	BENTON	05/10/88	PERMIT ISSUED	05/25/88	MOD
02	2173	EVANITE FIBER CORPORATION	BENTON	03/10/88	PERMIT ISSUED	06/20/88	MOD
				05/10/88	PERMIT ISSUED	06/20/88	MOD
02	2459	CORVALLIS SENIOR HS	BENTON	05/02/88	PERMIT ISSUED	05/25/88	RNW
02	2490	EVANITE FIBER CORPORATION	BENTON	05/10/88	PERMIT ISSUED	05/27/88	MOD
02	2515	EVANITE FIBER CORPORATION	BENTON	05/10/88	PERMIT ISSUED	05/25/88	MOD
02	6009	HULL OAKES LUMBER COMPANY	BENTON	04/29/88	PERMIT ISSUED	05/25/88	RNW
02	7002	MARYS RIVER LUMBER CO	BENTON	05/06/88	PERMIT ISSUED	05/25/88	RNW
03	2145	JAMES RIVER II, INC.	CLACKAMAS	05/06/88	PERMIT ISSUED	06/21/88	MOD
				11/02/84	PERMIT ISSUED	06/21/88	RNW
03	2668	E. C. GRAVEL	CLACKAMAS	04/04/88	PERMIT ISSUED	06/13/88	RNW
04	0004	JAMES RIVER II	CLATSOP	05/02/88	PERMIT ISSUED	05/13/88	MOD
05	2572	LAMMI SAND & ROCK PRODCTS	COLUMBIA	04/01/88	PERMIT ISSUED	05/10/88	RNW
05	2581	NORTHWEST NATURAL GAS	COLUMBIA	02/23/88	PERMIT ISSUED	06/13/88	MOD
10	0025	ROSEBURG FOREST PRODUCTS	DOUGLAS	02/28/83	PERMIT ISSUED	06/27/88	RNW
10	0037	CHAMPION BUILDING PRODUCT	DOUGLAS	12/01/87	PERMIT ISSUED	06/27/88	RNW
10	0119	MERCY CARE CENTER	DOUGLAS	04/21/88	PERMIT ISSUED	05/10/88	MOD
15	0111	ROGUE VALLEY MANOR	JACKSON	04/04/88	PERMIT ISSUED	05/25/88	RNW
15	0124	PACIFIC WOOD FIBERS	JACKSON	04/04/88	PERMIT ISSUED	05/10/88	RNW
17	0023	MILLER REDWOOD CO.	JOSEPHINE	01/07/87	PERMIT ISSUED	06/27/88	RNW
21	0031	TRI-AGG, INC.	LINCOLN	05/18/88	PERMIT ISSUED	06/21/88	MOD
22	2523	FRERES LUMBER CO., INC.	LINN	05/02/88	PERMIT ISSUED	05/13/88	MOD
22	4009	EUGENE CHEMICAL WORKS	LINN	04/22/88	PERMIT ISSUED	06/13/88	RNW
22	6309	STAYTON ROCK PRODUCTS INC	LINN	03/14/88	PERMIT ISSUED	05/10/88	RNW
24	2550	GREEN VENEER INC	MARION	06/21/88	PERMIT ISSUED	05/04/88	RNW
25	0020	KINZUA CORP	MORROW	08/24/87	PERMIT ISSUED	05/13/88	RNW
26	1851	REYNOLDS ALUMINUM	MULTNOMAH	01/07/85	PERMIT ISSUED	05/27/88	RNW
26	1865	OREGON STEEL MILLS, INC.	MULTNOMAH	05/01/86	PERMIT ISSUED	05/19/88	RNW
26	1909	LONE STAR NORTHWEST	MULTNOMAH	04/22/88	PERMIT ISSUED	05/27/88	RNW
26	2044	OWENS-CORNING FIBERGLAS	MULTNOMAH	05/02/88	PERMIT ISSUED	06/13/88	MOD
26	3038	CASCADE CORPORATION	MULTNOMAH	11/09/87	PERMIT ISSUED	05/13/88	MOD
26	3045	OREGONIAN PUBLISHING CO.	MULTNOMAH	01/15/88	PERMIT ISSUED	05/27/88	RNW
26	3110	TREASURE CHEST ADVRTSNG	MULTNOMAH	11/13/87	PERMIT ISSUED	05/19/88	EXT
34	2536	CITY BRASS FOUNDRY INC	WASHINGTON	05/18/88	PERMIT ISSUED	06/13/88	RNW
34	2641	OREGON ROSES	WASHINGTON	10/08/87	PERMIT ISSUED	05/13/88	RNW
34	2744	TIMES LITHO, INC.	WASHINGTON	11/04/87	PERMIT ISSUED	05/11/88	EXT
34	2746	WILLIAMS CONTROLS	WASHINGTON	01/12/88	PERMIT ISSUED	06/21/88	EXT
37	0205	WASCO COUNTY ROAD DEPT.	PORT.SOURCE	04/14/88	PERMIT ISSUED	05/10/88	RNW
37	0295	BALL, BALL & BROSAMER INC	PORT.SOURCE	02/26/88	PERMIT ISSUED	05/27/88	NEW
37	0385	GUTHRIE MACHINERY COMPANY	PORT.SOURCE	03/03/88	PERMIT ISSUED	05/27/88	NEW
37	0386	TIDEWATER CONTRACTORS	PORT.SOURCE	03/24/88	PERMIT ISSUED	06/21/88	NEW
37	0387	SOUTHERN OREGON ROCK	PORT.SOURCE	03/31/88	PERMIT ISSUED	06/27/88	NEW
37	0388	KIEWIT PACIFIC CO.	PORT.SOURCE	04/18/88	PERMIT ISSUED	06/27/88	NEW

TOTAL NUMBER QUICK LOOK REPORT LINES

04

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division
(Reporting Unit)

June 1988
(Month and Year)

PERMIT ACTIONS COMPLETED

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

Indirect Sources

Multnomah	Broadway Parking Garage Office Building, 392 spaces, File No. 26-8802	06/14/88	Final Permit Issued
Washington	NIKE World Headquarters 1,620 Spaces, File No. 34-8803	06/29/88	Final Permit Issued

DEPARTMENT OF ENVIRONMENTAL QUALITY
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Water Quality Division
(Reporting Unit)

June 1988
(Month and Year)

PLAN ACTIONS COMPLETED

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

MUNICIPAL WASTE SOURCES - 17

Page 1 of 2

Clackamas	Orchard Crest Care Center Recirculation Gravel Filter And On-Site Disposal System	6-23-88	Provisional Approval
Clackamas	North Clackamas School District No. 12 Happy Valley School Drainfield Additions	6-15-88	Provisional Approval
Baker	Sumpter Collection, Treatment and Disposal Project	6-28-88	Provisional Approval
Union	Union Arch St. Sewer Extension	7-7-88	Provisional Approval
Marion	Jefferson 1988 Sewer Repairs	7-5-88	Provisional Approval
Columbia	Clatskanie Orchard Street Sewer	7-7-88	Provisional Approval
Douglas	R.U.S.A. Loma Vista Pump Station Phase II	7-6-88	Comments to Sanitary Authority
Lincoln	Newport S.E. Bay Blvd. Sewer	6-29-88	Provisional Approval
Clackamas	Molalla Bear Creek Interceptor	6-29-88	Provisional Approval
Wallowa	Mark Hemstreet Troy Resort Holding Tank for R.V. Park	6-23-88	Provisional Approval
Coos	U.S. Forest Service Siuslaw National Forest Horstall Recreation Area	6-28-88	Comments to Engineer

DEPARTMENT OF ENVIRONMENTAL QUALITY
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PLAN ACTIONS COMPLETED

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

MUNICIPAL WASTE SOURCES -

Page 2 of 2

Douglas	Green Sanitary District Gravity Sewer (15") (Replacement for Pump Station "A")	7-6-88	Provisional Approval
Marion	Salem Pringle Creek Interceptor	6-13-88	Final Review and Approval
Hood River	Mt. Hood Meadows Wastewater Treatment Plant (Structural Design)	7-6-88	Accepted
Tillamook	N.T.C.S.A. - Ocean Bay Estates II (L.O. Group) - Lateral A-12 Extension (C.C. Henley) - Pacific Dunes No. 3 (Ted Erickson)	7-8-88	Provisional Approval

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

WC3460

DEPARTMENT OF ENVIRONMENTAL QUALITY
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(Reporting Unit)

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PLAN ACTIONS COMPLETED

* County	* Name of Source/Project * /Site and Type of Same	* Date of * Action	* Action
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INDUSTRIAL WASTE SOURCES - 7

Marion	Columbia Helicopters, Inc. Groundwater Monitoring and Treatment Facility	5-6-88	Forwarded to Hazardous & Solid Waste Division for review.
Clackamas	Portland General Electric Company Oil Stop Valve	6-6-88	Approved
Washington	Tektronix, Inc. Wastewater Minimization	6-13-88	Approved
Tillamook	M. Daryl Johnston Manure Control Facility	6-2-88	Approved
Tillamook	Stan Jud Manure Control Facility	6-2-88	Approved
Tillamook	Don Wermer Manure Control Facility	6-2-88	Approved
Washington	Tektronix, Inc. Cu Cl ₂ Regeneration	6-28-88	Forwarded to Hazardous & Solid Waste Division for review.

DEPARTMENT OF ENVIRONMENTAL QUALITY
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PLAN ACTIONS PENDING

* County	* Name of Source/Project	* Date	* Status	* Reviewer
*	* /Site and Type of Same	* Received	*	*
*	*	*	*	*

MUNICIPAL WASTE SOURCES - 29

Page 1 of 3

Deschutes	Sunriver Utilities WWTP Filter and Clarifier Expansions	5-15-87	Review Completion Projected 8-31-88	DSM
Deschutes	Sunriver Utilities WWTP Aeration tank/digester expansion	10-13-87	Review Completion Projected 8-31-88	DSM
Douglas	North Canyonville Sewer Dist. Pressure Sewer System	5-23-88	Review Completion Projected 7-31-88	JLV
Umatilla	Larry Greenwalt Shady Rest Mobile Home Court Bottomless Sand Filter	4-21-88	Review Completion Projected 7-31-88	JLV
Clackamas	Canby Redwood Interceptor Sewer (Revised)	5-6-88	Review Completion Projected 7-31-88	JLV
Linn	Millersburg Contract No. 7	5-13-88	Review Completion Projected 7-31-88	JLV
Wallowa	Wallowa Lake Co. Service District STEP System Equipment/Materials	6-6-88	Review Completion Projected 8-31-88	DSM
Lane	Sunny Country Store Sand Filter Replacement	6-6-88	Review Completion Projected 7-31-88	JLV
Coos	Coos Bay Pump Stations 4 & 5, Rehab	6-10-88	Review Completion Projected 8-31-88	DSM
Jackson	BCVSA Larry Meyer Project	6-10-88	Review Completion Projected 7-31-88	JLV
Linn	Lebanon Industrial Park Sewers	6-13-88	Review Completion Projected 8-31-88	JLV
Yamhill	Sheridan North Park Addition No. 2	6-13-88	Review Completion Projected 8-31-88	JVL

DEPARTMENT OF ENVIRONMENTAL QUALITY
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PLAN ACTIONS PENDING

* County	* Name of Source/Project	* Date	* Status	* Reviewer
*	* /Site and Type of Same	* Received	*	*
*	*	*	*	*

MUNICIPAL WASTE SOURCES

Page 2 of 3

Coos	Charleston Sanitary District Crown Point Force Main	6-27-88	Review Completion Projected 8-31-88	DSM
Marion	Stayton (Sublimity) Morning Crest Addition #3	6-27-88	Review Completion Projected 8-31-88	JLV
Washington	Newport Lucky Gap & NE 56th Court	6-28-88	Review Completion Projected 7-31-88	DSM
Jackson	John Record Prospect Hotel/Motel/Rest On-Site System	6-16-88	Review Completion Projected 7-31-88	JLV
Douglas	R.U.S.A - Follett Street Sewer - Douglas Avenue Sewer	6-20-88	Review Completion Projected 8-31-88	DSM

DEPARTMENT OF ENVIRONMENTAL QUALITY
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PLAN ACTIONS PENDING

* County	* Name of Source/Project	* Date	* Status	* Reviewer
*	* /Site and Type of Same	* Received	*	*
*	*	*	*	*

Municipal Waste Sources

Page 3 of 3

- - - - - 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
Coos	Coos Bay Plant No. 1 Contract 2	8-1-87	On Hold, Bid Protest Under EPA Review	DSM
Tillamook	Netarts-Oceanside S.D. Fall Creek Sewer Force Main Replacement	3-3-88	Bids Rejected, Being Redesigned	DSM
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

DEPARTMENT OF ENVIRONMENTAL QUALITY
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PLAN ACTIONS PENDING

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

INDUSTRIAL WASTE SOURCES - 5

Yamhill	Allen Fruit Pretreatment Facility	11-24-87	Review Completion Projected 7-31-88
Washington	Tektronix, Inc. Wastewater Treatment Facility Modification	1-29-88	Review Completion Projected 7-31-88
Marion	Siltec Epitaxial Corporation Wastewater Treatment Facility	4-5-88	Review Completion Projected 7-31-88
Tillamook	Steven Nearing Manure Control Facility	6-13-88	Review Completion Projected 7-31-88
Tillamook	Fritz Marti Manure Control Facility	6-13-88	Review Completion Projected 7-31-88

WC3460

Summary of Actions Taken
On Water Permit Applications in JUN 88

11 JUL 88

Source Category & Permit Subtype	Number of Applications Filed						Number of Permits Issued						Applications Pending Permits Issuance (1)			Current Number of Active Permits			
	Month			Fiscal Year			Month			Fiscal Year			NPDES	WPCF	Gen	NPDES	WPCF	Gen	
	NPDES	WPCF	Gen	NPDES	WPCF	Gen	NPDES	WPCF	Gen	NPDES	WPCF	Gen							
Domestic																			
NEW		1		3	21				1	26	2		5	15					
RW				1					1				2						
RWO	4	6		54	32		4	1		39	29		61	35					
MW				2									3						
MWO	1			3	1					22	5		3	2					
Total	5	7		63	54		4	1		63	60	2	74	52			224	195	31
Industrial																			
NEW	1	2	3	3	13	41		1	6	1	12	47	4	14	8				
RW													1						
RWO	3	2		25	26			1		16	19		23	20					
MW	1			5	1						1		5						
MWO	1	1		11	7	6	1	1		15	10			1	1				
Total	6	5	3	44	47	47	1	3	6	32	42	47	33	35	9		159	136	413
Agricultural																			
NEW						2			3			549							
RW																			
RWO				1	2						1		1	1					
MW																			
MWO																			
Total				1	2	2			3		1	549	1	1			2	9	603
Grand Total	11	12	3	108	103	49	5	4	9	95	103	598	108	88	9		385	340	1047

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

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

PERMIT CAT NUMBER	SUB- TYPE OR NUMBER	FACILITY	FACILITY NAME	CITY	COUNTY/REGION	DATE ISSUED	DATE EXPIRES
<u>General: Cooling Water</u>							
IND	100 GEN01 NEW	OR003253-1	103448/A EPSON PORTLAND INC.	HILLSBORO	WASHINGTON/NWR	03-JUN-88	31-DEC-90
IND	100 GEN01 NEW	OR003108-9	21359/A JAMES RIVER CORPORATION OF NEVADA	PORTLAND	MULTNOMAH/NWR	06-JUN-88	31-DEC-90
<u>General: Log Ponds</u>							
IND	400 GEN04 NEW	OR000059-1	9463/A BOISE CASCADE CORPORATION	INDEPENDENCE	POLK/WVR	09-JUN-88	31-DEC-90
<u>General: Suction Dredges</u>							
IND	700 GEN07 NEW		103825/A EARLS, DEAN		MOBILE SRC/ALL	02-JUN-88	31-JUL-91
IND	700 GEN07 NEW		103846/A EATON, ROGER C.	RIDDLE	MOBILE SRC/ALL	23-JUN-88	31-JUL-91
<u>General: Confined Animal Feeding</u>							
AGR	800 GEN08 NEW		103823/A SEALS, BEARL A.	MYRTLE POINT	COOS/SWR	02-JUN-88	31-JUL-92
AGR	800 GEN08 NEW		103828/A LEUTHOLD, DAVID J.	TILLAMOOK	TILLAMOOK/NWR	08-JUN-88	31-JUL-92
AGR	800 GEN08 NEW		103829/A HANSEN'S DAIRY	CANBY	CLACKAMAS/NWR	08-JUN-88	31-JUL-92

PERMIT CAT NUMBER	SUB- TYPE	OR NUMBER	FACILITY	FACILITY NAME	CITY	COUNTY/REGION	DATE ISSUED	DATE EXPIRES
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General: Gravel Mining

IND	1000	GEN10	NEW	103822/A	LININGER & SONS, INC., M.C.	CNETRAL POINT	JACKSON/SWR	01-JUN-88	31-DEC-91
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NPDES

DOM	100487	NPDES	RWO	OR002022-2	13729/A	CANNON BEACH, CITY OF	GANNON BEACH	CLATSOP/NWR	10-JUN-88	31-MAY-93
DOM	100489	NPDES	RWO	OR002700-6	20209/A	MABRY, JEFFREY W.	CORVALLIS	BENTON/WVR	21-JUN-88	30-APR-93
IND	100462	NPDES	MWO	OR000174-1	74995/A	RHONE-POULENC AG COMPANY	PORTLAND	MULTNOMAH/NWR	25-JUN-88	31-JAN-93
DOM	100490	NPDES	RWO	OR002338-8	25567/A	DUNDEE, CITY OF	DUNDEE	YAMHILL/WVR	27-JUN-88	31-MAY-93
DOM	100492	NPDES	RWO	OR002028-1	93504/A	WALDPORT, CITY OF	WALDPORT	LINCOLN/WVR	30-JUN-88	30-JUN-93

WPCF

IND	100486	WPCF	NEW	103733/A	OREGON NATURAL GAS DEVELOPMENT CORPORATION	VERNONIA	COLUMBIA/NWR	07-JUN-88	31-MAR-93
IND	100113	WPCF	MWO	90875/B	KERR-MCGEE CHEMICAL CORPORATION	THE DALLES	WASCO/CR	13-JUN-88	31-JUL-90
DOM	100488	WPCF	RWO	42532/A	ISBERG, JACK	AURORA	MARION/WVR	14-JUN-88	31-MAY-93
IND	100491	WPCF	RWO	25600/A	DALLAS, HERMAN L. & DORIS L.	EAGLE CREEK	CLACKAMAS/NWR	30-JUN-88	30-JUN-93

PERMIT TRANSFERS

Permit No.	Previous Facility Name	Facility	New Facility Name	City	County	Date Transferred
100462	Rhone-Poulenc Inc.	74995/A	Rhone-Poulenc Ag Company	Portland	Multnomah/NWR	25-Jun-88 (Name Chg.)

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DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Hazardous and Solid Waste Division
(Reporting Unit)

June 1988
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PLAN ACTIONS COMPLETED

* County	* Name of Source/Project	* Date of	* Action	* Action	* Action
*	*/Site and Type of Same	* Action	*	*	*
*	*	*	*	*	*
Jackson	South Stage Landfill	6/17/88	Plans approved		
Multnomah	Pennwalt	6/24/88	Plans disapproved		

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Hazardous and Solid Waste Division
(Reporting Unit)

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SUMMARY OF HAZARDOUS WASTE PROGRAM ACTIVITIES

PERMITS

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

INSPECTIONS

	COMPLETED		PLANNED
	No. This Month	No. FYTD	No. in FY 88
Generator	6	40	45
TSD	1	20	29

CLOSURES

	PUBLIC NOTICES			CERTIFICATIONS ACCEPTED		
	No. This Month	FYTD No.	Planned in FY88	No. This Month	No. FYTD	No. Planned in FY 88
Treatment	0	0	0	0	0	0
Storage	1	2	3	1	5	4
Disposal	0	1	2	0	2	3

DEPARTMENT OF ENVIRONMENTAL QUALITY

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Hazardous and Solid Waste Division
(Reporting Unit)

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PLAN ACTIONS PENDING - 48

* County *	* Name of Facility *	* Date Plans Rec'd. *	* Date of Last Action *	* Type of Action and Status *	* Location *
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Municipal Waste Sources - 31

Malheur	Brogan-Jamieson	6/29/84	--	(R) Holding	HQ
Malheur	Adrian	11/7/85	7/10/86	(C) Add'l. info. rec'd.	HQ
Baker	Haines	12/13/85	12/13/85	(R) Plan received	HQ
Deschutes	Knott Pit Landfill	8/20/86	8/20/86	(R) Plan received	HQ
Deschutes	Fryrear Landfill	8/20/86	8/20/86	(R) Plan received	HQ
Deschutes	Negus Landfill	8/20/86	8/20/86	(R) Plan received	HQ
Umatilla	Umatilla Tribal SW Service	8/25/86	8/25/86	(R) Plan received	HQ
Yamhill	River Bend	11/14/86	11/14/86	(R) Plan received	HQ
Marion	Ogden Martin Brooks ERF	3/24/87	3/24/87	(N) As-built plans rec'd.	HQ
Douglas	Reedsport Lndfl.	5/7/87	5/7/87	(R) Plan received	HQ
Benton	Coffin Butte	6/1/87	6/1/87	(R) Plan received	HQ
Malheur	Willowcreek Lndfl.	6/22/87	6/22/87	(C) Plan received	HQ
Klamath	Klamath Falls Landfill	7/6/87	7/6/87	(R) Plan received	HQ
Malheur	Harper Landfill	8/17/87	8/17/87	(C) Plan received	HQ
Lane	Short Mountain Landfill	9/16/87	9/16/87	(R) Revised operational plan	HQ

* County *	* Name of Facility *	* Date Plans Rec'd. *	* Date of Last Action *	* Type of Action and Status *	* Location *
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
Harney	Burns-Hines	12/16/87	12/16/87	(R) Plan received	HQ
Marion	Woodburn TS	1/5/88	1/5/88	(N) Revised plan rec'd.	HQ
Lincoln	Agate Beach Balefill	1/6/88	1/6/88	(R) Revised operational plan received	HQ
Jackson	Dry Creek Landfill	1/15/88	1/15/88	(R) Groundwater report received	HQ
Washington	Hillsboro TS	1/15/88	1/15/88	(N) Plans received	HQ
Marion	Woodburn Landfill	1/22/88	1/22/88	(R) As built plans rec'd.	HQ
Josephine	Grants Pass	5/2/88	5/2/88	(R) Plans received	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
Gilliam	Gilliam Co. Lndfl.	6/15/88	6/15/88	(N) Plans/contract documents rec'd.	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

Demolition Waste Sources - 1

Washington	Hillsboro Landfill	1/29/88	1/29/88	(N) Expansion plans received	
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* County *	* Name of Facility *	* Date Plans Rec'd. *	* Date of Last Action *	* Type of Action and Status *	* Location *
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Industrial Waste Sources - 13

Klamath	Weyerhaeuser, Klamath Falls	3/24/86	11/25/86	(N) Add'l. info. requested	HQ
Linn	Willamette Industries, Inc. Lime Rejects Site Closure	7/3/86	7/3/86	(C) Plan received	RO
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	Nygaard 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
Marion	Silverton Forest Products	5/5/88	5/5/88	(C) Plan received	HQ
Douglas	IP Gardiner	5/10/88	5/10/88	(N) Plans received	HQ
Douglas	Sun Studs	6/20/88	6/20/88	(R) Plans received	HQ
Clatsop	Wauna Mill	6/24/88	6/24/88	(N) Phase II plans rec'd.	HQ

* County *	Name of Facility	* Date Plans Rec'd. *	* Date of Last Action *	Type of Action and Status	* Location *
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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)

June 1988
(Month and Year)

SUMMARY OF SOLID WASTE PERMIT ACTIONS

	Permit Actions Received		Permit Actions Completed		Permit Actions Pending	Sites Under Permits	Sites Reqr'g Permits
	Month	FY	Month	FY			
<u>General Refuse</u>							
New	1	6	1	4	4		
Closures	-	1	-	-	5		
Renewals	-	5	2	6	14		
Modifications	1	24	1	22	1		
Total	2	36	4	32	24	179	179
<u>Demolition</u>							
New	-	2	-	2	-		
Closures	-	-	-	-	-		
Renewals	-	1	-	2	1		
Modifications	1	3	1	2	1		
Total	1	6	1	6	2	11	11
<u>Industrial</u>							
New	1	11	2	11	6		
Closures	-	-	-	-	1		
Renewals	-	3	-	2	5		
Modifications	1	18	1	18	-		
Total	2	32	3	31	12	107	107
<u>Sludge Disposal</u>							
New	-	1	-	-	2		
Closures	-	1	-	-	1		
Renewals	-	-	-	-	-		
Modifications	-	6	-	6	-		
Total	0	8	0	6	3	17	17
Total Solid Waste	5	82	8	75	41	314	314

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Hazardous and Solid Waste Division
(Reporting Unit)

June 1988
(Month and Year)

PERMIT ACTIONS COMPLETED

* County	* Name of Source/Project	* Date of	* Action	*
*	* /Site and Type of Same	* Action	*	*
*	*	*	*	*
Coos	Weyerhaeuser Co. North Spit	6/6/88	Addendum issued	
Grant	Hendrix Landfill	6/6/88	Permit issued	
Malheur	Harper Transfer Station	6/6/88	Permit issued	
Douglas	Lemolo Transfer Station	6/22/88	Permit issued	
Deschutes	Bend Demolition	6/24/88	Addendum issued	
Deschutes	Knot Pit Landfill	6/24/88	Addendum issued	
Multnomah	Pennwalt	6/24/88	Permit returned	
Columbia	Melvin E. Moore	6/27/88	Letter authorization issued	

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Hazardous and Solid Waste Division
(Reporting Unit)

June 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 *
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Municipal Waste Sources - 24

Clackamas	Rossmans	3/14/84	2/11/87	(C) Applicant review (second draft)	HQ/RO
Malheur	Brogan-Jamieson	6/29/84	4/21/86	(R) Application filed	HQ
Baker	Haines	1/30/85	6/20/85	(R) Applicant review	HQ
Malheur	Adrian	11/7/85	11/7/85	(C) Application filed	RO
Jackson	Ashland	12/9/85	5/31/88	(R) Applicant Review	HQ
Jackson	So. Stage	12/30/85	6/17/88	(R) Applicant 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	7/9/87	(R) Draft received	HQ
Multnomah	St. Johns Landfill	12/17/86	5/23/88	(C) Applicant Review	RO/HQ
Coos	Bandon Landfill	1/20/87	1/7/88	(R) Draft received	HQ
Deschutes	Negus Landfill	2/4/87	11/16/87	(R) Applicant review	HQ
Douglas	Reedsport Lndfl.	5/7/87	1/11/88	(R) Draft received	HQ
Malheur	Willowcreek Lndfl.	6/22/87	6/22/87	(C) Application filed	RO
Klamath	Klamath Falls Landfill	7/6/87	7/6/87	(R) Application filed	RO

* County *	* Name of Facility *	* Date Appl. Rec'd. *	* Date of Last Action *	* Type of Action and Status *	* Location *
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Malheur	Harper Landfill	8/17/87	8/17/87	(C) Application filed	RO
Lane	Florence Landfill	9/21/87	1/12/88	(R) Draft received	HQ
Morrow	Tidewater Barge Lines (Finley Butte Landfill)	10/15/87	10/15/87	(N) Application filed	HQ
Douglas	Roseburg Landfill	10/21/87	10/21/87	(R) Application filed	RO
Curry	Port Orford Lndfl.	12/14/87	4/8/88	(R) Draft received	HQ
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	6/30/88	(N) Application received	RO

Demolition Waste Sources - 2

Coos	Bracelin/Yeager (Joe Ney)	3/28/86	9/2/86	(R) Draft received	HQ
Washington	Hillsboro Lndfl.	1/29/88	1/29/88	(M) Application received	

Industrial Waste Sources - 12

Lane	Bohemia, Dorena	1/19/81	9/1/87	(R) Applicant review of second draft	HQ
Wallowa	Boise Cascade Joseph Mill	10/3/83	5/26/87	(R) Applicant comments received	HQ
Douglas	Int'l Paper (Gardiner)	2/20/86	3/15/88	(N) Applicant review	HQ
Klamath	Weyerhaeuser, Klamath Falls (Expansion)	3/24/86	11/25/86	(N) Add'l. info. requested	HQ

* County *	* Name of Facility *	* Date Appl. Rec'd. *	* Date of Last Action *	* Type of Action and Status *	* Location *
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Curry	South Coast Lbr.	7/18/86	7/18/86	(R) Application filed	RO
Linn	Western Kraft Lime storage	8/11/86	8/11/86	(C) Application filed	RO
Baker	Ash Grove Cement West, Inc.	4/1/87	4/1/87	(N) Application received	RO
Klamath	Modoc Lumber Landfill	5/4/87	5/4/87	(R) Application filed	RO
Clatsop	Nygaard 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	3/8/88	(R) Application filed	RO
Marion	Silverton Forest Products	5/5/88	5/5/88	(C) Application Filed	HQ

Sewage Sludge Sources - 3

Coos	Beaver Hill Lagoons	5/30/86	3/10/87	(N) Add'l. info. received (addition of waste oil facility)	HQ
Coos	Hempstead Sludge Lagoons	9/14/87	9/14/87	(C) Application received	HQ/RO
Clackamas	Cascade-Phillips Corp. Septage land appli- cation	11/12/87	4/12/88	(N) Applicant review	HQ

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

SUMMARY OF NOISE CONTROL ACTIONS

<u>Source Category</u>	New Actions Initiated		Final Actions Completed		Actions Pending	
	<u>Mo</u>	<u>FY</u>	<u>Mo</u>	<u>FY</u>	<u>Mo</u>	<u>Last Mo</u>
Industrial/ Commercial	8	108	18	166	188	198
Airports			1	16	0	0

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

<u>Noise Control Program</u>	<u>June, 1988</u>
(Reporting Unit)	(Month and Year)

FINAL NOISE CONTROL ACTIONS

<u>County</u>	* <u>Name of Source and Location</u>	* <u>Date</u>	* <u>Action</u>
Clackamas	Kaady Car Wash, Lake Oswego	6/88	In compliance
Multnomah	American Linen, Portland	6/88	Referred to City of Portland
Multnomah	Barteaux and Sons, Portland	6/88	In compliance
Multnomah	Chappell Transportation Clay Quarry, Portland	6/88	No violation
Multnomah	Lampros Steel, Portland	6/88	In compliance
Multnomah	Lion Body & Paint Shop, Portland	6/88	No violation
Multnomah	Sakrete of the Pacific NW, Portland	6/88	In compliance
Washington	Food Connection, Tigard	6/88	Referred to City of Tigard
Washington	L. C. Pardue, Tualatin	5/88	In compliance
Washington	Pierce Pacific Mfg., Inc., Tualatin	6/88	No violation
Lane	Western Trailer Company, Goshen	6/88	In compliance
Jackson	Advanced Automatic Trans- missions, Phoenix	6/88	In compliance
Jackson	Biomass One, L.P., White City	6/88	In compliance
Jackson	Don Brown Welding & Equip- ment Repair, Central Point	6/88	In compliance
Jackson	Oregon Freightways, Inc., Central Point	6/88	In compliance

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Noise Control Program
(Reporting Unit)

June, 1988
(Month and Year)

FINAL NOISE CONTROL ACTIONS

<u>County</u>	<u>* Name of Source and Location</u>	<u>* Date</u>	<u>* Action</u>
Jackson	Prospect General Store, Prospect	6/88	Source closed
Jackson	Renco Forest Products formerly Cornett Lumber Co., Central Point	6/88	In compliance
Josephine	Copeland Sand & Gravel, Murphy	6/88	No violation
Josephine	McCracken Motor Freight Co., Grants Pass	6/88	No violation
Benton	Flying Tom Airport, 6 mi. N. of Corvallis	6/88	Boundary approved

CIVIL PENALTY ASSESSMENTS

DEPARTMENT OF ENVIRONMENTAL QUALITY
1988

CIVIL PENALTIES ASSESSED DURING MONTH OF JUNE, 1988:

<u>Name and Location of Violation</u>	<u>Case No. & Type of Violation</u>	<u>Date Issued</u>	<u>Amount</u>	<u>Status</u>
Bestco Inc. Hillsboro, Oregon	AQOB-NWR-88-48 Open burned industrial plastic waste.	6/9/88	\$500	Company requested a penalty reduction.
Bill R. Labenske, Jr. dba/Guarantee Const. Portland, Oregon	AQAB-NWR-88-31 Failed to properly remove and handle materials containing asbestos during a renovation project at the Broadway Building owned by Commercial Securities (Oregon) Limited.	6/13/88	\$2,000	Contested on 7/5/88.
Commercial Securities (Oregon) Limited Portland, Oregon	AQAB-NWR-88-49 Failed to file a Notice of Intention to Demolish and/or Renovate for above described Broadway Building renovation which resulted in asbestos removal.	6/13/88	\$1,000	Contested on 7/1/88.
Elliott-Jochimsen Construction, Inc. Newberg, Oregon	AQAB-WVR-88-50 Failed to properly remove, handle and dispose of materials containing asbestos during a renovation project at George Fox College library building.	6/13/88	\$7,000	Contested on 7/6/88.
George Fox College Newberg, Oregon	AQAB-WVR-88-38 Failed to properly remove and handle materials containing asbestos during a renovation project at the library building.	6/17/88	\$3,750	Contested on 6/30/88.

<u>Name and Location of Violation</u>	<u>Case No. & Type of Violation</u>	<u>Date Issued</u>	<u>Amount</u>	<u>Status</u>
Dave G. Bernhardt Bulldozer Service Medford, Oregon	AQOB-SWR-88-44 Open burned demolition waste (a house).	6/21/88	\$1,000	Contested on 7/8/88.
R.B. Browns Trucking, Inc. Central Point, Oregon	AQOB-SWR-88-46 Open burned commercial waste (wooden pallets).	6/21/88	\$750	Paid on 7/11/88.

GB7667

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

July 1988
(Month and Year)

SUMMARY OF PLAN ACTIONS

	Plans Received		Plans Approved		Plans Disapproved		Plans Pending
	<u>Month</u>	<u>FY</u>	<u>Month</u>	<u>FY</u>	<u>Month</u>	<u>FY</u>	
<u>Air</u>							
Direct Sources	6	6	7	7	0	0	21
Small Gasoline Storage Tanks Vapor Controls	-	-	-	-	-	-	-
Total	6	6	7	7	0	0	21
<u>Water</u>							
Municipal	11	121	10	169	0	0	30
Industrial	5	72	4	69	0	0	6
Total	16	193	14	238	0	0	36
<u>Solid Waste</u>							
Gen. Refuse	4	4	4	4	2	2	29
Demolition	1	1	-	-	-	-	2
Industrial Sludge	1	1	1	1	1	1	12
	-	-	-	-	-	-	2
Total	6	6	5	5	3	3	45
<u>GRAND TOTAL</u>	28	28	26	26	3	3	102

MY7496

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	0006 PINE PRODUCTS CORP.	CROOK	05/27/88	COMPLETED-APRVD	06/29/88
09	0002 WILLAMETTE INDUSTRIES	DESCHUTES	06/01/88	COMPLETED-APRVD	06/30/88
			07/11/88	COMPLETED-APRVD	07/18/88
09	0015 BEND MILLWORK SYSTEMS INC	DESCHUTES	06/29/88	COMPLETED-APRVD	07/11/88
10	0136 INDUSTRIAL ELECTRIC MTRS	DOUGLAS	05/13/88	COMPLETED-APRVD	06/23/88
10	0137 EVERGREEN FOREST PRODUCTS	DOUGLAS	06/28/88	COMPLETED-APRVD	06/29/88
26	2016 VANRICH CASTING CORP.	MULTNOMAH	06/21/88	COMPLETED-APRVD	06/27/88

TOTAL NUMBER QUICK LOOK REPORT LINES 7

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division
(Reporting Unit)

July 1988
(Month and Year)

SUMMARY OF AIR PERMIT ACTIONS

	Permit Actions Received		Permit Actions Completed		Permit Actions Pending	Sources Under Permits	Sources Req'r'g Permits
	Month	FY	Month	FY			
<u>Direct Sources</u>							
New	0	0	4	4	10		
Existing	0	0	0	0	7		
Renewals	4	4	2	2	62		
Modifications	0	0	1	1	7		
Trfs./Name Chng.	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>		
Total	5	5	8	8	87	1398	1422
<u>Indirect Sources</u>							
New	1	1	1	1	2		
Existing	0	0	0	0	0		
Renewals	0	0	0	0	0		
Modifications	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>		
Total	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>2</u>	<u>287</u>	<u>289</u>
<u>GRAND TOTALS</u>	6	6	9	9	89	1685	1711

Number of
Pending Permits

10
18
10
5
4
6
25
9
87

Comments

To be reviewed by Northwest Region
To be reviewed by Willamette Valley Region
To be reviewed by Southwest Region
To be reviewed by Central Region
To be reviewed by Eastern Region
To be reviewed by Program Operations Section
Awaiting Public Notice
Awaiting end of 30-day Public Notice Period

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division
(Reporting Unit)

July 1988
(Month and Year)

PERMIT ACTIONS COMPLETED

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

Indirect Sources

Clackamas	SE Lester I-205 Intch., File No. 03-8804	07/27/88	Final Permit Issued
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DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION

MONTHLY ACTIVITY REPORT

DIRECT SOURCES
PERMITS ISSUED

Permit Number	Source Name	County Name	Appl. Rcvd.	Status	Date Achvd.	Type Appl.
02	7074 HOSKINS LUMBER CO	BENTON	11/04/87	PERMIT ISSUED	07/13/88	RNW
22	2525 FRANK LUMBER COMPANY INC	LINN	04/28/88	PERMIT ISSUED	07/13/88	RNW
22	6018 RAINIER WOOD PRODUCTS INC	LINN	10/21/87	PERMIT ISSUED	06/29/88	MOD
26	3241 ANODIZING, INC.	MULTNOMAH	03/16/88	PERMIT ISSUED	07/13/88	NEW
37	0325 WILDISH STANDARD PAVING	PORT.SOURCE	06/09/88	PERMIT ISSUED	06/29/88	MOD
37	0389 AMERICAN SAND & GRAVEL	PORT.SOURCE	04/25/88	PERMIT ISSUED	07/13/88	NEW
37	0390 VALLEY CONCRETE & GRAVEL	PORT.SOURCE	05/04/88	PERMIT ISSUED	07/13/88	NEW
37	0391 SALVEX, INC.	PORT.SOURCE	05/05/88	PERMIT ISSUED	07/13/88	NEW

TOTAL NUMBER QUICK LOOK REPORT LINES 8

DEPARTMENT OF ENVIRONMENTAL QUALITY
MONTHLY ACTIVITY REPORT

Water Quality Division
(Reporting Unit)

July 1988
(Month and Year)

PLAN ACTIONS COMPLETED

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

INDUSTRIAL WASTE SOURCES - 4

Washington	Tektronix, Inc. Wastewater Treatment Facility Modification	7-26-88	Cancelled This is the same project approved under WQ 820, T-2183
Tillamook	Steven Nearing Manure Control Facility	6-27-88	Approved
Tillamook	Fritz Marti Manure Control Facility	6-27-88	Approved
Washington	Portland General Electric Company Oil Spill Containment Facility	7-8-88	Approved

WC3564

DEPARTMENT OF ENVIRONMENTAL QUALITY
MONTHLY ACTIVITY REPORT

Water Quality Division
(Reporting Unit)

July 1988
(Month and Year)

PLAN ACTIONS COMPLETED

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

MUNICIPAL WASTE SOURCES -

Page 1 of 1

Douglas	RUSA - Douglas Avenue - Follett Street - Whipple Avenue - River Front Drive	7-14-88	Provisional Approval
Deschutes	Sunriver North Course Estates	7-18-88	Provisional Approval
Lane	Mapleton Collection and Treatment System	7-21-88 and 8-1-88	Verbal Comments to Engineer
Coos	Joe Ney Slough Bridge Crossing Charleston Sewer District	7-29-88	Provisional Approval
Lane	Newport Lucky Gap Sewer	7-29-88	Provisional Approval

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

DEPARTMENT OF ENVIRONMENTAL QUALITY
MONTHLY ACTIVITY REPORT

Water Quality Division
(Reporting Unit)

July 1988
(Month and Year)

PLAN ACTIONS PENDING

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

INDUSTRIAL WASTE SOURCES - 6

Yamhill	Allen Fruit Pretreatment Facility	11-24-87	Review Completion Projected 8-31-88
Marion	Siltec Epitaxial Corporation Wastewater Treatment Facility	4-5-88	Review Completion Projected 8-31-88
Polk	Willamette Industries Groundwater Protection & Monitoring System	7-22-88	Review Completion Projected 8-31-88
Linn	Teledyne Wah Chang Enlargement of Storage Pond	7-20-88	Review Completion Projected 8-31-88
Clackamas	Ore Best, Inc. Wastewater Collection & Treatment System	7-28-88	Review Completion Projected 8-31-88
Clackamas	Vanport Manufacturing, Inc. Storm Runoff Collection & Treatment System	7-20-88	Review Completion Projected 8-31-88

WC3564

DEPARTMENT OF ENVIRONMENTAL QUALITY
MONTHLY ACTIVITY REPORT

Water Quality Division
(Reporting Unit)

July 1988
(Month and Year)

PLAN ACTIONS PENDING

* County	* Name of Source/Project	* Date	* Status	* Reviewer
*	* /Site and Type of Same	* Received	*	*
*	*	*	*	*

MUNICIPAL WASTE SOURCES

Page 1 of 3

Deschutes	Sunriver Utilities WWTP Filter and Clarifier Expansions	5-15-87	Review Completion Projected 8-31-88	DSM
Deschutes	Sunriver Utilities WWTP Aeration tank/digester expansion	10-13-87	Review Completion Projected 8-31-88	DSM
Douglas	North Canyonville Sewer Dist. Pressure Sewer System	5-23-88	Review Completion Projected 7-31-88	JLV
Umatilla	Larry Greenwalt Shady Rest Mobile Home Court Bottomless Sand Filter	4-21-88	Review Completion Projected 7-31-88	JLV
Clackamas	Canby Redwood Interceptor Sewer (Revised)	5-6-88	Review Completion Projected 7-31-88	JLV
Lane	Sunny Country Store Sand Filter Replacement	6-6-88	Review Completion Projected 7-31-88	JLV
Jackson	BCVSA Larry Meyer Project	6-10-88	Review Completion Projected 7-31-88	JLV
Linn	Lebanon Industrial Park Sewers	6-13-88	Review Completion Projected 8-31-88	JLV
Yamhill	Sheridan North Park Addition No. 2	6-13-88	Review Completion Projected 8-31-88	JLV

WC3564

DEPARTMENT OF ENVIRONMENTAL QUALITY
MONTHLY ACTIVITY REPORT

Water Quality Division
(Reporting Unit)

July 1988
(Month and Year)

PLAN ACTIONS PENDING

* County	* Name of Source/Project	* Date	* Status	* Reviewer
*	* /Site and Type of Same	* Received	*	*
*	*	*	*	*

MUNICIPAL WASTE SOURCES

Page 2 of 3

Marion	Stayton (Sublimity) Morning Crest Addition #3	6-27-88	Review Completion Projected 8-31-88	JLV
Columbia	PGE Trojan STP	8-1-88	Review Completion Projected 8-31-88	DSM
Hood	Mt. Hood Meadows STP Mechanical & Electrical	8-5-88	Review Completion Projected 8-31-88	DSM
Clatsop	Warrenton Eastside Sewer Extension	7-11-88	Review Completion Projected 8-31-88	
Benton	Philomath Applegate Street Sewer Extension	7-12-88	Review Completion Projected 8-31-88	
Clatsop	Astoria Williamsport Sewer L.I.D.	7-14-88	Review Completion Projected 8-31-88	
Jackson	Medford Meadow Wood Apartments	7-27-88	Review Completion Projected 8-31-88	
Coos	Charleston Sanitary District Joe Ney Slough Bridge Sewer Crossing	7-27-88	Review Completion Projected 8-31-88	
Jackson	BCVSA Bigham Road/Avenue "E"	7-22-88	Review Completion Projected 8-31-88	

DEPARTMENT OF ENVIRONMENTAL QUALITY
MONTHLY ACTIVITY REPORT

Water Quality Division
(Reporting Unit)

July 1988
(Month and Year)

PLAN ACTIONS PENDING

* County	* Name of Source/Project	* Date	* Status	* Reviewer
*	* /Site and Type of Same	* Received	*	*
*	*	*	*	*

Municipal Waste Sources

Page 3 of 3

- - - - - 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
Tillamook	Netarts-Oceanside S.D. Fall Creek Sewer Force Main Replacement	3-3-88	Bids Rejected, Being Redesigned	DSM
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 Equipment/Materials	6-6-88	Review Completion Projected 8-31-88	DSM
Coos	Coos Bay Pump Stations 4 & 5, Rehab	6-10-88	Review Completion Projected 8-31-88	DSM

WC3564

Summary of Actions Taken
On Water Permit Applications in JUL 88

10 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							NPDES	WPCF	Gen
Domestic																				
NEW		3			3		1	1			1	1		4	16					
RW	1			1									2							
RWO	2	2		2	2		2	1			2	2		63	36					
MW													3							
MWO	1	2		1	2								4	5						
Total	4	7		4	7		3	2			3	3		76	57			225	195	29
Industrial																				
NEW	2		2	2		3		3	2			3	4	6	12	8				
RW														1						
RWO	1	3		1	3		1	1			1	1		22	23					
MW							1				1			4						
MWO	1	1		1	1						1	1			1	1				
Total	4	4	2	4	4	3	2	4	2		3	5	4	33	36	9		157	137	417
Agricultural																				
NEW									21				21							
RW																				
RWO		1			1									1	2					
MW																				
MWO																				
Total		1			1				21				21	1	2			2	9	624
Grand Total	8	12	2	8	12	3	5	6	23		6	8	25	110	95	9		384	341	1070

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-JUL-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

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PERMIT CAT NUMBER	SUB- TYPE OR NUMBER	FACILITY FACILITY NAME	CITY	COUNTY/REGION	DATE ISSUED	DATE EXPIRES
<u>General: Suction Dredges</u>						
IND	700 GEN07 NEW	103870/A DALEY, DOMINIC & MENDOZA, DANIAL		MOBILE SRC/ALL	01-JUL-88	31-JUL-91
IND	700 GEN07 NEW	103908/A FRITZ, ELTON M.		MOBILE SRC/ALL	19-JUL-88	31-JUL-91
<u>General: Confined Animal Feeding</u>						
AGR	800 GEN08 NEW	103921/A MAXWELL, DONALD A.	ROSEBURG	DOUGLAS/SWR	26-JUL-88	31-JUL-92
AGR	800 GEN08 NEW	103923/A SEPPA DAIRY CO.	ASTORIA	CLATSOP/NWR	26-JUL-88	31-JUL-92
AGR	800 GEN08 NEW	103925/A FRITZ, TIM	TURNER	MARION/WVR	26-JUL-88	31-JUL-92
AGR	800 GEN08 NEW	103927/A KOHLTFARBER, GENE	ONTARIO	MALHEUR/ER	26-JUL-88	31-JUL-92
AGR	800 GEN08 NEW	103929/A MERRILL, RALPH L.	HUBBARD	MARION/WVR	26-JUL-88	31-JUL-92
AGR	800 GEN08 NEW	103930/A FOX VALLEY RANCH, INC.	LYONS	LINN/WVR	26-JUL-88	31-JUL-92
AGR	800 GEN08 NEW	103928/A HANSON, STEPHEN D.	BEND	DESCHUTES/CR	26-JUL-88	31-JUL-92
AGR	800 GEN08 NEW	103926/A GORST DAIRY	MYRTLE POINT	COOS/SWR	26-JUL-88	31-JUL-92
AGR	800 GEN08 NEW	103924/A PLATT'S OAK HILL DAIRY	INDEPENDENCE	POLK/WVR	26-JUL-88	31-JUL-92
AGR	800 GEN08 NEW	103922/A NIELSON, KEITH	ADRIAN	MALHEUR/ER	26-JUL-88	31-JUL-92
AGR	800 GEN08 NEW	103934/A ALLEN, GEORGE W.	TILLAMOOK	TILLAMOOK/NWR	29-JUL-88	31-JUL-92
AGR	800 GEN08 NEW	103938/A FISHER FARMS	HALSEY	LINN/WVR	29-JUL-88	31-JUL-92
AGR	800 GEN08 NEW	103939/A SWARTOUT, RICHARD	MOLALLA	CLACKAMAS/NWR	29-JUL-88	31-JUL-92
AGR	800 GEN08 NEW	103941/A KIL-MAR ACRES	NEWBERG	YAMHILL/WVR	29-JUL-88	31-JUL-92
AGR	800 GEN08 NEW	103943/A OSMIN, AL	HEPPNER	MORROW/ER	29-JUL-88	31-JUL-92

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PERMIT CAT NUMBER	TYPE	SUB- TYPE	OR NUMBER	FACILITY	FACILITY NAME	CITY	COUNTY/REGION	DATE ISSUED	DATE EXPIRES
AGR	800	GEN08	NEW	103945/A	PETERS, KENNETH	FOREST GROVE	WASHINGTON/NWR	29-JUL-88	31-JUL-92
AGR	800	GEN08	NEW	103944/A	ROOD RIVERMEAD DAIRY	COOS BAY	COOS/SWR	29-JUL-88	31-JUL-92
AGR	800	GEN08	NEW	103940/A	GNOS, LAWRENCE	OTIS	LINCOLN/WVR	29-JUL-88	31-JUL-92
AGR	800	GEN08	NEW	103936/A	MERIDIAN FARMS	EAGLE POINT	JACKSON/SWR	29-JUL-88	31-JUL-92
AGR	800	GEN08	NEW	103937/A	WENDTE, MICHAEL J.	CORNELIUS	WASHINGTON/NWR	29-JUL-88	31-JUL-92
AGR	800	GEN08	NEW	103935/A	DOMENIGHINI, BARTOL	BANDON	COOS/SWR	29-JUL-88	31-JUL-92

NPDES

DOM	100493	NPDES	RWO	OR002088-5	87830/A THE DALLES, CITY OF	THE DALLES	WASCO/CR	05-JUL-88	31-MAR-93
DOM	100494	NPDES	RWO	OR002078-8	39694/A HOOD RIVER, CITY OF	HOOD RIVER	HOOD RIVER/CR	05-JUL-88	31-MAR-93
IND	100144	NPDES	MW	OR002345-1	70825/A PORTLAND GENERAL ELECTRIC COMPANY	RAINER	COLUMBIA/NWR	13-JUL-88	30-NOV-90
DOM	100499	NPDES	NEW	OR003238-7	100101/A ALPINE COUNTY SERVICE DISTRICT		BENTON/WVR	14-JUL-88	31-MAY-93
IND	100500	NPDES	RWO	OR000014-1	88729/A TILLAMOOK COUNTY CREAMERY ASSOCIATION	TILLAMOOK	TILLAMOOK/NWR	21-JUL-88	30-JUN-93

WPCF

IND	100495	WPCF	NEW	102771/A	GOLDSEARCH RESOURCES (U.S.), INC.	JOHN DAY	GRANT/ER	06-JUL-88	31-MAR-93
DOM	100496	WPCF	RWO	70335/A	POLK STATION COMMERCIAL CORP.	DALLAS	POLK/WVR	06-JUL-88	31-MAY-93
IND	100497	WPCF	RWO	78990/A	SCENIC FRUIT COMPANY	GRESHAM	MULTNOMAH/NWR	13-JUL-88	31-MAY-93
IND	100498	WPCF	NEW	103736/A	TOWNSEND FARMS, INC.	TROUTDALE	MULTNOMAH/NWR	13-JUL-88	31-MAY-93
IND	100501	WPCF	NEW	103523/A	PACIFIC QUAIL FARMS, INC.	CLATSKANIE	COLUMBIA/NWR	21-JUL-88	31-JUL-93
DOM	100502	WPCF	NEW	103441/A	BYBEE, DON R. AND HAHN, A. ROY JR. AND MORE, RONALD E.	SANDY	CLACKAMAS/NWR	26-JUL-88	31-MAY-93

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DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Hazardous and Solid Waste Division
(Reporting Unit)

July 1988
(Month and Year)

PLAN ACTIONS COMPLETED

* County	* Name of Source/Project	* Date of	* Action	*
*	* /Site and Type of Same	* Action	*	*
*	*	*	*	*
Malheur	Harper Landfill	7/11/88	Plans approved.	
Malheur	Willowcreek Landfill	7/11/88	Plans approved.	
Malheur	Adrian Landfill	7/11/88	Plans approved.	
Malheur	Brogan-Jameson Landfill	7/11/88	Plans withdrawn.	
Josephine	Grants Pass Landfill	7/14/88	Plans disapproved.	
Douglas	I P Gardiner	7/19/88	Plans approved.	
Umatilla	Umatilla Tribe Landfill	7/22/88	Plans approved.	
Linn	Western Kraft Lime Storage Site	7/26/88	Plans withdrawn.	

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Hazardous and Solid Waste Division
(Reporting Unit)

July 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.

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Hazardous and Solid Waste Division
(Reporting Unit)

July 1988
(Month and Year)

PLAN ACTIONS PENDING - 45

* County *	* Name of Facility *	* Date Plans Rec'd. *	* Date of Last Action *	* Type of Action and Status *	* Location *
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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

* 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
Lincoln	Agate Beach Balefill	1/6/88	1/6/88	(R) Revised operational plan received	HQ
Jackson	Dry Creek Landfill	1/15/88	1/15/88	(R) Groundwater report received	HQ
Washington	Hillsboro TS	1/15/88	1/15/88	(N) Plans received	HQ
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
Gilliam	Gilliam Co. Lndfl.	6/15/88	6/15/88	(N) Plans/contract documents rec'd.	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

Demolition Waste Sources - 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

* County *	* Name of Facility *	* Date Plans Rec'd. *	* Date of Last Action *	* Type of Action and Status *	* Location *
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Industrial Waste Sources - 12

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
Marion	Silverton Forest Products	5/5/88	5/5/88	(C) Plan received	HQ
Douglas	Sun Studs	6/20/88	6/20/88	(R) Plans received	HQ
Clatsop	Wauna Mill	6/24/88	6/24/88	(N) Phase II plans rec'd.	HQ
Douglas	Sun Studs	7/1/88	7/1/88	(R) Operational/groundwater plans received	HQ

* County *	Name of Facility	* Date Plans Rec'd. *	* Date of Last Action *	Type of Action and Status	* Location *
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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)

July 1988
(Month and Year)

SUMMARY OF SOLID WASTE PERMIT ACTIONS

	Permit Actions Received		Permit Actions Completed		Permit Actions Pending	Sites Under Permits	Sites Reqr'g Permits
	Month	FY	Month	FY			
<u>General Refuse</u>							
New	3	3	-	-	7		
Closures	1	1	1	1	5		
Renewals	-	-	1	1	13		
Modifications	11	11	11	11	1		
Total	15	15	13	13	26	180	180
<u>Demolition</u>							
New	1	1	-	-	1		
Closures	-	-	-	-	-		
Renewals	-	-	-	-	1		
Modifications	2	2	2	2	1		
Total	3	3	2	2	3	11	11
<u>Industrial</u>							
New	-	-	1	1	4		
Closures	-	-	1	1	1		
Renewals	1	1	1	1	6		
Modifications	3	3	3	3	-		
Total	4	4	6	6	11	107	107
<u>Sludge Disposal</u>							
New	-	-	1	1	1		
Closures	-	-	-	-	1		
Renewals	-	-	-	-	-		
Modifications	1	1	1	1	-		
Total	1	1	2	2	2	18	18
Total Solid Waste	23	23	23	23	42	315	315

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Hazardous and Solid Waste Division
(Reporting Unit)

July 1988
(Month and Year)

PERMIT ACTIONS COMPLETED

* County	* Name of Source/Project * /Site and Type of Same	* Date of * Action	* Action	*
Jackson	Roto-Rooter Transfer Sta.	7/5/88	Addendum issued	*
Jackson	Jackson Sports Park	7/5/88	Addendum issued	*
Douglas	Elkton Transfer Sta.	7/5/88	Addendum issued	*
Linn	Freres Lumber	7/5/88	Addendum issued	*
Multnomah	Pennwalt	7/8/88	Letter Authorization renewed	*
Clackamas	Clackamas Transfer & Recycling Center	7/11/88	Addendum issued	*
Multnomah	Riedel Waste Systems, Inc.	7/11/88	Addendum issued	*
Malheur	Lytle Blvd. Landfill	7/11/88	Addendum issued	*
Baker	Baker Sanitary Landfill	7/11/88	Addendum issued	*
Lane	Oakridge Landfill	7/11/88	Addendum issued	*
Tillamook	Tillamook Landfill	7/11/88	Addendum issued	*
Linn	Sweet Home Transfer Sta.	7/11/88	Addendum issued	*
Linn	Sweet Home Sludge	7/11/88	Addendum issued	*
Malheur	Brogan-Jameson	7/11/88	Application withdrawn	*
Columbia	HIS Transfer Station	7/18/88	Addendum issued	*
Yamhill	Smurfit Newsprint Co., Inc. Newberg Landfill	7/18/88	Addendum issued	*
Lane	Delta Sand & Gravel	7/18/88	Addendum issued	*
Lane	McKenzie Bridge T.S.	7/18/88	Addendum issued	*
Douglas	Reedsport Landfill	7/18/88	Addendum issued	*

* County	* Name of Source/Project	* Date of	* Action	*
*	* /Site and Type of Same	* Action	*	*
*	*	*	*	*
Clackamas	Cascade-Phillips Sludge	7/18/88	Permit issued	
Multnomah	St. Johns Landfill	7/18/88	Permit issued	
Douglas	IP-Gardiner	7/19/88	Permit issued	
Linn	Western Kraft Lime Storage	7/26/88	Application withdrawn	

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Hazardous and Solid Waste Division
(Reporting Unit)

July 1988
(Month and Year)

PERMIT ACTIONS PENDING - 42

* County *	* Name of Facility *	* Date Appl. Rec'd. *	* Date of Last Action *	* Type of Action and Status *	* Location *
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Municipal Waste Sources - 26

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) Applicant review	HQ
Jackson	Ashland	12/9/85	5/31/88	(R) Applicant Review	HQ
Jackson	So. Stage	12/30/85	6/17/88	(R) Applicant 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	HQ

* County *	* Name of Facility *	* Date Appl. Rec'd. *	* Date of Last Action *	* Type of Action and Status *	* Location *
Curry	Port Orford Lndfl.	12/14/87	4/8/88	(R) Draft received	HQ
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	6/30/88	(N) Application received	RO
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
<u>Demolition Waste Sources - 3</u>					
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	
Marion	Browns Island Demolition	6/8/88	6/8/88	(N) Application received	HQ
<u>Industrial Waste Sources - 11</u>					
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	Nygaard 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	3/8/88	(R) Application filed	RO
Marion	Silverton Forest Products	5/5/88	5/5/88	(C) Application Filed	HQ
Douglas	Hayward Disp. Site	6/7/88	7/14/88	(R) Draft received	HQ
<u>Sewage Sludge Sources - 2</u>					
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)

July, 1988
(Month and Year)

SUMMARY OF NOISE CONTROL ACTIONS

<u>Source Category</u>	<u>New Actions Initiated</u>		<u>Final Actions Completed</u>		<u>Actions Pending</u>	
	<u>Mo</u>	<u>FY</u>	<u>Mo</u>	<u>FY</u>	<u>Mo</u>	<u>Last Mo</u>
Industrial/ Commercial	17	17	13	13	192	188
Airports			1	1	2	2

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Noise Control Program (Reporting Unit)	July, 1988 (Month and Year)
---	--------------------------------

FINAL NOISE CONTROL ACTIONS

<u>County</u>	<u>* Name of Source and Location</u>	<u>* Date</u>	<u>* Action</u>
Multnomah	DEQ Air Monitoring Station, near SE 58th & Lafayette St., Portland	7/88	In compliance
Multnomah	Minit Mart, SE 68th and Division, Portland	7/88	Referred to City of Portland
Multnomah	Pierce Sales, Parts & Service, Portland	7/88	Referred to City of Portland
Multnomah	Riedel International, Inc., North Portland Yard, Portland	7/88	In compliance
Multnomah	Uptown Shopping Center, Portland	7/88	Referred to City of Portland
Washington	Clermont West, Inc., Cornelius	7/88	No violation
Washington	Cyclone Band, Tigard	7/88	In compliance
Washington	D & W Plastics, Portland,	7/88	In compliance
Washington	Durametal Corporation, Tualatin	7/88	In compliance
Washington	Willamette Manufacturing & Supply Co. (WiMSCo), Tualatin	7/88	No violation
Marion	Ogden Martin Systems of Marion, Inc., Brooks	7/88	In compliance
Union	Idaho Timber Company, North Powder	7/88	In compliance

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

FINAL NOISE CONTROL ACTIONS

County	* Name of Source and Location	* Date	* Action
Union	Union Pacific Railroad, West end rail siding, La Grande	7/88	Referred to Federal Rail- road Admin.
Malheur	Holy Rosary Hospital Emergency Helipad, Ontario	7/88	Exception granted

CIVIL PENALTY ASSESSMENT

DEPARTMENT OF ENVIRONMENTAL QUALITY
1988

CIVIL PENALTIES ASSESSED DURING MONTH OF JULY 1988

<u>Name and Location of Violation</u>	<u>Case No. & Type of Violation</u>	<u>Date Issued</u>	<u>Amount</u>	<u>Status</u>
City of Portland, Portland, Oregon	WQ-NWR-88-54 Failure to immediately notify the Department of 2 sewage by-passes in to the Willamette River, in violation of the City's waste discharge permit.	7/1/88	\$5,000	By letter of 7/14/88, City Accepted Department's offer to consider mitigation of the penalty to zero if City undertakes a public education program about the sewerage system. The proposed program is scheduled to be submitted by 9/1/88.
Stanley-Continental, Inc., Gregg Foods Division, Portland, Oregon	WQ-NWR-88-47 Discharged waste (a vegetable oil) into the Columbia Slough.	7/7/88	\$1,000	A default order and judgment was issued on 8/5/88.
Port of Portland, Portland, Oregon	WQ-NWR-88-53 Failed to operate dust control equipment during a ship loading operation, thereby allowing soda ash dust to escape uncontrolled into the air.	7/13/88	\$1,000	Paid on 8/1/88.

July, 1988
DEQ/EQC Contested Case Log

<u>ACTIONS</u>	<u>LAST MONTH</u>	<u>PRESENT</u>
Preliminary Issues	2	0
Discovery	0	0
Settlement Action	5	7
Hearing to be scheduled	0	0
Department reviewing penalty	0	0
Hearing scheduled	2	5
HO's Decision Due	1	2
Briefing	0	0
Inactive	<u>0</u>	<u>1</u>
SUBTOTAL of cases before hearings officer.	10	15
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	1
Case Closed	<u>1</u>	<u>1</u>
TOTAL Cases	12	17

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

Hrngrs 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

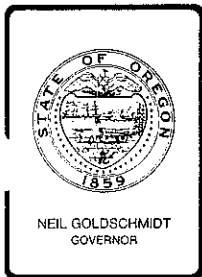
July, 1988
DEQ/EQC Contested Case Log

Pet/Resp Name	Hrng Rqst	Hrng Rfrl	Hrng Date	Resp Code	Case Type & No.	Case Status
WAH CHANG	04/78	04/78		Prtys	16-P-WQ-WVR-78-2849-J NPDES Permit Modification	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	<u>Tentative settlement reached.</u> <u>Order to be prepared for EQC</u> <u>consideration.</u>
MERIT USA, INC.	05/30/87	06/10/87	09/14/87		4-WQ-NWR-87-27 \$3500 civil penalty	EQC decision appealed to Court of Appeals.
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.
Richard Doerfler	01/08/88	01/11/88	05/19/88	---Hrgs---	4-AQ-FB-87-05	<u>Hearings officer reduced penalty</u> <u>from \$400 to \$300. No appeal.</u> <u>Case closed.</u>
Zelmer, dba Rivergate Auto	3/2/88	3/3/88	07/12/88	Hrgs	AQOB-NWR-88-03 \$1,000 Civil Penalty	<u>Hearing concluded 8/4/88.</u> <u>Decision due.</u>

63

July, 1988
DEQ/EQC Contested Case Log

Pet/Resp Name	Hrng Rqst	Hrng Rfrl	Hrng Date	Resp Code	Case Type & No.	Case Status
Markee	4/1/88	4/11/88		Resp	WQ-WVR-88-22 Civil Penalty	Settlement Action. Community service to substitute for civil penalty.
CSSI	3/31/88	4/19/88		Prtys	Permit 089-452-353	<u>A stipulated order resolving certain disputed terms will be submitted to EQC for approval; others will be adjudicated.</u>
Neu-Glo Candles	6/9/88		07/25/88	<u>Hrgs.</u>	AQAB-NWR-88-33 Asbestos \$1,000 Civil Penalty	<u>Decision due.</u>
<u>64 Commercial Securities</u>			<u>10/4/88</u>	<u>Ptrys</u>	<u>AQAB-NWR-88-49</u> <u>\$1,000 Civil Penalty</u>	<u>Hearing Scheduled.</u>
<u>Guarantee Construction</u>			<u>10/4/88</u>	<u>Ptrys</u>	<u>AQAB-NWR-88-31</u> <u>\$2,000 Civil Penalty</u>	<u>Hearing Scheduled.</u>
<u>George Fox College</u>			<u>9/7/88</u>	<u>Ptrys</u>	<u>AQAB-WVR-88-38</u> <u>\$3,750 Civil Penalty</u>	<u>Hearing Scheduled.</u>
<u>Elliott-Jochimsen</u>			<u>9/7/88</u>	<u>Ptrys</u>	<u>AQAB-WVR-88-50</u> <u>\$7,000 Civil Penalty</u>	<u>Hearing Scheduled.</u>
<u>Bernhardt</u>			<u>9/1/88</u>	<u>Ptrys</u>	<u>AQOB-SWR-88-44</u> <u>\$1,000 Civil Penalty</u>	<u>Settlement Proposed to be submitted to EQC 9/9/88.</u>
<u>BESTCO, Inc.</u>			<u>9/9/88</u>	<u>Ptrys</u>	<u>AQOB-NWR-88-48</u> <u>\$500 Civil Penalty</u>	<u>Hearing Scheduled.</u>



Department of Environmental Quality

811 SW SIXTH AVENUE, PORTLAND, OREGON 97204-1390 PHONE (503) 229-5696

MEMORANDUM

To: Environmental Quality Commission Date: September 9, 1988

From: Director *Rydia Taylor*

Subject: Request for Approval of a Settlement Agreement in Case No. AQOB-SWR-88-44, DEQ v. Dave G. Bernhardt

On June 21, 1988, the Department assessed a \$1000 civil penalty against Dave G. Bernhardt, doing business as Bernhardt Bulldozer Service for the open burning of a large pile of demolition waste in Medford, Oregon.

On July 5, 1988, Mr. Bernhardt, through his attorney, James L. Grantland, Jr., sent the Department a letter stating that Mr. Bernhardt had believed that his burn was in a district which did not require a written permit for open burning. Mr. Bernhardt had informed the Jackson County Fire District of the location of the burn prior to its occurrence. A representative from the district okayed the burn and informed Mr. Bernhardt that no permit was required. After considering this, and that this was Mr. Bernhardt's first violation, I offered to reduce the civil penalty to \$500. Mr. Bernhardt has agreed to this offer, and has signed the attached proposed settlement agreement.

I believe the terms of the proposed settlement agreement are satisfactory, and recommend Commission approval. If you agree, please sign and date the attached Stipulation and Final Order, which mitigates the \$1000 civil penalty to \$500.

Fred Hansen
Director

Larry Cwik:x
GH154
Attachments
August 15, 1988



Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission
From: Director *Fred Hansen*
Subject: Agenda Item C, September 9, 1988, EQC Meeting

Proposed Civil Penalty Settlement Agreements

Background

Oregon Revised Statute 468.130 provides that any civil penalty may be remitted or mitigated upon such terms and conditions as the Environmental Quality Commission considers proper and consistent with the public health and safety. The statute further provides that the Commission may by rule delegate to the Department, upon such conditions as deemed necessary, all or part of the authority to remit or mitigate civil penalties. Oregon Administrative Rule 340-12-070 authorizes the Director of the Department 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.

Attached are two proposed settlement agreements for Commission consideration and approval.

Fred Hansen

GB7785

1 thereof; and to service of a copy of this stipulated final order, which
2 order shall be effective upon signing by or on behalf of the Commission.

3 II

4 Respondent admits each and every fact and violation alleged in the
5 Notice referred to in Paragraph 1 above.

6 III

7 Subject to approval by the Commission, the parties agree to a
8 mitigation of the \$1,000 civil penalty to \$500.

9 IV

10 The Department hereby waives its claim to interest on the penalty from
11 the date of Notice referred to in Paragraph 1 above through the date which
12 the order is signed below.

13 V

14 The Commission shall enter a final order:

15 A. Finding that each and every fact and violation alleged in the
16 Notice referred to in Paragraph 1 above occurred.

17 B. Imposing upon Respondent a civil penalty of \$500 for the violation
18 cited in the Notice referred to in Paragraph 1 above.

19 C. Finding that the Department and Commission have satisfied all the
20 requirements of law and the mitigation herein is consistent with public
21 health and safety and is in the public interest.

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RESPONDENT

Aug 4 1988
Date

Y. Dana Bonhardt
(Name _____)
(Title owner _____)

AUG 1 1988
Date

DEPARTMENT OF ENVIRONMENTAL QUALITY

Fred Hansen
Fred Hansen
Director

FINAL ORDER

IT IS SO ORDERED:

ENVIRONMENTAL QUALITY COMMISSION

Date

William P. Hutchison, Jr., Chairman

Date

Wallace B. Brill, Member

Date

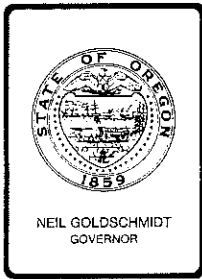
Emery N. Castle, Member

Date

Genevieve Pisarski Sage, Member

Date

William Wessinger, Member



Department of Environmental Quality

811 SW SIXTH AVENUE, PORTLAND, OREGON 97204-1390 PHONE (503) 229-5696

MEMORANDUM

Date: September 9, 1988

To: Environmental Quality Commission
From: Fred Hansen, Director
Subject: DEQ v. Loren Markee
Proposal to Mitigate and Settle Case No. WQ-WVR-88-22

On March 17, 1988, I assessed a \$3000 civil penalty against Loren Markee for dumping about 15 gallons of agricultural chemicals into a small drainage ditch near his home. The chemicals reached public waters, and made it necessary for the City of Willamina to shut down its water supply intake for 38 hours.

In response to the penalty, Mr. Markee requested a hearing, but also asked to meet with me to discuss the incident. At that meeting, Mr. Markee explained that he had no idea that the chemicals would cause such a major problem, and he expressed his deeply felt regret over the incident.

In keeping with the Governor's Childrens Agenda, we explored the idea of reducing Mr. Markee's penalty in response to Mr. Markee taking some action that would benefit youth.

Subsequently, Mr. Markee has given something back to the Willamina community by donating \$750 each to the Willamina chapters of the Boy Scouts and Girl Scouts to promote community service and youth activities. The scouts plan to use the donated money for travel, and to fix up their meeting place. In response to the donations, the scouts have volunteered to restore and maintain the community's Pioneer Cemetery as an on-going, and much needed, community service project.

In acknowledgement of Mr. Markee's donations to youth, and in order to settle the outstanding contested case, the Department proposes to mitigate Mr. Markee's penalty to \$500. If you agree, please sign and date the attached Stipulation and Final Order.

Fred Hansen

Attachment

Larry M. Schurr
229-6932
August 18, 1988

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 DEPARTMENT OF ENVIRONMENTAL QUALITY,) STIPULATION AND FINAL ORDER
4 OF THE STATE OF OREGON,) No. WQ-WVR-88-22
5 Department,) YAMHILL COUNTY
6 v.)
7 LOREN MARKEE,)
8 Respondent.)

9 WHEREAS:

10 1. On March 17, 1988, the Department of Environmental Quality
11 (Department) filed with the Environmental Quality Commission (Commission) a
12 Notice of Assessment of Civil Penalty in Case No. WQ-WVR-88-22, against
13 Loren Markee (Respondent), assessing a \$3,000 civil penalty upon
14 Respondent.

15 2. On April 1, 1988, the Respondent filed a request for hearing and
16 answer to the Notice referred to in Paragraph 1 above.

17 3. The parties wish to compromise and settle the civil penalty
18 referred to in Paragraph 1 above on the following terms.

19 NOW THEREFORE, in consideration of the mutual covenants and agreements
20 of the parties hereto, it is stipulated and agreed that:

21 I

22 Respondent hereby waives any and all objections it may have: to the
23 form, content, manner of service and timeliness of the Notice referred to in
24 Paragraph 1 above; to a contested case hearing thereon and judicial review,
25 thereof; and to service of a copy of this Stipulation and Final Order, which
26 order shall be effective upon signing by or on behalf of the Commission.

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II

Respondent admits each and every fact and violation alleged in the Notice referred to in Paragraph 1 above.

III

Subject to approval by the Commission, the parties agree to a mitigation of the \$3,000 civil penalty to \$500.

IV

The Department hereby waives its claim to interest on the penalty from the date of Notice referred to in Paragraph 1 above through the date which the order is signed below.

V

The Commission shall enter a final order:

A. Finding that each and every fact and violation alleged in the Notice referred to in Paragraph 1 above occurred.

B. Imposing upon Respondent a civil penalty of \$500 for the violation cited in the Notice referred to in Paragraph 1 above, plus interest from the date which the order is signed below until paid in full.

C. Finding that the Department and Commission have satisfied all the requirements of law and the mitigation herein is consistent with public health and safety and is in the public interest.

RESPONDENT

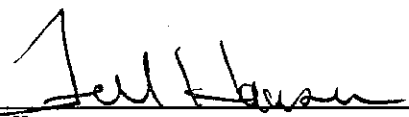
July 22 1988
Date

Loren Markee
Loren Markee

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DEPARTMENT OF ENVIRONMENTAL QUALITY

AUG 19 1988



Date

Fred Hansen
Director

FINAL ORDER

IT IS SO ORDERED:

ENVIRONMENTAL QUALITY COMMISSION

Date

William P. Hutchison, Jr., Chairman

Date

Wallace B. Brill, Member

Date

Emery N. Castle, Member

Date

Genevieve Pisarski Sage, Member

Date

William Wessinger, Member



Environmental Quality Commission

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

EXECUTIVE SUMMARY

To: Environmental Quality Commission
From: Fred Hansen, Director *[Signature]*
Subject: Agenda Item D, September 9, 1988, EQC Meeting
Pollution Control Tax Credits

The Pollution Control Tax Credit program has been in effect since 1967. Tax credits are provided under the program to industries and businesses which install pollution control devices to limit entry of pollutants into the environment. DEQ's role in administering the program is to review the particular device, make sure that it meets the requirements of the law to qualify for credit, ask the EQC to certify the cost of the facility and determine what percent of the facility is used for pollution control. Once this is accomplished, a certificate is issued, and the reporting of the tax credit is accomplished through a deduction in income, corporate excise or property tax liability via the Department of Revenue. The program was first initiated to help existing industry comply with new federal and state pollution control requirements. Over time the law was changed to allow various pollution control efforts to qualify under the law. Some activities were put in by one legislature, such as allowing garbage burners to qualify, only to be removed as an allowable tax credit activity by a subsequent legislature. The bulk of tax credits have been issued for facilities which were installed to meet federal or state requirements. Some tax credits have been issued for items which might be considered incentive based such as straw holding sheds used in lieu of field burning or recycling facilities.

Between the beginning of the program in 1967 through the end of 1986, the EQC certified \$706 million dollars of pollution control equipment. Of these certified costs, \$341 million dollars are eligible to be written off against taxes. (\$284 against income, \$56 against property tax.)

Property tax credits are taken over a 20 year period. Credits taken against property taxes under current law are allowed only to nonprofit corporations and cooperatives. They used to be allowed as an option for any credit holder. Personal income and corporate

excise tax credits are calculated at 50% of the certified cost applicable to pollution control and are taken over a 10 year period. On June 30, 1989, the amount of the facility cost allocable to pollution control which may be taken as a tax credit will be reduced to 25%.

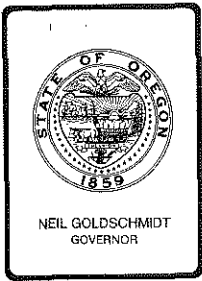
Before beginning construction an application for a preliminary certification for tax credit is filed by the applicant with the Department. This allows an applicant some assurance that what they're investing in will qualify for a credit. After construction is completed a final application for certification is filed and approved by the Commission. Because of the wording of the statute on preliminary certifications (ORS 468.175), if the Department determines a preliminary application doesn't meet the requirements for a tax credit, the Commission must issue an order denying it. The applicant can then appeal if they wish and the Commission can make a decision based on the appeal. Applications for preliminary certification which are approved by the Department are not brought before the Commission.

To qualify for tax credits the facility being installed must meet one of two criteria. Its principal purpose must be to meet a state or federal requirement or its sole purpose must be for pollution control. In staff reports for final certification the Department indicates the reason why a particular device meets one of these requirements and then goes on to discuss the factors which must be considered by the EQC to determine how much of the facility cost qualifies for tax credits. In some instances, the Department may feel that a particular facility does not meet the basic requirements of "principal" or "sole" purpose. In that case, the staff reports its recommendation to the Commission to deny the final tax credit application.

The present tax credit program is scheduled to end on December 31, 1990, which means facilities will have to be completed by that date to qualify.

Included in this tax credit agenda item is an application for preliminary certification for tax credit which the Department has determined does not qualify for tax credit. It is the first preliminary tax credit application the Department has received on asbestos removal. Reasons for the Department determination are stated in the report.

lrt
229-6485
September 9, 1988



Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director *Rydie Taylor*

Subject: Agenda Item D, September 9, 1988, EQC Meeting

TAX CREDIT APPLICATIONS

Director's Recommendations

It is recommended that the Commission take the following action:

1. Issue tax credit certificates for pollution control facilities:

Appl. No.	Applicant	Facility
T-2010	Smurfit Newsprint Corporation	Secondary Particulate Emission Control System
T-2145	Roseburg Forest Products Co.	Burley Wet Scrubber

2. Deny Preliminary Certification for Tax Credit to First Interstate Bank or Oregon (T-2528).

EQC Agenda Item D
September 9, 1988
Page 2

Proposed September 9, 1988 Totals:

Air Quality	\$ 171,552
Water Quality	-0-
Hazardous/Solid Waste	-0-
Noise	<u>-0-</u>
	\$ 171,552

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

Air Quality	\$ 5,819,146
Water Quality	428,877
Hazardous/Solid Waste	167,142
Noise	<u>-0-</u>
	\$ 6,415,165

Fred Hansen

C. Nuttall:y
(503) 229-6484
August 9, 1988
MY7443

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Smurfit Newsprint Corporation
Philomath Mill (Cladwood Division)
427 Main Street
Oregon City, OR 97045

The applicant owns and operates a Particleboard manufacturing plant in Philomath, Oregon.

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

2. Description of Facility

The claimed facility is a secondary particulate emission control system consisting of a high-efficiency cyclone, a dust receiving box, motor/fan, and connecting ducting for the purpose of controlling emissions from four primary collection cyclones.

Claimed Facility Cost: \$74,978.00
(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 October 7, 1985, 30 days before installation commenced on November 12, 1985.
- b. The request for preliminary certification was approved before application for final certification was made.
- c. Installation of the facility was substantially completed on January 23, 1986, and the application for final certification was found to be complete on November 13, 1987, within 2 years of substantial completion of the facility.

4. Evaluation of Application

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

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 any amount of waste products into a salable or usable commodity. Essentially all of the 50 or so cubic yards of collected wood residue is landfilled. Because the residue is very wet, it has very poor fuel value.

- 2) The estimated annual percent return on the investment in the facility is negative as there is no income and there are operating expenses associated with the facility.

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

The method chosen is the accepted method for control of wood dust particulate.

- 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 \$30,000 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.

The facility was installed for sole purpose of controlling wood dust to the 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 principal purpose of the facility is to comply with a requirement imposed by the Department and the sole purpose of the facility is to control a substantial quantity of air pollution.

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

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$74,978.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-2010.

D. Neff:d
AD2870
(503) 229-6480
June 13, 1988

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Roseburg Forest Products Co.
Coquille Plant
P.O. Box 1088
Roseburg, OR 97470

The applicant owns and operates a plywood manufacturing plant in Coquille, Oregon.

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

2. Description of Facility

The pollution control facility is a five stage wet scrubber (known as a Burley scrubber) which controls particulate emissions exhausted from a newly installed veneer dryer (No. 5).

Claimed Facility Cost: \$96,574.32.
(Accountant's Certification was provided).

3. Procedural Requirements

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

The facility met all statutory deadlines in that:

- a. The request for preliminary certification was filed July 2, 1986 more than 30 days before installation commenced on September 1, 1986.
- b. The request for preliminary certification was approved before application for final certification was made.
- c. Installation of the facility was substantially completed on August 1, 1987, and the application for final certification was found to be complete on April 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 control a substantial quantity of air pollution.

This control is accomplished by 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 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.

The company did not consider any other methods or equipment for controlling emissions from this new dryer. The company has installed and operates 21 scrubbers of this same type on other veneer dryers. These units have been considered one of the lowest cost emission control systems for controlling veneer dryer particulate emissions.

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

The company claimed no gross annual income from the facility. The Department estimates that the pitch and organic material collected by the scrubber, if used as boiler fuel, would be less than \$500 per year over the next five years. Operating costs of the scrubber system exceeds \$500 per year.

- 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 installation and operation of an emission control device on the new veneer dryer was a condition of approving the dryer construction and operation.

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, and the sole purpose of the facility is to control a substantial quantity of air pollution.
- c. The facility complies with DEQ statutes and rules and the 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 \$96,574.32 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-2145.

Don Neff:d
AD2871
(503) 229-6480
August 25, 1988

State of Oregon

Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

First Interstate Bank of Oregon, N.A.
P.O. Box 3131
Portland, Oregon 97208

First Interstate Bankcorp
707 Wilshire Boulevard
Los Angeles, CA 90017

2. Background

The Department regulates asbestos removal under OAR 340-25-465 to prevent the release of asbestos fibers into the atmosphere during building, renovation and demolition activities. Control of asbestos fibers during building renovation and demolition is important because asbestos is a known human carcinogen. However, Department regulations do not require removal of asbestos unless demolition is occurring.

The Department believes asbestos is a serious problem. However, the review of this application should be evaluated based on the tax credit statute.

3. Description of Claimed Facility

Applicants request preliminary pollution control facility tax credit certification for an asbestos abatement project on the fifth and sixth floors of the First Interstate Bank Center, 1300 SW Fifth Avenue, Portland. Applicants claim that removal of asbestos-containing fireproofing and replacement with fireproofing not containing asbestos constitute a pollution control facility. Applicants also claim that protective practices, equipment, and devices employed during the abatement project constitute a pollution control facility.

Applicants describe the present condition of the asbestos-containing fireproofing as good. There is no evidence that asbestos fibers are currently being released.

Applicants' estimated total cost of the claimed facility is \$628,889. In addition to labor for asbestos removal, this estimate includes, among other things, the costs of reinstallation of fireproofing, liability insurance, window covers to protect existing solar control film, medical examinations of new hires and annual medical examinations of permanent employees, permit fees, and fire watch for off-hours.

4. Evaluation of Application

- a. The request for preliminary certification was received on July 8, 1988.
- b. The Department determined the application was complete on August 7, 1988, and the project was authorized to proceed without waiting 30 days, as required by tax credit statute, by letter dated July 26, 1988.
- c. In accordance with OAR 340-16-015(3), the deadline for DEQ and EQC action on Applicants' request was initially September 6, 1988. On August 10, 1988, counsel for Applicants agreed to an extension of this deadline to September 9, 1988.
- d. Applicants' asbestos abatement project is not a pollution control facility, for the following reasons:
 - (i) The asbestos removal and related claimed activities are not a "land, structure, building, installation, excavation, machinery, equipment or device", contrary to the definition of pollution control facility under ORS 468.155(1) and OAR 340-16-025(1).
 - (ii) The asbestos removal and related claimed activities are not an "addition to, reconstruction of or improvement of, land or an existing structure, building, installation, excavation, machinery, equipment or device reasonably used, erected, constructed, or installed", contrary to the definition of the pollution control facility under ORS 468.155(1) and OAR 340-16-025(1).
 - (iii) Removal of asbestos at the First Interstate Bank Center is not mandated by DEQ, EPA, or a regional air pollution authority. The asbestos removal therefore is not a pollution control facility since, under ORS 468.155(1)(a)(A) and OAR 340-16-025(1)(a), the project's "principle purpose" must be compliance with a DEQ, EPA, or other authority requirement.

- (iv) Applicants' asbestos removal serves other purposes than pollution control--e.g., being part of general remodeling of the fifth and sixth floors, reducing liability exposure, reducing the potential for exposure of building occupants, enhancing marketability and value, etc. The asbestos removal therefore is not a pollution control facility since, under ORS 468.155(1)(a)(B) and OAR 340-16-025(1)(b), the project's "sole purpose" must be pollution control.
 - (v) Neither the sole nor the principle purpose of Applicants' installing non-asbestos fireproofing is pollution control. The purpose of such installation is to retard fires or meet code requirements.
 - (vi) Releases of asbestos are not authorized by law. Therefore, even if asbestos were currently being released on the fifth and sixth floors (which Applicants state is not occurring), the asbestos abatement project would only be for the purpose of addressing an "unauthorized release". Cleanups of unauthorized releases are exempted from the definition of pollution control facility, under ORS 468.155(2)(f) and OAR 340-16-025(3)(g).
- e. Many of the cost items claimed by Applicants (such as new fireproofing, insurance, window covers, fire watch, medical exams, and permit fees) are not allocable to pollution control, even if Applicants' asbestos abatement project were considered a pollution control facility. Since the project is not a pollution control facility as a threshold matter, a determination of allocable costs has not been undertaken.
- f. Even if Applicants' asbestos abatement project were considered a pollution control facility, the asbestos removal will not eliminate air contaminants or air pollution as required by ORS 468.155(1)(b)(B) and OAR 340-16-025(2)(b), since air contaminants and pollution are by definition only present in the outdoor atmosphere, under ORS 468.275.

5. Summation

Applicants' asbestos abatement project and related activities are not a pollution control facility.

6. Director's Determination

Based upon Applicants' request for preliminary tax credit certification and agency files, the Director determines that the project does not comply with ORS Chapter 468 and related regulations and is not eligible for tax credit certification. Pursuant to ORS 468.175(3), it is requested that the Commission issue the attached Order denying Preliminary Tax Credit Certification.

AD3305 (8/88)

- Attachments:
1. First Interstate Letter of July 8, 1988 re: Request for Preliminary Certification for Tax Credit
 2. Order Denying

**First
Interstate
Bank**

First Interstate Bank
of Oregon, N.A.
1300 S.W. Fifth Avenue
P.O. Box 3131
Portland, OR 97208
503 225-2555

Robert Ames
President

Management Services Div.
Dept. of Environmental Quality

R E C E I V E D
JUL 8 1988

July 8, 1988

Department of Environmental Quality
Management Services Division
811 S.W. Sixth Avenue
Portland, Oregon 97204

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
JUL 11 1988
AIR QUALITY CONTROL

RE: REQUEST FOR PRELIMINARY CERTIFICATION FOR TAX
CREDIT

Enclosed is the Request for Preliminary Certification for Tax Credit for the asbestos abatement project to be commenced on the fifth and sixth floors of the First Interstate Bank of Oregon, N.A. ("Bank") Center on August 1, 1988. The request is being filed on behalf of the Bank and First Interstate Bancorp, our parent holding company. The joint request is necessary because the Bank owns the building but First Interstate Bancorp is the Oregon taxpayer.

We expect that this request may present a case of first impression for the Department and Commission in applying the provisions of ORS 468.150 through 468.190. We have provided a detailed explanation of why the project qualifies as a "pollution control facility" in response to Section (14) of the application. We also believe that the policy behind the tax credit provisions clearly embraces this type of project. That policy is to reward, through tax credits, voluntary or mandatory expenditures made to prevent, control or reduce air, water or noise pollution. Asbestos abatement falls squarely within the type of pollution prevention and control which this policy was intended to encourage.

Conceptually, the Bank's abatement project constitutes two distinct pollution control facilities. The first is a permanent facility and comprises the removal and replacement of the asbestos contaminated fireproofing. The second facility is temporary and consists of the

July 8, 1988
Department of Environmental Quality
Page 2

containment and other protective practices, equipment and devices used to prevent the discharge of asbestos fibers during the abatement project.

Both of these facilities fit the statutory definition of "pollution control facility". The statutory definition is broad. To paraphrase, a pollution control facility means any land, structure, building, installation, equipment or device, or improvement of any of the above, the principal purpose of which is to comply with Department or EPA requirements, or sole purpose is to prevent or control air pollution. ORS 468.155(1)(a)(A) and (B).

The present condition of the spray applied fireproofing in the Bank Center is good. It has not deteriorated to a point where removal is presently required to protect tenants or visitors. Because ordinary renovation work, vibrations, water damage, maintenance work or other physical contact with the material could result in eventual release of airborne asbestos fibers, the Bank has determined to remove the material under a voluntary, floor by floor program. The sole purpose of this program is to prevent release of airborne asbestos fibers from the defective fireproofing. Because there is no acceptable minimal exposure to ensure protection of the public health (See ORS 468.877(2)), prevention of any release of asbestos fibers must be considered prevention of a substantial quantity of air pollution ORS 468.155(1)(a)(B). The removal thus constitutes an improvement of the building for the sole purpose of preventing a substantial quantity of air pollution.

Similarly, the removal methods, which include containment measures to ensure no release of airborne fibers to the outside air or other Bank Center areas, are for the sole purpose of preventing a substantial quantity of air pollution. The removal procedures are also dictated by, and thus for the principal purpose of, complying with Department and EPA requirements.

As set forth under Section 13 of the application, the Bank contemplates commencement of construction of the facility on August 8, 1988. In fact, the Bank would prefer to start the project before that date.

We therefore request Departmental waiver of the requirement that the application be filed thirty days

July 8, 1988
Department of Environmental Quality
Page 3

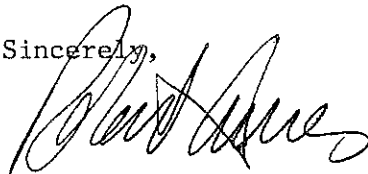
before construction begins. We agree that such a waiver will not affect the Department's thirty day time limit to notify us as to whether our application is complete. Considering the nature of the Bank's pollution control facilities, we see no overriding reason to delay the project pending the Department's decision on our request for preliminary certification.

We would appreciate being contacted regarding the requested waiver of the 30 day time period as soon as possible, and, of course, we would be happy to discuss any other issues raised by this application in person. Please contact David G. Ellis, Associate General Counsel, at:

First Interstate Bank of Oregon, N.A.
Law Department
P.O. Box 3131
Portland, Oregon 97208
(503)225-2227

Thank you for your time and consideration.

Sincerely,



Robert Ames
President,
First Interstate Bank of Oregon, N.A.

Enclosures

Environ.Ltr

STATE OF OREGON

ENVIRONMENTAL QUALITY COMMISSION

In the Matter of Request for	)	Application No. 2528
Preliminary Pollution Control)	
Facility Tax Credit Certification	)	ORDER DENYING PRELIMINARY
	)	TAX CREDIT CERTIFICATION
FIRST INTERSTATE BANK OF OREGON,	)	AND NOTICE OF OPPORTUNITY
N.A., and FIRST INTERSTATE	)	FOR A CONTESTED CASE
BANCORP,	)	HEARING
)	
Applicants.)	

1.

Pursuant to ORS 468.175(3), the Environmental Quality Commission (EQC) denies the request for preliminary pollution control facility tax credit certification by First Interstate Bank of Oregon, N.A., and First Interstate Bancorp (Applicants). This denial is based upon the determination of the Department of Environmental Quality (DEQ) that the request is not eligible under ORS 468.150 through 468.190 and OAR Chapter 340 Division 16. DEQ's determination, entitled "Tax Relief Application Review Report, Application No. 2528", is attached to and incorporated by reference into this order.

2.

Pursuant to ORS 468.175(5), Applicants have a right to request a hearing before the EQC or its hearing officer regarding this order and DEQ's determination that the request is not eligible for preliminary tax credit certification under ORS 468.150 through 468.190 and OAR Chapter 340 Division 16. Any such request must be made in writing and received by the

1 - ORDER DENYING PRELIMINARY TAX CREDIT CERTIFICATION AND NOTICE OF OPPORTUNITY FOR A CONTESTED CASE HEARING

Director of DEQ within twenty (20) days from the date of mailing of this notice. Any such request must be accompanied by a written answer admitting or denying all factual matters contained in DEQ's determination, and must affirmatively allege any and all affirmative claims or defenses Applicants might have. Any hearing shall be conducted under ORS Chapter 183 and OAR Chapter 340 Division 11. If Applicants do not request a hearing within twenty (20) days of mailing of this notice, Applicants shall waive the right to a hearing under ORS Chapter 183, except as provided under OAR 137-03-075(6) and (7). In the absence of a timely answer and request for hearing, the Director, on behalf of the EQC, may issue a default order and judgment, based upon a prima facie case made on agency files and records to date. Applicants must be represented by an attorney.

IT IS SO ORDERED:

ENVIRONMENTAL QUALITY COMMISSION

William P. Hutchison, Jr. Date
Chairman

Emery N. Castle Date
Member

Wallace B. Brill Date
Member

Genevieve Pisarski Sage Date
Member

William W. Wessinger Date
Member

CERTIFICATE OF SERVICE

I certify that I served this Order Denying Preliminary Tax Credit Certification and Notice of Opportunity for a Contested Case Hearing by mailing it certified mail, return receipt requested, to:

David G. Ellis
Associate General Counsel
Law Department
First Interstate Bank
1300 SW Fifth Avenue
Portland, OR 97208

DATED this ____ day of September, 1988.

MONICA RUSSELL
Secretary to the Environmental
Quality Commission

Agenda Item E

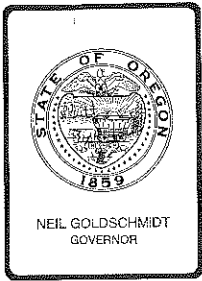
Director's Introduction
Request for Authorization to Conduct a
Public Hearing on Proposed Recycling and
Certification Rules: OAR 340-60-010
through 125, and Permit Fee Schedule for
Recycling Implementation, OAR 340-61-120.

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 requirements 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. As was true for the temporary rule, any local government unit included in an approved or conditionally approved recycling report would be certified. For out-of-state local governments, the regional disposal site that is to accept their wastes would be responsible for gathering and reporting the information necessary to determine if a sufficient opportunity to recycle is provided. New categories are proposed for the disposal permit recycling implementation fees, to cover the potentially large amounts of waste that may be received from outside of Oregon. In addition, amendments are proposed to clarify two existing recycling rules.

David Rozell, Manager of the Waste Reduction Section, is present to answer any questions you may have.

9/9/1988, EQC Meeting
CERTRULE.A



Environmental Quality Commission

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

EXECUTIVE SUMMARY

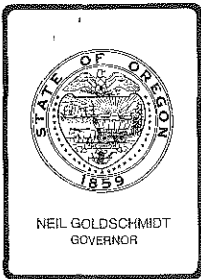
To: Environmental Quality Commission
From: Director *Angela Taylor*
Subject: Agenda Item E, September 9, 1988 EQC Meeting

Request for Authorization to Conduct a Public Hearing on Proposed Recycling and Certification Rules: OAR 340-60-010 through 125, and Permit Fee Schedule for Recycling Implementation, OAR 340-61-120.

ORS 459.305, passed as part of HB 2619 in 1987, requires that regional solid waste disposal sites not accept any wastes after July 1, 1988 from any local government units 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 requirements of the Oregon Recycling Opportunity Act. One purpose of HB 2619 is to insure that before a jurisdiction imposes its wastes on a different region, that jurisdiction must first minimize its waste by implementing at least the minimum recycling requirements of the Oregon Recycling Opportunity Act. A regional disposal site is a site selected under SB 662, the landfill supersiting bill of 1985, or one designed for or receiving more than 75,000 tons of waste per year from outside of the immediate service area (county or Metropolitan Service District) where the disposal site is located. The Coffin Butte landfill in Benton County and the proposed large landfills in Gilliam County and Morrow County are the only existing or proposed regional disposal sites.

The rules proposed here are to implement this statutory certification requirement, and are to supersede the temporary rule OAR 340-60-100 adopted by the Commission at the July 8, 1988 meeting. The rules are designed to not discriminate against out-of-state wastes, but to insure that the goals of waste and pollution minimization, conservation of land, and resource and energy conservation are carried out regardless of the state or jurisdiction that generated the waste, if that waste is to be landfilled in Oregon. As was true for the temporary rule, local governments will automatically be considered certified if they are included in an approved or conditionally approved wasteshed recycling report. Otherwise, the regional disposal site will be responsible for submitting all information necessary for determining whether a sufficient opportunity to recycle is provided.

New higher quantity fee categories are proposed to be added to the disposal permit recycling fee schedule. These categories are for quantities of garbage that are higher than presently received by any Oregon landfill, but will likely pertain to the proposed large regional landfills. New amendments are also proposed for the recycling report rule and the rule prohibiting the disposal of source-separated recyclable material. The recycling report rule amendment is designed to clarify that the recycling collectors are responsible for gathering and submitting the required recycling data. The prohibition amendment clarifies what collectors are to do with source-separated material that has not been correctly prepared.



Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director *Russell Taylor*

Subject: Agenda Item E, September 9, 1988 EQC Meeting

Request for Authorization to Conduct a Public Hearing on Proposed Recycling and Certification Rules; OAR 340-60-010 through 125, and Permit Fee Schedule for Recycling Implementation, OAR 340-61-120.

BACKGROUND: Recycling Certification and Fees

The 1987 Oregon Legislature passed HB 2619, which contains a provision (codified as ORS 459.305, see attachment 4) that prohibits a regional disposal site from accepting solid waste from any local or regional government unit located within or outside the State of Oregon after July 1, 1988 unless the Department certifies that the government unit has implemented the opportunity to recycle. A regional disposal site is defined as a disposal site selected pursuant to Chapter 679, Oregon Laws 1985 (SB 662, the landfill supersiting bill of 1985) or a disposal site that receives, or a proposed disposal site that is designed to receive, more than 75,000 tons of solid waste a year from commercial haulers from outside the immediate service area (county or Metropolitan Service district) in which the disposal site is located. The proposed Eastern Oregon landfills in Gilliam and Morrow Counties and the existing Coffin Butte landfill are the only landfills immediately affected by this law. The statutory definition of regional disposal site was chosen to not include the existing St. John's landfill, but to almost certainly include any successor landfill to St. John's.

At its July, 1988 meeting, the Commission adopted temporary rule OAR 340-60-100 to define a mechanism for certifying in-state recycling programs as required by law. At the time the temporary rule was proposed and adopted, no regional disposal site was receiving any wastes from out of state. The temporary rule was necessary to insure that the wastes from Polk and Linn Wastesheds, both with conditionally approved recycling reports, could continue to be disposed at the Coffin Butte Landfill without disruption. However, the proposed Gilliam and Morrow regional disposal sites are expected to be accepting wastes from out of state within the next few years. The rules proposed here cover both in-state and out-of-state wastes, and would supersede the temporary rule adopted in July. The in-state requirements proposed are the same as adopted in the temporary rule.

One purpose of HB 2619 is to insure that before a jurisdiction imposes its wastes on a different region, that jurisdiction must minimize its waste by implementing at least the minimum recycling requirements of the Oregon Recycling Opportunity Act (ORS 459.165-459.200 and 459.250). The Legislature anticipated that when major regional disposal sites are developed such as were being proposed in Gilliam and Morrow Counties, local or regional governments located outside the State of Oregon (for example, Clark County, Washington) would consider sending their wastes to the regional sites. The law requires these areas to have recycling opportunities which are equivalent to the requirements placed upon Oregon communities. The law also directs the Commission to develop a certification program which ensures that these government units will provide the opportunity to recycle as required by ORS 459.165 to ORS 459.200 and ORS 459.250. The opportunity to recycle includes recycling depots at all disposal sites, on-route collection of recyclable materials within the urban growth boundaries of all cities of more than 4,000 people and within the urban growth boundary of a metropolitan service district, and an education and promotion program which encourages people to recycle. An alternative method that is at least as effective as the standard method can be used to provide the recycling collection and depots portion of the opportunity to recycle.

One legal issue is whether HB 2619 and the proposed implementing rules are permissible under the interstate commerce clause of the United States Constitution. The commerce clause restricts the authority of the states to regulate the flow of commerce between the states, and the courts have held that garbage is an article of commerce. The Attorney General's Office has advised the Department that regulation of out-of-state waste to be disposed in Oregon would be permissible only if the regulation does not discriminate against out-of-state wastes and if the reasons for the regulation outweigh any burden on interstate commerce. Working with the Attorney General's office, the Department has carefully drafted the rules to meet these tests. The proposed rules are not discriminatory. They simply impose the same requirements for out-of-state wastes as presently exist for in-state wastes. Furthermore, the rules should achieve the state's desired minimization of solid waste without unduly restricting interstate commerce.

The law allows a certain amount of waste from out-of-state local governments to be exempt from the certification requirements. The proposed rules would set this exemption at 1,000 tons per year for each local government unit. Although the law allows the Department to set a recycling certification fee, the Department chooses not to do so, but instead to propose higher-quantity waste categories for the disposal permit annual recycling program implementation fees. The new categories are for higher quantities of waste than are presently received by any Oregon landfill, but will pertain to any large regional landfill that imports large amounts of wastes from outside of Oregon. The rate structure for the new categories is proportional to the rate structure for

the existing categories. A single category is proposed for 500,000 to 700,000 tons per year so as to not affect the present permit fee for the St. John's landfill in Portland, which disposes 650,000 tons per year.

Attachment 1 contains a statement of need for rulemaking.

ALTERNATIVES AND EVALUATION

Where possible, existing rules which set standards for providing the opportunity to recycle will be used to evaluate the opportunity to recycle for out-of-state jurisdictions. In some cases, the existing rules are inappropriate in this regard. For example, OAR 340-60-045 (recycling report standards) was modified in 1987 to require submission of only the material necessary to update the previous recycling report, and no longer includes requirements suitable for initial recycling reports (hence proposed OAR 340-60-105). Decertification is similar to the statutory procedure for disapproval of wasteshed recycling reports (ORS 459.185), but the latter has many provisions that are not appropriate, such as requirements that the Commission order the opportunity be provided.

Several major issues are associated with the proposed rules. Foremost is the issue of how to carry out the Legislative mandates for waste minimization, recycling opportunities, and priorities for waste management without unduly restricting interstate commerce in garbage.

The policy statement (OAR 340-60-090) specifies the goals that the Commission intends to accomplish through the adoption of these rules, to balance any potential restriction in interstate commerce. Alternative methods and variances are specifically included in the proposed rules so that out-of-state jurisdictions would have at least the same amount of flexibility in developing a recycling program as is available to Oregon jurisdictions.

The rules proposed here put the burden of supplying information about recycling programs on the regional disposal site. As an alternative, the Department could require that the out-of-state local governments and collectors report directly to the Department. The Department felt it more appropriate to directly regulate an Oregon business rather than out-of-state jurisdictions. The disposal site permittee can provide for gathering all the required data through contractual arrangements as a part of arranging for disposal of a jurisdiction's waste.

The law allows the Department to set a fee for recycling certification. The Department feels that local government units located within Oregon should not be subject to additional recycling fees, since all wastesheds are already required to submit recycling reports, and since all Oregon domestic waste disposal sites already pay an annual recycling program implementation fee. General fund revenue also pays part of the cost of recycling report review.

The legal question exists as to whether charging a fee for out-of-state certification would be discriminatory if no such fee were charged for in-state certification. It is possible that the courts would not consider a small fee for out-of-state certification to be discriminatory or a burden on interstate commerce. At this time, the Department is not proposing such a fee. However, since the disposal site recycling implementation fees are higher for landfills that accept higher quantities of wastes, accepting waste from out of state should result in higher recycling fees collected by the Department, and help offset some of the additional costs to the Department of certifying out-of-state programs. This fee structure is not discriminatory, but results in each jurisdiction ultimately paying its own share. The existing fee scale, however, is designed only for the present quantities of wastes generated in Oregon, and does not have categories for the high quantities of wastes expected if, for example, the Oregon Waste Systems disposal site in Gilliam County were to begin accepting wastes from Seattle and King County, Vancouver and Clark County, and other jurisdictions in addition to the wastes expected from Metro. New fee categories for these higher quantities of wastes are proposed here.

The increase in recycling implementation fees collected as a result of out-of-state wastes entering Oregon for disposal should pay for the cost of annual reviews of recycling compliance, but would not pay for the initial cost of certification. This is because the increased fees would not be received until after waste from the out-of-state local government unit is disposed in Oregon, whereas the initial certification is required before the waste enters the state. If many applications were received in a single year for certification of out-of-state local government units, the resources required for certification review could substantially affect the other waste reduction activities of the Department. The Department plans to seek information during the public hearings process as to how many applications are to be expected for certification of out of state local government units, and as to whether a certification fee should be charged.

The law requires the Commission to adopt a rule that sets a minimum amount of waste that a regional disposal site may receive from an out-of-state local government unit before any certification would be required for that local government unit. The Department is proposing to set this exemption limit at 1,000 tons per year, which is the amount of waste generated each year by some 1,000 to 2,000 people. Most communities of this size could economically support a small recycling depot, but any smaller-sized community would likely be exempt by OAR 340-60-070 from offering any recycling service or depot. The Department will solicit testimony on the issue of the exemption limit during the public hearing process.

The Recycling Opportunity Act requires recycling collection and notification not only within the incorporated limits of cities of 4,000 or more population, but also in the unincorporated areas within the urban

growth boundary of the city or within the Metropolitan Service District. However, these boundaries are specific to Oregon, and official urban growth boundaries do not exist for cities in most other states. In addition, many states have townships that include extensive rural areas, particularly those states that are entirely divided into townships with no unincorporated areas. The rules proposed here would use a combination of the incorporated areas of cities and the areas designated as urbanized areas by the Federal Highway Administration as being the equivalent to the urban growth boundaries of Oregon cities. On-route recycling collection or an alternative method would have to be provided in the unincorporated as well as the incorporated parts of the urbanized area before the local government unit would be certified. Flexibility is provided in this rule by allowing the applicant to propose other boundaries as constituting the urbanized area. The Department would approve these other boundaries if we found that the proposed boundaries include all the area with sufficiently high density to be substantially equivalent to the urban growth boundaries in Oregon.

The statutory definition for "regional disposal site" contains within it a definition for "immediate service area" that, for areas within Clackamas, Multnomah, and Washington Counties, is difficult to interpret. The legislature intended that wastes generated within any part of the Metropolitan Service District could continue to be disposed at the St. Johns landfill without that landfill being considered a regional landfill. However, any new landfill that is located outside the Metropolitan Service District boundary was intended to be considered a regional landfill if it accepted more than 75,000 tons per year of waste generated from the Metropolitan Service District or from another county. The wording adopted in statute is confusing, but appears to say that were a new disposal site to be located outside of the Metropolitan Service District but within either Clackamas, Multnomah, or Washington Counties, that site would not be within its own immediate service area. The Department believes this is not the legislative intent, and so proposes a new definition to better follow the legislative intent.

BACKGROUND: Recycling Report Rule

The original recycling report rule adopted in 1984 provided standards for just the initial recycling report required by ORS 459.180. The initial watershed recycling reports detailed how the watershed was implementing the opportunity to recycle, and had no provisions for data to demonstrate the effectiveness of the programs. The Commission amended the rule in March, 1987, to require annual recycling reports that detail changes in how the opportunity to recycle is being provided, and that also provide data that can be used to evaluate the effectiveness of the programs. One set of data required is recycling setout reports that provide direct information on the number of households participating in each program. During the first month of each quarter (January, April, July, and October), the on-route recycling collectors count the number of recycling

setouts they collect. Originally, it was intended that these reports be included as part of the annual recycling report. However, after the collectors have gathered the required data the first month of each quarter, we ask that they send the data forms directly to the Department immediately rather than holding them until the end of the year. This way the forms are less likely to be lost, and we can provide quick feedback if data are not being reported in the proper manner. The other set of data required is the annual data forms for quantity of material recycled.

Although the data reporting system is generally working well, two problems have surfaced that limit the effectiveness of the Department in pursuing cases where data are not being gathered or reported in a proper manner. First, although the setout data are gathered and reported quarterly, the reporting deadline specified in the current rule is the deadline for the annual reports - February 15th of the following year. It would be much more efficient if the quarterly setout reporting deadline were closer to the finish of data collection, so that we can provide a timely and appropriate response if data are not collected and reported properly, rather than having to wait until February 15th of the following year. Second, the existing rule does not specify who is to gather and report the data, only that the data be reported. If data are not gathered and reported, it is not clear whether we should take action against the city, the county, or the collector. The same is true for the annual quantity of material data forms.

The proposed amendments specifically require the recycling collectors to gather the necessary data. They also set the due date for the quarterly recycling setout data forms as being the 15th of the month following data collection, or the first business day thereafter.

ALTERNATIVES AND EVALUATION: Recycling Report Rule Amendment

As an alternative to directly requiring data collection by the recycling collector, the Department could initiate action against the county or city, rather than directly against the collector if the required data is not collected and reported. Counties and cities have clear authority to regulate the collection of solid waste and recycling within their jurisdiction, and so they could be considered as having responsibility to insure that reporting requirements are met. However, this approach seems very cumbersome. Since all wastesheds have identified the person or persons responsible for the required recycling collection programs, and since these persons are the logical ones to gather the required data, it seems much more practical to pursue reporting problems directly with the collectors rather than indirectly through the counties and cities.

BACKGROUND AND EVALUATION: Prohibition Amendment

Recently, Lane County fined a collector for disposing of cardboard that had been set out for recycling, but had not been properly prepared (tied in a bundle) by the generator. OAR 340-60-080 prohibits the disposal of source-separated recyclable material that has been collected or received from the generator. However, OAR 340-60-075 allows a collector to set reasonable standards for the preparation of recyclable material, and to refuse to pick up any material that has not been prepared to these specifications. The Department's policy has been that the collector should not discard improperly prepared material, but should either recycle it or leave it with the generator along with information on proper preparation. However, some collectors have interpreted that improperly prepared material is not recyclable material, and can be disposed. The proposed rule amendments are designed to remove the ambiguity by adopting the Department's existing policy in rule form.

SUMMATION

1. The 1987 Legislature passed a law, HB 2619, which includes a provision (ORS 459.305) that prohibits a regional disposal site from accepting waste from any local or regional government unit located within or outside of the State of Oregon, unless DEQ certifies that the local government unit has implemented the opportunity to recycle. The rules proposed here are designed to implement this statutory requirement.
2. For local governments located within Oregon, recycling report approval would be sufficient to receive certification. No additional fees would be required. These provisions for in-state jurisdictions are the same as the provisions of the temporary rule OAR 340-60-100 which was adopted by the Commission on July 8, 1988, and which would be superseded by the rules proposed here.
3. For out-of-state wastes, the regional disposal site that is to receive the wastes would be responsible for gathering and reporting the information required to demonstrate that a sufficient opportunity to recycle is being provided in the local government unit where the waste is generated.
4. The Department would have up to 90 days after receipt of an initial recycling report to either certify a local government unit, or to indicate what deficiencies exist in implementing a sufficient opportunity to recycle. If the Department fails to respond within the 90 day limit, the local government unit would be automatically certified. A procedure for decertification and recertification is also specified.
5. Up to 1,000 tons of waste per year may be sent by an out-of-state local government unit to an Oregon regional disposal site without any requirement for recycling certification. The regional disposal site

would be required to report to the Department the quantity of material accepted for disposal from each local government unit located outside of its immediate service area.

6. No certification fees are proposed. However, since the proposed regional disposal sites in Gilliam and Morrow Counties will likely accept far more waste per year than any Oregon landfill presently accepts, the Department is proposing new higher-quantity categories for recycling implementation disposal site fees, with proportionately higher fees for these higher categories.
7. Amendments are proposed to clear up ambiguities in both the annual recycling report rule and the prohibition on disposal of source-separated recyclable material.

DIRECTOR'S RECOMMENDATION

Based on the Summation, it is recommended that the Commission authorize a public hearing on the proposed recycling and certification rules: OAR 340-60-010 through 110, and the permit fee schedule for recycling implementation, OAR 340-61-120.

Fred Hansen

- Attachments
1. Draft Statement of Need for Rulemaking
 2. Draft Notice of Public Hearing
 3. Draft Rules and Rule Amendments OAR 340-60-010, 045, and 080 through 110
 4. ORS 459.305, Certification That Government Unit Has Implemented the Opportunity to Recycle.

Peter H. Spendelow
Phone: 229-5253
August 23, 1988

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Before the Environmental Quality Commission
of the State of Oregon

In the Matter of Adoption of Recycling)	Statement of Need for Rule
and Certification Rules: OAR 340-60-010)	for a Recycling Certification
through 125, and Permit Fee Schedule)	Program, Recycling Rules
for Recycling Implementation,)	Amendments, and Permit Fees
OAR 340-61-120)	Rule Amendments

1. Statutory Authority

The proposed recycling certification program rules and the recycling rules and fee schedule amendments are proposed under authority of HB 2619, 1987 Oregon Legislature, codified under ORS 459.305, certification that government unit has implemented the opportunity to recycle; and ORS 459.165 to 459.200 and 250, Recycling Opportunity Act.

2. Statement of Need

The proposed rules are needed to carry out the program mandated by the 1987 Legislature in HB 2619. That law prohibits a regional disposal site from accepting waste from a local government unit located within or outside of Oregon unless the DEQ certifies that the local government unit has implemented the opportunity to recycle. The proposed rules prescribe procedures for certification and decertification of recycling programs for in-state and out-of-state local or regional governments. The proposed fee schedule amendments will provide the necessary funds for the recycling certification program. The other recycling rule amendments are necessary to clear up existing ambiguities in the recycling rules.

3. Principal Documents Relied Upon

- a. OAR 340-60-005 to 185, Rules for Recycling and Waste Reduction
- b. ORS 459.305
- c. ORS 459.165 to 200 and 250; Recycling Opportunity Act

4. Fiscal and Economic Impact

If there is no change in the present waste generation and disposal patterns in Oregon, the proposed rules and rule amendments will have no significant fiscal or economic impact, since there will be no change in fees to existing disposal sites. If local governments outside of Oregon begin sending significant amount of wastes to the two proposed Eastern Oregon regional landfills, permit fees paid to the Department will increase proportionate to the new amount of waste being disposed. Because the increase is roughly proportional, there should be no net effect on present Oregon waste generators or disposal sites.

5. Land Use Consistency Statement

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

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

With regard to Goal 11 (public facilities and services), the rules are designed to extend the life of solid waste disposal facilities through requiring that the opportunity to recycle be provided in all areas from which the waste is sent. The rules do not appear to conflict with other goals.

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

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

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

A CHANCE TO COMMENT ON...

Proposed Temporary Recycling Certification Program Rules

OAR 340-60-100

DRAFT

Hearing Date: October 19, 1988

Comments Due: October 21, 1988

**WHO IS
AFFECTED:**

Local and regional government units located within and outside of Oregon who are considering sending their solid waste to a regional landfill located in Oregon, regional disposal site owners and operators, owners and operators of local solid waste and recycling collection services within the local government units considering sending their waste to a regional disposal site, and citizens in these affected areas.

**WHAT IS
PROPOSED:**

DEQ proposes to adopt rules for a recycling certification program. Regional landfills such as the new Oregon Waste Systems landfill in Gilliam County may not accept waste from local government units located within or outside of Oregon unless the DEQ certifies that the government units have implemented the opportunity to recycle as defined in ORS 459.165 to 200 and 250. The opportunity to recycle includes recycling depots at all disposal sites, on route collection of recyclable materials in all cities with more than 4,000 people, and an education and promotion program which encourages people to recycle.

**WHAT ARE THE
HIGHLIGHTS:**

The proposed rules set certification of in-state local governments approved as having a DEQ recycling report. For out of state local government units, the regional disposal site would be responsible for submitting information necessary to determine if a sufficient opportunity to recycle is provided. Procedures for decertification and recertification are also set. New high quantity categories are added to the disposal permit recycling fee schedule. These categories exceed the amount of waste received by any present Oregon landfill, but will pertain to large regional landfills. The rules on recycling reports and the prohibition on disposal of source-separated recyclable material are also clarified.

- OVER -



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

11/1/86

FOR FURTHER INFORMATION:

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

HOW TO
COMMENT:

Copies of the proposed rule package may be obtained from the Hazardous and Solid Waste Division, 811 S.W. Sixth, Portland, Oregon 97204. Oral and written comments will be accepted at the public hearing:

2:00 p.m.
Wednesday, October 19, 1988
DEQ Conference Room 4A
811 S.W. Sixth
Portland, Oregon

Written comments should be sent to Peter Spendelow of the DEQ Waste Reduction Program, Hazardous and Solid Waste Division, 811 S.W. Sixth, Portland, OR 97204, and must be received by 5 pm, October 21st. For further information contact Peter Spendelow at (503) 229-5253, or toll-free within Oregon at 1-800-452-4011.

WHAT IS THE
NEXT STEP:

After the public hearing, the Environmental Quality Commission may adopt rules identical to the proposed rules, adopt modified rules on the same subject matter, or decline to act. The Commission's deliberation should come during the regularly scheduled Commission meeting in November, 1988.

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

New rules OAR 340-60-090 through 110 are proposed to be adopted as follows:

Policy for Certification

OAR 340-60-090

(1) The Commission's purpose in adopting rules OAR 340-60-090 through 340-60-110, for certifying the a sufficient opportunity to recycle is provided pursuant to ORS 459.305, is to:

(a) conserve valuable landfill space by insuring that the persons who generate the garbage going to a disposal site have the opportunity to recycle, and that the amount of recyclable material being disposed is reduced as much as is practical;

(b) protect groundwater resources and the environment and preserve public health by reducing the waste going to landfills; and

(c) conserve energy and natural resources by promoting the reuse and recycling of materials as a preferred alternative to disposal.

(2) The purpose as stated in section 1 of this rule is to apply regardless of the state or jurisdiction in which the waste was generated.

(3) The Department shall not have enforcement authority regarding the requirements of ORS 459.165 to 459.200 and 459.250, or rules adopted under these statutory requirements, for out-of-state local government units other than the ability to certify and decertify the local government units under OAR 340-60-210, thus restricting the disposal of wastes in a regional landfill when an adequate opportunity to recycle has not been provided to the generators of the wastes.

Recycling Certification

OAR 340-60-095

(1) A local government unit shall be considered certified if it has not been decertified under OAR 340-60-100 and if:

(a) The permittee of the regional disposal site has submitted or caused to be submitted a recycling report covering the local government unit, and containing the information required in OAR 340-60-105 (1), and the Department has approved or conditionally approved the report; or

(b) The Department has approved or conditionally approved a recycling report submitted under OAR 340-60-045 for the wastesheds or parts of wastesheds that include the entire local government unit.

(2) The date of certification shall be considered to be the date that the recycling report was first approved, or conditionally approved, by the Department for the wastesheds or areas that include the entire local government unit.

(3) For each initial recycling report submitted to fulfill the requirements of section (1) of this rule, the Department must respond within 90 days by either certifying the local government unit or by indicating what deficiencies exist in providing the opportunity to recycle. If the Department does not respond within 90 days of the submission of the initial recycling report, the local government unit shall be considered to be certified under OAR 340-60-095.

(4) Except as otherwise provided in section (5) of this rule, after July 1, 1988, a regional disposal site may not accept any solid waste generated from any local government unit within or outside the State of Oregon unless the Department has certified that the recycling programs offered within the local government unit provide an opportunity to recycle that meets the requirements of ORS 459.165 to 459.200 and 459.250.

(5) A regional disposal site may accept wastes for disposal that are generated from a local government unit outside the State of Oregon without certification required under section (4) of this rule, if:

(a) the wastes were transported to the regional disposal site on or before July 1, 1990; or

(b) the regional disposal site accepts no more than 1,000 tons per year of wastes generated within any single local government unit. This 1,000 ton per year exemption shall apply separately to each incorporated city or town or similar local government unit, and to the unincorporated area of each county or similar local government unit.

Decertification, Recertification, and Variances

OAR 340-60-100

(1) Certified local government units shall be decertified if the Department finds, through its review of the recycling report submitted under OAR 340-60-045 or 340-60-105, or through other information that becomes known to the Department, that the opportunity to recycle is no longer being provided. Certified local governments shall also be decertified if no annual recycling report required under OAR 340-60-045 or

OAR 340-60-105 is submitted. The procedure used for the decertification is as follows:

(a) The Department shall notify the regional disposal site that receives the waste and the persons who participated in preparing the most recent recycling report of the proposed decertification, based on written findings.

(b) An affected person may:

(A) Request a meeting with the Department to review the Department's findings, which meeting may include all or some of the persons who prepared the report; or

(B) Correct the deficiencies that the Department found regarding the opportunity to recycle.

(c) For local government units that have previously been certified under OAR 340-60-095, the Department shall grant a reasonable extension of time of at least 60 days to permit the affected persons to correct any deficiencies in providing the opportunity to recycle. The regional disposal site permittee may submit, or cause to be submitted, information to the Department during this period to demonstrate that any deficiencies have been corrected and the opportunity to recycle is being provided.

(d) If the Department finds, after a reasonable extension of time, that the opportunity to recycle is still not implemented in the local government unit, the Director of the Department shall notify the Commission, and shall send a notice to the regional disposal site that receives wastes from the local government unit and to the persons who participated in the preparation of the most recent recycling report. This notice shall indicate how comments on the Department's findings can be directed to the Commission.

(e) If requested by the regional disposal site permittee or by another affected person within 30 days after notification under subsection (d) of this section, the Commission shall hold a public hearing. For local government units within the State of Oregon, this hearing may be held in conjunction with a hearing required under ORS 459.185 (5).

(f) If, after review of the public record, and based on the Department's findings on review of the recycling report and other information made known to the Department, the Commission determines that all or part of the opportunity to recycle is not being provided, the Commission shall act to

decertify the local government unit, and shall set an effective date for the decertification.

(2) If a local government unit has been decertified under OAR 340-60-100 (1), the regional disposal site permittee may apply to the Department for recertification by supplying, or causing to be supplied, information to demonstrate that all deficiencies have been corrected and that the opportunity to recycle is being provided. If the Department determines that the opportunity to recycle is being provided, the Department shall so certify, and shall provide notice of the certification to the affected regional disposal site permittee.

(3) Upon written application, the Commission may, to accommodate special conditions in a local government unit, grant a variance from specific requirements of rules adopted with regards to providing the opportunity to recycle. The procedure for adopting such a variance and the powers of the Commission shall be as set forth in ORS 459.185 (8).

Recycling Reports for Out of State Certification

OAR 340-60-105

(1) Before a regional disposal site can accept waste from a local government unit, the following information must be submitted for the Department's approval on forms provided by the Department:

(a) The materials which are recyclable material at each disposal site and within each city of 4,000 or more population or unincorporated urbanized area.

(b) The manner in which the recyclable material are to be collected and received in order to provide the opportunity to recycle.

(c) Proposed and approved alternative methods for providing the opportunity to recycle which are to be used within the local government unit.

(d) Proposed or existing methods for providing a recycling public education and promotion program, including copies of materials that are to be or are being used as part of the program.

(e) For disposal sites and for cities of more than 4,000 people and for unincorporated urbanized areas located within the local government unit, copies of any ordinance, franchise, permit, or other document that insures that the opportunity to recycle will be provided.

(f) The geographic boundaries of urbanized area or proposed boundaries of urbanized areas as set forth in OAR 340-60-110 (2).

(g) Other information or attachments necessary to describe the proposed program for providing the opportunity to recycle.

(2) In order to maintain certification for local government units located outside the State of Oregon, quarterly recycling setout data reports and an annual recycling report that includes the information required in OAR 340-60-045 (2), (3), and (5) must be submitted each year. The annual recycling report shall be due on February 15th of each year following certification. If these recycling reports are not submitted, the local government unit shall be subject to decertification as specified in OAR 340-60-100.

(3) The regional disposal site permittee shall be responsible for submitting, or causing to be submitted, all of the information required by sections (1) and (2) of this rule.

(4) The regional disposal site permittee shall report, on forms provided by the Department, the quantity of material received from each local government unit located outside of the immediate service area of the disposal site.

Equivalents for Out of State Jurisdictions

OAR 340-60-110

(1) For certification purposes, the special recycling requirements that apply in Oregon to areas within the urban growth boundaries of cities of 4,000 or more population or within the urban growth boundary of a metropolitan service district shall also apply to urbanized areas outside of Oregon that are certified or are to be certified under OAR 340-60-095. These special requirements include:

(a) on-route collection at least once a month of source-separated recyclable material from collection service customers (OAR 340-60-020(1)(a)); and

(b) notice required by OAR 340-60-040(1)(a)(A).

(2) Unless otherwise proposed in a recycling report and approved by the Department, the urbanized area of the local government unit shall be considered to include all of the area within the incorporated limits of cities or towns of 4,000 or more population within the local government

unit, plus all area that is designated as an urbanized areas by the Federal Highway Administration if that Federal Highway Administration urbanized area contains an incorporated city, town, or other municipality having 4,000 or more population. The person or persons submitting the initial recycling report may propose a different boundary for the urbanized area of the local government unit. The Department shall accept the proposed urbanized area boundary if the Department finds that this boundary includes all parts of the local government unit that has sufficiently high population, commercial, and industrial density to be substantially equivalent to urbanized areas in Oregon.

(3) For the purposes of certification under OAR 340-60-095, a regional disposal site may apply for an alternative method that involves removing recyclable material from mixed solid waste. Any such application may include one or more local government units, and shall include information on the method to be used for separating recyclable material and the percentage of the waste stream and quantity of material that is to be separated and recycled. The Department shall approve the alternative method if it finds that the alternative method will result in as much material, of as high a value in terms of resource and energy conservation, being separated from mixed waste and recycled as would have been recycled and conserved had the general method for providing the opportunity to recycle set forth in OAR 340-60-020 been implemented.

Temporary Rule OAR 340-60-100 is proposed to be superseded by proposed new rules OAR 340-60-090 through 110.

OAR 340-60-010 is proposed to be amended as follows:

Definitions

OAR 340-60-010 As used in these rules unless otherwise specified:

(1) "Affected person" means a person or entity involved in the solid waste collection service process including but not limited to a cycling collection service, disposal site permittee or owner, city, county and metropolitan service district. For the purposes of these rules "Affected person" also means a person involved in operation of a place to which

persons not residing on or occupying the property may deliver source separated recyclable material.

(2) "Area of the state" means any city or county or combination or portion thereof or other geographical area of the state as may be designated by the Commission.

(3) "Collection franchise" means a franchise, certificate, contract or license issued by a city or county authorizing a person to provide collection service.

(4) "Collection service" means a service that provides for collection of solid waste or recyclable material or both. "Collection service" of recyclable materials does not include a place to which persons not residing on or occupying the property may deliver source separated recyclable material.

(5) "Collector" means the person who provides collection service.

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

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

(8) "Depot" means a place for receiving source separated recyclable material.

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

(10) "Disposal site" means land and facilities used for the disposal, handling or transfer of or resource recovery from solid wastes, including but not limited to dumps, landfills, sludge lagoons, sludge treatment facilities, disposal sites for septic tank pumping or cesspool cleaning service, transfer stations, resource recovery facilities, incinerators for solid waste delivered by the public or by a solid waste collection service, composting plants and land and facilities previously used for solid waste disposal at a land disposal site; but the term does not include a facility subject to the permit requirements of ORS 468.740; a landfill site which is used by the owner or person in control of the premises to dispose of soil, rock concrete or other similar nondecomposable material, unless the site is used by the public either directly or through a solid waste collection service; or a site licensed pursuant to ORS 481.345.

(11) "Generator" means a person who last uses a material and makes it available for disposal or recycling.

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

(13) "Local government unit" means the territory of a political subdivision that regulates either solid waste collection, disposal, or both, including but not limited to incorporated cities, municipalities, townships, counties, parishes, regional associations of cities and counties, metropolitan service districts, states, and provinces, but not including sewer districts, fire districts, or other political subdivisions that do not regulate solid waste.

[(13)] (14) "Metropolitan service district" means a district organized under ORS Chapter 268 and exercising solid waste authority granted to such district under ORS chapters 268 and 459.

[(14)] (15) "On-route collection" means pick up of source separated recyclable material from the generator at the place of generation.

[(15)] (16) "Opportunity to recycle" means those activities described in OAR 340-60-020.

[(16)] (17) "Permit" means a document issued by the Department, bearing the signature of the Director or the Director's authorized representative which by its conditions may authorize the permittee to construct, install, modify or operate a disposal site in accordance with specified limitations.

[(17)] (18) "Person" means the state or a public or private corporation, local government unit, public agency, individual, partnership, association, firm, trust, estate or any other legal entity.

[(18)] (19) "Principal recyclable material" means material which is a recyclable material at someplace where the opportunity to recycle is required in a watershed and is identified by the Commission in OAR 340-60-030.

[(19)] (20) "Recyclable material" means any material or group of materials that can be collected and sold for recycling at a net cost equal to or less than the cost of collection and disposal of the same material.

[(20)] (21) "Recycling setout" means any amount of source-separated recyclable material set out at or near a residential dwelling for collection by the recycling collection service provider.

(22) "Regional disposal site" means:

(a) A disposal site selected pursuant to Chapter 679, Oregon Laws 1985.

or

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

[(21)] (23) "Resource recovery" means the process of obtaining useful material or energy resources from solid waste and includes:

(a) "Energy recovery," which means recovery in which all or a part of the solid waste materials are processed to utilize the heat content, or other forms of energy, of or from the material;

(b) "Material recovery," which means any process of obtaining from solid waste, by presegregation or otherwise, materials which still have useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled for the same or other purpose;

(c) "Recycling," which means any process by which solid waste materials are transformed into new products in such a manner that the original products may lose their identity;

(d) "Reuse," which means the return of a commodity into the economic stream for use in the same kind of application as before without change in its identity.

[(22)] (24) "Solid waste collection service" or "service" means the collection, transportation or disposal of or resource recovery from solid wastes but does not include that part of a business licensed under ORS 481.345.

[(23)] (25) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage, rubbish, refuse, ashes, waste paper and cardboard; sewage sludge, septic tank and cesspool pumpings or other sludge; commercial, industrial, demolition and construction wastes; discarded or abandoned vehicles or parts thereof; discarded home and industrial appliances; manure, vegetable or animal solid and semisolid wastes, dead animals and other wastes; but the term does not include:

(a) Hazardous wastes as defined in ORS 459.410;

(b) Materials used for fertilizer or for other productive purposes or which are salvageable as such materials are used on land in agricultural operations and the growing or harvesting of crops and the raising of fowls or animals.

[(24)] (26) "Solid waste management" means prevention or reduction of solid waste; management of the storage, collection, transportation, treatment, utilization, processing and final disposal of solid waste; or resource recovery from solid waste; and facilities necessary or convenient to such activities.

[(25)] (27) "Source separate" means that the person who last uses recyclable material separates the recyclable material from solid waste.

(28) "Urbanized area" means, for jurisdictions within the State of Oregon, the territory within the urban growth boundary of each city of 4,000 or more population, or within the urban growth boundary established by a metropolitan service district. For jurisdictions outside the State of Oregon, "urbanized area" means a geographic area with substantially the same character, with respect to minimum population density and commercial and industrial density, as urbanized areas within the State of Oregon.

[(26)] (29) "Waste" means useless or discarded materials.

[(27)] (30) "Wasteshed" means an area of the state having a common solid waste disposal system or designated by the commission as an appropriate area of the state within which to develop a common recycling program.

[(28)] (31) "Yard debris" means vegetative and woody material generated from residential property or from commercial landscaping activities.

OAR 340-60-045 is proposed to be amended as follows:

Standards for Recycling Reports

340-60-045

(1) The first recycling report shall be submitted to the Department not later than July 1, 1986 on forms supplied by the Department. Subsequent recycling reports shall be submitted to the Department not later than February 15 each year, beginning in 1988, on forms supplied by the Department.

(2) The recycling report shall include the following information:

(a) The materials which are recyclable at each disposal site and within [the urban growth boundary of each city of 4,000 or more population or within the urban growth boundary established by a metropolitan service district] any urbanized area, if there has been a change from the previous year;

(b) The manner in which recyclable material is collected or received, if there has been a change from the previous year;

(c) Proposed and approved alternative methods for the opportunity to recycle which are to be used in the wasteshed and justification for the alternative method, if there has been a change from the previous year;

(d) Public education and promotion activities in the preceding calendar year;

(e) Other information necessary to describe changes from the preceding calendar year in the programs for providing the opportunity to recycle;

[(f) The number of recycling set-outs collected by each on-route collection program required by OAR 340-60-020 in January, April, July and October of the preceding calendar year;]

[(g)] ~~(f)~~ The amount of materials recycled in the preceding calendar year at each disposal site or more convenient location, by type of material collected;

[(h)] ~~(g)~~ The amount of materials recycled in the previous calendar year by each on-route collection program required by OAR 340-60-020, or by an approved alternative method, by type of material collected; and

[(i)] ~~(h)~~ If a recycling program required by OAR 340-60-020 collects materials both on-route and at disposal sites or other recycling depots in such a way that it is impractical to separately report the amount of material recycled as required in subsections (2)(~~f~~) and (~~g~~) [and (h)] of this rule, then the total amount of material recycled and estimates of the amount of material recycled by the on-route collection program and at each disposal site or more convenient location shall be reported.

(3) The recycling report shall include attachments including but not limited to the following materials related to the opportunity to recycle:

(a) Copies of materials that are being used in the wasteshed as part of education and promotion;

(b) A copy of any new city or county collection service franchise, or any new amendment to a franchise, including rates under the franchise; which

relates to recycling in areas required by ORS 459.180 and OAR 340-60-020 to provide on-route collection of source separate recyclable materials; and

(c) Other attachments which demonstrate the programs for providing the opportunity to recycle.

(4) By January 25th of each year, collectors, disposal site operators, and other persons providing an opportunity to recycle required under ORS 459.180 and OAR 340-60-020 shall gather and report to their wasteshed representative, on forms provided by the Department, the information required by subsections (2f), (2g), and (2h) of this rule, for inclusion in the annual recycling report for the preceding calendar year.

(5) In addition to any annual reporting requirement set forth in sections 1-3 of this rule, the number of recycling setouts collected during January, April, July, and October shall be reported to the Department for those local government units where recycling collection is required by ORS 459.180 or required for certification under OAR 340-60-095. This report shall be on forms provided by the Department, and shall be due each following month on the first business day following the 14th of that month. For local government units within the state of Oregon, this report shall be submitted by the person who provides on-route collection required under ORS 459.180. For local government units outside of Oregon, this report shall be submitted, or caused to be submitted, by the regional disposal site that accepts the waste from a local government unit where on-route collection is required for certification under OAR 340-60-095.

[(4)](6)(a) The cities and counties and other affected persons in each wasteshed should:

(A) Jointly identify a person as representative for that wasteshed to act as a contact between the affected persons in that wasteshed and the Department in matters relating to the recycling report;

(B) Inform the Department of the choice of a representative.

(b) The cities and counties and other affected persons in a wasteshed shall gather information from the affected persons in the wasteshed and compile that information into the recycling report.

[(5)](7) The Department shall review the recycling report to determine whether the opportunity to recycle is being provided to all persons in the wasteshed. The Department shall approve the recycling report if it

determines that the report contains all the information required under this rule and wasteshed:

(a) Is providing the opportunity to recycle, as defined in OAR 340-60-020, for:

(A) Each material identified on the list of principal recyclable material for the wasteshed, as specified in OAR 340-60-030, or has demonstrated that at a specific location in the wasteshed a material on the list of the principal recyclable material is not a recyclable material for that specific location; and

(B) Other materials which are recyclable material at specific locations where the opportunity to recycle is required.

(b) Has an effective public education and promotion program which meets the requirements of OAR 340-60-040.

OAR 340-60-080 is proposed to be amended as follows:

Prohibition

OAR 340-60-080

(1) In addition to the provisions set forth in ORS 459.195, no person shall dispose of source-separated recyclable material which has been collected or received from the generator by any method other than reuse or recycling.

(2) This prohibition shall apply to recyclable material which has not been correctly prepared to reasonable specifications referred to in OAR 340-60-075 (1). However, this prohibition shall not apply to unauthorized material that has been deposited by the generator at a recycling depot when it is impractical to recycle the unauthorized material, or to collected recycled material later found to be contaminated with hazardous material.

OAR 340-61-120 is proposed to be amended as follows:

Permit Fee Schedule

340-61-120

(1) Filing Fee. A filing fee of \$50 shall accompany each application for issuance, renewal, modification, or transfer of a Solid Waste Disposal Permit. This fee is non-refundable and is in addition to any application processing fee or annual compliance determination fee which might be imposed.

(2) Application Processing Fee. An application processing fee varying between \$50 and \$2,000 shall be submitted with each application. The amount

of the fee shall depend on the type of facility and the required action as follows:

(a) A new facility (including substantial expansion of an existing facility):

(A) Major facility ¹	\$2,000
(B) Intermediate facility ²	\$1,000
(C) Minor facility ³	\$ 300

¹Major Facility Qualifying Factors:

- a- Received more than 25,000 tons of solid waste per year; or
- b- Has a collection/treatment system which, if not properly constructed, operated and maintained, could have a significant adverse impact on the environment as determined by the Department.

²Intermediate Facility Qualifying Factors:

- a- Received at least 5,000 but not more than 25,000 tons of solid waste per year; or
- b- Received less than 5,000 tons of solid waste and more than 25,000 gallons of sludge per month.

³Minor Facility Qualifying Factors:

- a- Received less than 5,000 tons of solid waste per year; and
- b- Received less than 25,000 gallons of sludge per month.

All tonnages based on amount received in the immediately preceding fiscal year, or in a new facility the amount to be received the first fiscal year of operation.

(b) Preliminary feasibility only (Note: the amount of this fee may be deducted from the complete application fee listed above):

(A) Major facility	\$1,200
(B) Intermediate facility	\$ 600
(C) Minor facility	\$ 200

(c) Permit renewal (including new operational plan, closure plan or improvements):

(A) Major facility	\$ 500
(B) Intermediate facility	\$ 250
(C) Minor facility	\$ 125

(d) Permit renewal (without significant change):

(A) Major facility	\$ 250
(B) Intermediate facility	\$ 150
(C) Minor facility	\$ 100

(e) Permit modification (including new operational plan, closure plan or improvements):

- (A) Major facility \$ 500
- (B) Intermediate facility \$ 250
- (C) Minor facility \$ 100

(f) Permit modification (without significant change in facility design or operation): All categories \$ 50

(g) Permit modification (Department initiated) All categories No fee

(h) Letter authorizations, new or renewal: \$ 100

(3) Annual Compliance Determination Fee (In any case where a facility fits into more than one category, the permittee shall pay only the highest fee):

(a) Domestic Waste Facility:

- (A) A landfill which received 500,000 tons or more of solid waste per year:\$60,000
- (B) A landfill which received at least 400,000 but less than 500,000 tons of solid waste per year:\$48,000
- (C) A landfill which received at least 300,000 but less than 400,000 tons of solid waste per year:\$36,000
- (D) A landfill which received at least 200,000 but less than 300,000 tons of solid waste per year:\$24,000
- (E) A landfill which received at least 100,000 but less than 200,000 tons of solid waste per year:\$12,000
- (F) A landfill which received at least 50,000 but less than 100,000 tons of solid waste per year:\$ 6,000
- (G) A landfill which received at least 25,000 but less than 50,000 tons of solid waste per year:\$ 3,000
- (H) A landfill which received at least 10,000 but less than 25,000 tons of solid waste per year:\$1,500
- (I) A landfill which received at least 5,000 but not more than 10,000 tons of solid waste per year:\$ 750
- (J) A landfill which received at least 1,000 but not more than 5,000 tons of solid waste per year:\$ 200
- (K) A landfill which received less than 1,000 tons of solid waste per year:\$ 100
- (L) A transfer station or processing facility which received more than 10,000 tons of solid waste per year:\$ 500
- (M) A transfer station or processing facility which received less than 10,000 tons of solid waste per year:\$ 50
- (N) An incinerator, resource recovery facility other than processing facility, composting facility and each other facility not specifically classified above which receives 100,000 tons or more of solid waste per year:.....\$8,000
- (O) An incinerator, resource recovery facility other than processing facility, composting facility and each other facility not specifically classified above which receives at least 50,000 tons but less than 100,000 tons of solid waste per year:.....\$4,000
- (P) An incinerator, resource recovery facility other than processing facility, composting facility and each other facility not specifically

classified above which receives less than 50,000 tons of solid waste per year:.....\$2,000

(Q) A landfill which has permit provisions to store over 100 waste tires --the above fee or \$250 whichever is highest.

(b) Industrial Waste Facility:

(A) A facility which received 10,000 tons or more of solid waste per year:\$1,500

(B) A facility which received at least 5,000 tons but less than 10,000 tons of solid waste per year:\$ 750

(C) A facility which received less than 5,000 tons of solid waste per year:\$ 150

(c) Sludge Disposal Facility:

(A) A facility which received 25,000 gallons or more of sludge per month:\$ 150

(B) A facility which received less than 25,000 gallons of sludge per month:\$ 100

(d) Closed Disposal Site: Each landfill which closes after July 1, 1984:..... 10% of fee which would be required, in accordance with subsections (3)(a), (3)(b), and (3)(c) above, if the facility was still in operation or \$50 whichever is greater.

(e) Facility with Monitoring Wells: In addition to the fees described above, each facility with one or more wells for monitoring groundwater or methane, surface water sampling points, or any other structures or locations requiring the collection and analysis of samples by the Department, shall be assessed a fee. The amount of the fee shall depend on the number of wells (each well in a multiple completion well is considered to be a separate well) or sampling points as follows:

For each well or sampling point.....\$250

(4) Annual Recycling Program Implementation Fee. An annual recycling program implementation fee shall be submitted by each domestic waste disposal site, except transfer stations and closed landfills. This fee is in addition to any other permit fee which may be assessed by the Department. The amount of the fee shall depend on the amount of solid waste received as follows:

(a) A disposal site which received 1,600,000 tons or more of solid waste per year \$64,000

(b) A disposal site which received at least 1,500,000 but less than 1,600,000 tons of solid waste per year:..... \$60,000

(c) A disposal site which received at least 1,400,000 but less than 1,500,000 tons of solid waste per year:..... \$56,000

(d) A disposal site which received at least 1,300,000 but less than 1,400,000 tons of solid waste per year:..... \$52,000

(e) A disposal site which received at least 1,200,000 but less than 1,300,000 tons of solid waste per year: \$48,000

(f) A disposal site which received at least 1,100,000 but less than 1,200,000 tons of solid waste per year:..... \$44,000

(g) A disposal site which received at least 1,000,000 but less than 1,100,000 tons of solid waste per year:..... \$40,000

<u>(h)</u>	A disposal site which received at least 900,000 but less than 1,000,000 tons of solid waste per year:.....	\$36,000
<u>(i)</u>	A disposal site which received at least 800,000 but less than 900,000 tons of solid waste per year:	\$32,000
<u>(j)</u>	A disposal site which received at least 700,000 but less than 800,000 tons of solid waste per year:	\$28,000
<u>[(a)](k)</u>	A disposal site which received at least 500,000 tons but less than 700,000 tons [or more] of solid waste per year	\$20,000
<u>[(b)](l)</u>	A disposal site which received at least 400,000 but less than 500,000 tons of solid waste per year:.....	\$18,000
<u>[(c)](m)</u>	A disposal site which received at least 300,000 but less than 400,000 tons of solid waste per year:.....	\$14,000
<u>[(d)](n)</u>	A disposal site which received at least 200,000 but less than 300,000 tons of solid waste per year:.....	\$ 9,000
<u>[(e)](o)</u>	A disposal site which received at least 100,000 but less than 200,000 tons of solid waste per year:	\$ 4,600
<u>[(f)](p)</u>	A disposal site which received at least 50,000 but less than 100,000 tons of solid waste per year:	\$ 2,300
<u>[(g)](q)</u>	A disposal site which received at least 25,000 but less than 50,000 tons of solid waste per year:	\$ 1,200
<u>[(h)](r)</u>	A disposal site which received at least 10,000 but less than 25,000 tons of solid waste per year:	\$ 450
<u>[(i)](s)</u>	A disposal site which received at least 5,000 but less than 10,000 tons of solid waste per year:.....	\$ 225
<u>[(j)](t)</u>	A disposal site which received at least 1,000 but less than 5,000 tons of solid waste per year:	\$ 75
<u>[(k)](u)</u>	A disposal site which received less than 1,000 tons of solid waste per year:	\$ 50

459.305 Certification that government unit has implemented opportunity to recycle; rules; fee; special provisions for metropolitan service district. (1) Except as otherwise provided by rules adopted by the Environmental Quality Commission under subsection (3) of this section, after July 1, 1988, a regional disposal site may not accept solid waste generated from any local or regional government unit within or outside the State of Oregon unless the Department of Environmental Quality certifies that the government unit has implemented an opportunity to recycle that meets the requirements of ORS 459.165 to 459.200 and 459.250.

(2) The Environmental Quality Commission shall adopt rules to establish a program for certification of recycling programs established by local or regional governments in order to comply with the requirement of subsection (1) of this section.

(3) Not later than July 1, 1988, the commission shall establish by rule the amount of solid waste that may be accepted from an out-of-state local or regional government before the local or regional government must comply with the requirement set forth in subsection (1) of this section. Such rule shall not become effective until July 1, 1990.

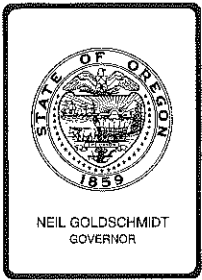
(4) Subject to review of the Executive Department and the prior approval of the appropriate legislative review agency, the department may establish a certification fee in accordance with ORS 468.065.

(5) After July 1, 1988, if the metropolitan service district sends solid waste generated within the boundary of the metropolitan service district to a regional disposal site, the metropolitan service district shall:

(a) At least semiannually operate or cause to be operated a collection system or site for receiving household hazardous waste;

(b) Provide residential recycling containers, as a pilot project implemented not later than July 1, 1989; and

(c) Provide an educational program to increase participation in recycling and household hazardous materials collection programs. [1987



Environmental Quality Commission

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

Agenda Item No. F: Proposed Adoption Of Rules To Certify Wastewater System Personnel in Accordance With Oregon Revised Statutes (ORS) 448.405

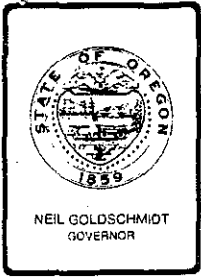
This agenda item requests adoption of rules to implement a Wastewater System Personnel Certification Program to carry out the provisions of ORS 448.

The statute requires the Commission to adopt rules to classify all sewage treatment works and certify persons qualified to supervise their operation.

Carl Andresen and Mary Halliburton from the Water Quality Division are present to answer any questions you might have.

(Someone from the Wastewater Advisory Committee may also be present to answer any questions you might have.)

WJ941



Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission
From: Director
Subject: Amendment to Item F, September 9, 1988, EQC Meeting

Proposed Adoption of Rules to Certify Wastewater System
Personnel in Accordance with Oregon Revised Statute (ORS)
448.405

Purpose of Amendment

The Department staff reviewed the proposed rule language with several Advisory Committee members this week and learned that rule language regarding certification of shift supervisors needs to be clarified. To avoid any misunderstanding as to the Department's intent, rule language regarding certification of shift supervisors which appears in Attachment A, pages A-2 and A-3, should be replaced as follows:

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 shift supervisor is not required to be on-site. The shift supervisor shall be available to the system owner and to any other operator during the shift supervisor's assigned shift. The system owner is not required to have a shift supervisor if another certified supervisor is available.

340-49-015 (2)

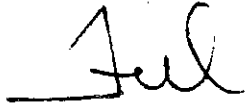
After July 1, 1989, any wastewater system owner with a system having more than one daily shift shall have their shift supervisor, if any, certified at no less than one grade level lower than the wastewater system classification.

Amendment to EQC Agenda Item F
September 9, 1988
Page 2

The rules do not require either shift operations or owners to have their system supervised by more than one certified operator holding a certificate at a grade level equal to or greater than the system classification. However, if a system owner designates authority for the system operation to a shift supervisor, the rules would require that person to be certified at no less than one grade lower than the wastewater system classification.

Director's Recommendation

The Director recommends the Commission adopt the rules as shown in Attachment A, with these proposed changes to rule language.



Fred Hansen

Carl Andresen:kjc
WJ1034
229-5370
September 8, 1988



Environmental Quality Commission

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

EXECUTIVE SUMMARY

TO: Environmental Quality Commission

FROM:

Director

SUBJECT: Agenda Item No. F, September 9, 1988, EQC Meeting

Proposed Adoption of Rules to Certify Wastewater System Personnel In Accordance With Oregon Revised Statute (ORS) 448.405

The 1987 Oregon Legislature enacted ORS 448.405 requiring the Environmental Quality Commission to adopt rules to certify persons who supervise the operation of wastewater treatment systems. The statute requires the Department to administer the wastewater system certification program.

Historically, many who operate wastewater systems in Oregon have been certified under a voluntary certification program. A Committee representing the Oregon voluntary certification program requested the Department administer a voluntary program for certification during the transition to a mandatory certification program. The Department concurred with this request. The Department submitted to the Commission a request for adoption of temporary rules. The Commission adopted the temporary rules for a voluntary certification program at their January 22, 1988 EQC meeting. These rules were effective until July 20, 1988.

The Department, while administering the voluntary certification program submitted to the Commission proposed draft rules for receiving public testimony during a public hearing process. The Commission authorized the public hearing at their April 29, 1988 meeting.

An Advisory Committee was appointed to aid the Department in developing the proposed rules. Public hearings were held in May and June of this year and oral and written testimony received by the Department was reviewed with the Advisory Committee. The recommendations of the Advisory Committee are included in the Department staff report submitted to the Commission. The proposed rules:

- a. Establish criteria for classifying wastewater treatment works, both wastewater treatment and wastewater collection systems, into one of four classes each based on their size and complexity.
- b. Establish minimum qualifications for certifying persons in classifications and grade levels consistent with the classification of the wastewater treatment works to be supervised. These qualifications include minimum education, experience criteria and examination requirements.

- c. Require by July 1, 1989, wastewater system owners to have their system supervised by a certified operator at the classification level of the system and wastewater system owners with a system having more than one daily shift to have shift supervisors certified no less than one grade level lower than the classification of the system.
- d. As required by statute, enable persons who hold a current Oregon voluntary certificate to become certified under these rules.
- e. Enable the Director to issue certificates to new applicants and those seeking to upgrade their certificate who meet the minimum education and experience qualifications and satisfactorily pass an examination at the grade level for which certification is sought, except as provided by rule.
- f. Allow the Department to schedule and administer examinations at least twice per calendar year.
- g. Enable the Director to renew certificates, without examination, provided a timely renewal application is received.
- h. Enable the Director to issue certificates, without examinations, to persons holding a current certificate issued in another state provided the minimum qualifications to obtain that certificate are substantially equivalent.
- i. Establish a fee schedule for new certification or upgrade certification which includes an examination fee; certificate renewal; reinstatement of a lapsed certificate; and certificate through reciprocity.
- j. Establish an advisory committee to assist the Department in preparing examination and evaluating the needs of the certification program.
- k. Allow variances and specify provisions for refusal to issue and revocation of certificates and penalties for violation of rules.

The Department is submitting to the Commission proposed rules that include revisions in response to much of the public testimony. The Advisory Committee concurred with the recommendations, with the exception that a member is concerned that a requirement that shift operators be certified may not coincide with the legislative intent.

The statutory language is not explicit regarding who is required to be certified. The Health Division has developed rules for certification of drinking water systems under ORS 448 that include a requirement that shift operators be certified to ensure drinking water safety. The Department staff believes the legislative intent was to require at least one certified supervisor as a means to insure proper operation and maintenance of systems. The Department sought legal counsel review of the legislative intent on this

Executive Summary
EQC Agenda Item
September 9, 1988
Page 3

matter. Legal counsel advised that although the statute does not specify shift supervisors be required to be certified, such a rule requirement is legally defensible. Requiring shift supervisors to be certified would help ensure larger systems are properly operated and maintained and the availability of qualified personnel to the system owner and to other operating personnel. In addition, the preface of the rules encourages as many persons who qualify to become certified and requires owners to have their system supervised by one or more certified operators.

In response to other public testimony, as summarized in attachments, the Department recognizes the need to prepare guidance to system owners and operators about training opportunities, safety concerns and general information on how to become certified.

The final rules address the need of the certification program to: (1) allow a period of time for wastewater system collection personnel to be certified, without passing a written examination; (2) enable the Department to process applications for certification received since July 20, 1988 and until final rule adoption under the temporary rule provisions; (3) clarify the criteria for provisional certificates; (4) clarify that the system owner is responsible for ensuring their system has a certified individual available at all times to respond on-site even though the designated supervisor may be on vacation or sick leave; (5) provide for a combination certificate for operators upon renewal of Level II certificates for wastewater collection and treatment; (6) specify the procedures for processing variance requests; and (7) identify how the rules may be enforced using civil and criminal misdemeanor penalties.

The Department proposes to coordinate with the Health Division the report to the 1989 Legislature, as required by statute. This report will identify that operators would like to obtain combination certificates for water and wastewater system operators holding multiple certificates; the desire of maintenance and laboratory personnel to have the Department administer a voluntary certification program for them and that it may be appropriate for the legislature to clarify who must be certified.

The Department believes that the proposed rules with revisions are consistent with the statutory requirements and recommends approval by the Commission.

Carl J. Andresen:kjc
August 12, 1988
229-5370
WJ940



Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission
From: Director *Rydia Taylor*
Subject: Agenda Item , September 9, 1988, EQC Meeting

Proposed Adoption Of Rules To Certify Wastewater System Personnel In Accordance With Oregon Revised Statutes (ORS) 448.405.

Background and Problem Statement

The 1987 Oregon Legislature enacted ORS 448.405 to 448.494 requiring the Environmental Quality Commission to adopt rules to certify persons who supervise the operation of wastewater treatment works within one year of enactment of the statute. The Health Division's Administrator is to adopt rules to certify water treatment and distribution system personnel (Attachment E). The purpose of the statute is to help protect public health, and Oregon's environmental and water resources by certifying those persons responsible for operation and maintenance of wastewater treatment and collection systems to meet minimum qualifications in terms of education, experience and testing.

Although Oregon is one of the last states to require system owners to have certified water and wastewater system personnel, a voluntary statewide certification program has existed in Oregon since the 1950s. This program has promoted operator training and certification as a means to protect public health and prevent water quality problems through proper operation and maintenance of treatment systems by qualified personnel. The Legislature, in enacting ORS 448, proposes to bring to all communities the benefits of skilled, knowledgeable and experienced personnel that are necessary to properly operate water and wastewater systems.

Regarding wastewater systems, the statute requires all owners of wastewater treatment and collection systems to have their systems supervised by a certified operator. No wastewater system shall be allowed to be operated unless the operator is certified or the wastewater system is supervised by an operator who is certified. Each wastewater treatment and collection system will be classified by size and complexity as a Class I, II, III, or IV system and the certified supervisor of each system is required to hold a certificate equal to or higher than the system's classification. Wastewater treatment works systems under 75,000 gallons per day design flow are exempt from the provisions that a system's operating supervisor be certified, if the owner has contracted with a certified operator to provide part-time

supervision in accordance with the Commission rules. Also, individual on-site wastewater disposal systems less than 5,000 gallons per day are exempt entirely. The statute covers wastewater treatment/collection systems (specifically defined in the statute as wastewater treatment works consistent with the definition in ORS 454) whether public or private, used or intended for use by the public or private persons. The statute also requires a fee schedule be adopted to recover expenses associated with implementing the certification program.

The proposed rules and fee schedule were developed by the Department of Environmental Quality with public participation and assistance of an Advisory Committee. The statement of need for rulemaking is presented in Attachment C. As presented in Attachment A and summarized in Attachment B, the rules:

- a. Establish criteria for classifying wastewater treatment works, both wastewater treatment and wastewater collection systems, into one of four classes each based on their size and complexity.
- b. Establish minimum qualifications for certifying persons in classifications and grade levels consistent with the classification of the wastewater treatment works to be supervised. These qualifications include minimum education, experience criteria and examination requirements.
- c. Require by July 1, 1989, wastewater system owners to have their system supervised by a certified operator at the classification level of the system and wastewater system owners with a system having more than one daily shift to have shift supervisors certified no less than one grade level lower than the classification.
- d. As required by statute, enable persons who hold a current Oregon voluntary certificate to become certified under these rules.
- e. Enable the Director to issue certificates to new applicants and those seeking to upgrade their certificate who meet the minimum education and experience qualifications and satisfactorily pass an examination at the grade level for which certification is sought, except as provided by rule.
- f. Allow the Department to schedule and administer examinations at least twice per calendar year.
- g. Enable the Director to renew certificates, without examination, provided a timely renewal application is received.
- h. Enable the Director to issue certificates, without examinations, to persons holding a current certificate issued in another state provided the minimum qualifications to obtain that certificate are substantially equivalent.

- i. Establish a fee schedule for new certification or upgrade certification which includes an examination fee; certificate renewal; reinstatement of a lapsed certificate; and certificate through reciprocity.
- j. Establish an advisory committee to assist the Department in preparing examination and evaluating the needs of the certification program.
- k. Allow variances and specify provisions for refusal to issue and revocation of certificates and penalties for violation of rules.

Alternatives and Evaluation

Alternative 1 - Adopt the revised proposed rules and fee schedule that incorporates many suggestions and recommendations received during the public hearing process (Attachment A).

The proposed final rules are consistent with the legislative intent of ORS 448.405 to 448.492. They also reflect many recommendations received during the public hearings process and by the Advisory Committee which assisted the Department in developing rules.

The major modifications to the draft rules are explained, as follows:

- (1) Addition of rule language to extend temporary voluntary certification rules. The temporary rules adopted by the Commission on January 22, 1988 enabled the Department to administer a Voluntary Certification Program for 180 days. This program acted as a transition between the dissolving of the previous voluntary certification program and the adoption of the final rules, originally anticipated for an August EQC meeting. The rescheduling of the August meeting to September lengthens the period that would not be covered by any certification program. In order to clearly establish the criteria for applications received from July 20, 1988 until September 9, 1988, the final rules propose to allow applications received to date to be processed under the criteria of the Voluntary Certification program.
- (2) Addition of rule language to extend certification without examination for collection system personnel for a limited time period. Before the Department administered the voluntary program, a limited opportunity for wastewater collection system personnel to obtain certification with appropriate experience and education was allowed by the Voluntary Certification Corporation. No examination was required. Testimony revealed that many were not properly advised of the time extension afforded by the nonprofit corporation. Thus, many who would have applied for voluntary certification without examination did not. The proposed rules would allow collection system personnel the opportunity to apply for new certification or upgrade certification, without examination, until May 1, 1989. After this date, collection personnel will be required to comply with all of the proposed qualifications, including the requirement to pass a written examination.

- (3) Clarification of rule language for provisional certificates. Draft rules for provisional certificates which allow individuals to obtain certification while obtaining training under supervision of a certified operator did not specify the term of the certificate after an individual passed the Grade Level I exam. The proposed rules address this omission by specifying the fees paid for the provisional certificate would keep the newly acquired Level I certificate current until the end of the two year term in which the provisional certificate was acquired.
- (4) Clarification of who must be certified and responsibilities of persons required to be certified. Testimony suggested all operators be certified at some level and shift supervisors be required to be certified. Some questioned the responsibilities of the designated supervisor during normal absences such as vacation and sick leave. The draft rules specified that the designated supervisor who is required to be certified be available to respond on-site and to any other operator. The draft rules also specified that a certified operator under contract would have to be on-call 24 hours a day. These two rules were inconsistent. The Department proposes to add rule language which would specify that the system owner is responsible for insuring their system has a certified individual available at all times to respond on-site, even though the designated supervisor may be on vacation or sick leave. Absence of an individual certified at the classification of the system is limited to 30 days duration. During this period, the system owner must ensure a person certified no less than one grade lower than the system classification is available to the system owner and to any other operator.

The requirement with respect to the availability of a certified part-time supervisor under contract to an owner having a system under 75,000 gallons per day has been modified to delete the on-call 24 hour a day provision. Instead, the owner must provide that a contract supervisor be available to respond on-site at the request of the system owner and to any other operator.

In response to testimony concerning who must be certified, the Department proposes rule language to require shift supervisors at larger systems having more than one daily shift be certified. This was not initially proposed because the Department was unsure that the statute allowed this. The statute is not explicit regarding who must be certified. Legal counsel advised that such a requirement is legally defensible. In addition, the Department believes this requirement is consistent with legislative intent that system owners have at least one certified supervisor as a means to ensure proper operation and maintenance of systems and qualified personnel available to respond to the system owner and other operators.

- (5) Modification of rule language concerning combination certificates. The ability to obtain combination certificates for wastewater collection/

treatment and water/wastewater certificates were proposed for those holding multiple Grade Level I certificates. A combination certificate for water/wastewater is deleted from the final proposed rules. The Health Division questioned whether either agency has the authority to collect only a partial fee for the renewal of one of the two aspects of a combination certificate. Both agencies will identify this issue and the expressed desire of many operators to be able to obtain a combination water/wastewater certificate in the Department's report to the Legislature. This report is required by statute. The proposed final rules have expanded the combination certificate at renewal to include those who hold Grade Level II collection and treatment operator certificates in response to testimony.

- (6) Modification of rule language concerning variances, fines and penalties. The draft rules regarding variances, fines and penalties did not specify steps for implementing these provisions. The proposed final rules add clarifying language.

The Department will specify requirements of system owners in permits through the permit issuance or modification process. Thus, the opportunity exists for owners of systems to request a variance to rule and permit requirements as a part of permit (applicant review step) process. Permit issued by the Department may be appealed to the EQC; thus, an opportunity exists for appealing a variance denial. Language is added to specify these provisions.

The statute authorizes criminal penalties for misdemeanor violations of the statute. Violations of the rules concerning system owners' responsibilities also may be addressed by civil penalty authority since the requirements to have a certified operator will be incorporated into permits. Because the statute is placed under ORS 448, Health Division Statutes and DEQ Civil Penalty Rules (OAR Chapter 340, Division 12) do not specifically reference this statute, civil penalty authority against individuals who violate the rules does not exist. The primary means for addressing any violation of rules that apply to individuals are revocation of a certificate and criminal penalties.

- (7) Clarification of rule language concerning classification of systems and examinations. Testimony requested more detail concerning rule provisions allowing Department discretionary authority. Discretionary language appeared in rules concerning classification of systems and examination.

The Department proposed language under the criteria for classifying wastewater systems allowing the Director to assign higher classification to a wastewater treatment or collection system. The higher classification would be based on complexities of the system not specifically identified in the point system where skills, knowledge and training consistent with a higher level of operator certification are needed. Rule language has been added to specify that in assigning

points for additional complexity, the Director shall assign points consistent with the intent of the classification system and shall provide written notice through the permit process (OAR 340-45-005, et seq, and OAR 340-14-005, et seq, as applicable). This process provides an opportunity for the system owner (permittee) to appeal an action of the Director to EQC.

In addition, rules concerning the content of an oral examination have been modified by adding a definition of an oral examination specifying that it will be the same as a written exam in content, but the answers may be provided orally to the Department's examiner.

- (8) Revision to the term "sewage". In response to testimony, rule revisions also include substitution of the term "wastewater" in place of the term "sewage". It is for the purpose of these rules only and is not intended to refer to industrial or other types of wastewater treatment systems except as allowed by statute, i.e., sewage treatment works. The term wastewater is the current term used in publications, training manuals, and schools for personnel in the "domestic sewage" collection and treatment field.

Alternative 2 - Revise the proposed rules to include other modifications suggested by public testimony.

The proposed rules, including the revisions, address the majority of concerns expressed in testimony and the recommendations of the Advisory Committee. They meet the needs of the wastewater system personnel and system owners. However, they do not address all of the testimony received. These points of testimony are summarized below and include the Department's rationale for not proposing further rule modifications.

- a. Add rule language to address safety concerns. Many operators and system owners expressed a need for the Department to address safety considerations in operation/maintenance of collection and treatment systems. The Department has involved state agencies responsible for safe practices in wastewater systems, such as Worker's Compensation, to present their rules and guidelines concerning safe working practices for wastewater systems at wastewater seminars and workshops. Historically, the examinations for wastewater personnel have included questions on safety aspects in collection, operation, laboratory and maintenance of wastewater systems. Written examination questions, however, do not nor should they cover all safe practices. They are used as indicators of the level of basic understanding of safety issues. The Department believes safety to be an important aspect of wastewater system operations but is best addressed by the agency responsible for worker safety such as Worker's Compensation. The Department will continue to conduct safety training with Worker's Compensation at workshops.

- b. Make the qualification criteria for certification more stringent. The recommended criteria for education to qualify for certification in the proposed rules is a high school education or equivalent, except for the Level IV in wastewater treatment qualifications, which is a minimum of one year post high school education. The proposed rules do allow substitution of post high school education for some of the required experience. For example, in the Level III which requires 8 years experience, an individual may qualify with 3 years experience and 3 years post high school education. Some individuals suggested a more stringent requirement for education, such as was required in the voluntary program or the Associated Board of Certification (ABC). These set a minimum of one year post high school education for Level III and two years for Level IV.

The Department and Advisory Committee believes a more flexible program than allowed under the voluntary rules is appropriate insofar as educational requirements to qualify for certification. This is appropriate since it allows both the formal education and the self-acquired education to qualify individuals to take the written examination. This rationale also applies to deleting "direct responsible charge" (DRC) as a prerequisite for Levels III and IV. DRC was required for certification at these levels under the voluntary program. The Department and Advisory Committee evaluated the qualifications to become certified at the various levels and agreed it is important to eliminate requirements that were, in effect, artificial barriers to equal advancement in the program. Certain minimum requirements are established by rule and system owners may require additional qualifications to employ persons in the operation of their system. At the present time, other state certification programs in the Pacific Northwest and the ABC are reviewing qualification for certification.

- c. Make training in wastewater available in local areas around the state.

Many individuals expressed the need for training to be available to them locally and include acquisition of educational credit for hands on training. The Department and Advisory Committee reviewed the training opportunities currently available. Although more training opportunities are needed, in-house workshops, etc., could qualify for continuing education units (CEUs) if formalized and approved by the Environmental Services Advisory Committee. This is a committee made up of Health Division, Department, Higher Education Community College representatives and other professionals who are working to coordinate statewide training for environmental protection programs and who currently review and approve training programs sponsored by individuals and groups for CEU credit.

The needs in training are known, implementing the actual training in some areas is yet to be accomplished. The restructuring of the CEU accreditation for on-site training and the implementation of a

community college training program to bring technical training in wastewater to the local areas and wastewater systems will meet much of the needs in local training. The Department will continue its training and participation at short schools and section meetings.

- d. Exempt some systems from the rule requirements. Some small system owners expressed that their systems were not complex or did not discharge to surface waters and should be exempt from the requirement to have a certified operator. The statute requires all wastewater treatment systems to be supervised by a certified operator unless under 75,000 gallons per day. Those system owners may contract with a certified operator for part-time supervision of their system consistent with the needs of their system. Individual on-site systems permitted under OAR Chapter 340, Division 71 are exempt from the statute. Owners of systems may also apply for a variance from specific rule requirements and a variance may be granted for sufficient cause.
- e. Renewal for voluntary certificates that have lapsed. Some testimony requested allowing renewal of certification without examination even though the certificate had lapsed more than three years. The proposed rules allow certificates to be renewed before May 1, 1989 without examination provided the last certificate had not lapsed for more than three years. This period is considered a reasonable time frame to allow individuals to renew their certificate. The statute specifically allows those who are currently certified under a voluntary program to become certified under these rule without examination. The rules extend an opportunity for renewal without examination for a limited period of time consistent with provisions of past voluntary certification bylaws. After May 1, 1989, renewal applications must be submitted within 180 days after the certificate lapses or a written examination is require to renew a certificate.

Alternative 3. - Adopt the draft rules approved for public hearings by the Commission at the April 29, 1988, EQC meeting (Attachment D).

The adoption of the proposed rules presented for hearing authorization would satisfy the statutory requirement to establish a certification program by September 1988. However, upon evaluation of the testimony, the Department concludes a number of revisions are appropriate.

Alternative 4 - Do not adopt rules for a Certification Program.

Without rules for a certification program in place by September 1988, the statutory requirements would not be satisfied. Many wastewater system owners could also be in violation of the statute requiring their systems to be supervised by a certified operator. The voluntary certification program has expired in Oregon and existing voluntary certification would not be valid as required by statute.

Rule Development Process

The statute requires the Health Division to administer the water systems personnel certification program and the Department of Environmental Quality to administer the wastewater treatment works systems personnel certification program. The voluntary certification wastewater committee requested the Department administer a voluntary wastewater certification program during the transition to a mandatory certification program to allow the voluntary corporation to dissolve. The Environmental Quality Commission approved temporary rules for a voluntary certification program to certify wastewater system personnel at their January 22, 1988, EQC meeting. The temporary rules were in effect until July 20, 1988. Presently over 800 wastewater system personnel hold current certificates in the DEQ administered voluntary certification program.

The Environmental Quality Commission authorized the Department to hold public hearings on proposed rules for certifying wastewater system personnel at the April 29, 1988, EQC meeting (Attachment E). Six public hearings were held throughout the state on the proposed rules (Attachment D). A summary of oral and written testimony is shown in Exhibit II of Attachment D. Department staff and the Advisory Committee reviewed and evaluated the testimony (Attachment D, Exhibits I, II and IV, Evaluation and Response to Testimony and Advisory Committee Recommendations). The Advisory Committee met again on July 29, 1988 and concurred with changes in the proposed rules. They also recommended changes not be made in response to some testimony. They concluded that response to some of the testimony did not necessitate a rule revision or that the suggestions had been discussed and debated sufficiently by the Committee to be confident in their position that the proposed rules are fair, equitable and not burdensome to the majority affected by them.

Additional legal review was provided on the statute regarding the issue of who is required to be certified. Legal counsel advised that although the statute is not explicit regarding whether shift supervisors are required to be certified, such a rule requirement would be legally defensible. The majority on the Advisory Committee prefer rules requiring this. At larger facilities where shift operation occurs, shift supervisors ensure the system is properly operated and maintained similar to the designated lead supervisor. To require they be certified at no less than one grade level lower than the system classification will help ensure the availability of qualified personnel to the system owner and to other operating personnel.

Summation

1. 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.

2. The Environmental Quality Commission authorized the Department to hold public hearings on proposed rules at the April 29, 1988, EQC meeting.
3. The public hearings were held in Portland, Albany, Coos Bay, Medford, Bend and La Grande from May 31 to June 2, 1988.
4. After the close of the public hearing period (June 15, 1988), the Department and Advisory Committee reviewed and evaluated the submitted oral and written testimony.
5. The proposed final rules (Attachment A) include some revisions that address the major concerns expressed during the public hearing process and reflect the recommendations of the Advisory Committee. The major revisions include:
 - a. Proposing a period of transition from July 20, 1988 (the end of the temporary rule period) until final rule adoption to allow the voluntary certification rules to apply so the Department may complete the unfinished certification business on applications received under these rules and until final rule adoption.
 - b. Proposing an open enrollment period for collection personnel to obtain certification without the requirement of an exam.
 - c. Proposing changes in the Provisional Certificate clarifying the applicant must be employed in a wastewater system and specifying the term of the certificate.
 - d. Proposing the 24 hour on-call status for part-time supervisors be removed and substitute the requirement that owners of all systems have a certified person available at all times to respond on-site at the request of the system owner and to any other operator of the system. Larger 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.
 - e. Proposing the addition of a combination collection/wastewater certificate upon renewal for Level II certified operators and deletion of a provision for combination water/wastewater Level I certificates.
 - f. Proposing clarifying language in the rules for variances and imposing fines and penalties.
 - g. Proposing revisions in the rules specifying the steps required by the Director when using discretionary authority to classify wastewater systems and the Department in giving oral examinations.

6. The Advisory Committee has concurred with the proposed revisions and approach the Department will take in reporting other issues of concern to the 1989 Legislature.
7. Without a certification program in place in September 1988, the EQC statutory requirements would not be satisfied.

Director's Recommendation

Based on the findings in the summation, it is recommended that the Commission adopt the proposed final rules and fee schedule as summarized in Alternative 1 and presented in Attachment A.

Fred Hansen

- Attachments:
- A. Proposed Rules for Adoption
 - B. Summary of Proposed Rules
 - C. Statement of need for rulemaking
 - D. Hearings Officers' Report
 - Exhibit I: Evaluation and Response to Oral and Written Testimony
 - Exhibit II: Summary of Oral and Written Testimony
 - Exhibit III: OAR Chapter 340, Division 12
 - Exhibit IV: Advisory Committee Recommendations
 - E. Request for Hearings Authorization including Oregon Law Chapter 448.

Carl Andresen:kjc
WJ923
229-5370
August 12, 1988

(The rules were adopted by the Environmental Quality Commission
on September 9, 1988.)

OREGON ADMINISTRATIVE RULES

DEPARTMENT OF ENVIRONMENTAL QUALITY

CHAPTER 340

DIVISION 49

REGULATIONS PERTAINING TO CERTIFICATION OF WASTEWATER SYSTEM
OPERATOR PERSONNEL

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PREFACE

340-49-005

- (1) The purpose of these rules is to help protect public health, the environment, and the water resources of Oregon through proper operation and maintenance of wastewater collection and treatment systems by establishing requirements regarding certification of wastewater treatment works personnel. The principal objectives of the rules are to:
 - (a) Establish criteria for classifying wastewater treatment and collection systems;
 - (b) Define the requirements of wastewater system owners whose systems must be supervised by a person who holds a valid certificate at a grade level equal to or greater than wastewater treatment works classification;
 - (c) Define the minimum qualifications for certifying personnel and those who supervise the operation of wastewater systems in accordance with wastewater systems classifications;
 - (d) Define the requirements and fees for persons who apply for certification including examination requirements, renewal certification and certification through reciprocity;
 - (e) Establish criteria for variances;
 - (f) Establish penalties for violations of these rules; and
 - (g) Assure a reservoir of qualified wastewater treatment system personnel that are certified to operate and maintain sewage treatment works systems in Oregon.
- (2) Certification, under these regulations, is available to all personnel who meet the minimum qualifications in a given classification and grade. All wastewater system personnel are encouraged to apply for certification in the highest classification and grade consistent with their qualifications. Maintenance and laboratory personnel in wastewater systems are encouraged to participate in the respective voluntary certification programs.

DEFINITIONS

340-49-010

As used in these regulations unless otherwise required by context:

- (1) "Approved Dry Weather Flow" means the average dry weather design capacity of the sewage treatment system as approved by the Department, or the population equivalent design of the system.
- (2) "Certified", for the purpose of these rules, means an individual holds a current Oregon wastewater operator/collection certificate issued by the Department of Environmental Quality.
- (3) "Commission" means the Environmental Quality Commission.
- (4) "Continuing Education Unit (CEU)" means a nationally recognized unit of measurement for assigning credits for education or training that provides the participant with advanced or post high school learning. One CEU is equivalent to 10 contact hours of lecture and/or formal organized training conducted under responsible sponsorship, capable direction and qualified instruction. Forty-five CEU are equal to one year of post high school education (30 semester hours or 45 college quarter hours).
- (5) "Contract Operations" means the wastewater system owner has a written contract with a wastewater treatment systems operations company entity or person for supervising the operation of the wastewater system in accordance with these rules.
- (6) "Department" means the Department of Environmental Quality.
- (7) "Director" means the Director of the Department of Environmental Quality or any official designee of the Director.
- (8) "Industrial Waste" means liquid wastes from an industrial or commercial process discharged into a sanitary sewer system for conveyance and treatment.
- (9) "NPDES" permit means a waste discharge permit issued in accordance with requirements and procedures of the National Pollutant Discharge Elimination System authorized by the federal Clean Water Act and OAR Chapter 340, Division 45.
- (10) "Oral Examination" means an examination administered by the Department where the applicant provides verbal answers to the written examination for the level of certification the applicant is seeking.
- (11) "Population" means the design population of the sewage works system represented as the number of people or the population equivalent the system is designed to serve. Equivalent population ordinarily is determined based on 70 gallons per person per day approved dry weather design flow or 0.17 lbs BOD₅ per person per day whichever is greater.
- (12) "Provisional Certificate" means a temporary certificate issued by the Department to a person meeting the requirements of these rules.

- (13) "Post High School Education" means education acquired through programs such as short schools, bona fide correspondence courses, trade schools, community colleges, colleges, formalized workshops, seminars, etc. for which continuing education credit or college credit is issued by the training sponsor. One year of post high school education is equal to 30 college semester hours, 45 college quarter hours, or 45 CEUs.
- (14) "Shift Supervisor" means the person to whom the system owner designates authority for executing the specific practice and procedures for operating the wastewater system when the system is operated on more than one daily shift. The shift supervisor is not required to be on-site. The shift supervisor shall be available to the system owner and to any other operator during the shift supervisor's assigned shift. The system owner is not required to have a shift supervisor if another certified supervisor is available.
- (15) "Supervise" means responsible for the technical operation of a sewage treatment works system performance which may affect its performance or the quality of the effluent produced by such sewage treatment works.
- (16) "Supervisor" means the person to whom the system owner designates the authority for establishing and executing the specific practice and procedures for operating the wastewater system in accordance with the policies of the owner of the system and the permit requirements. The supervisor may be employed part-time when acting as the supervising party in a contractual agreement for wastewater treatment systems with an approved dry weather design flow of less than 75,000 gallons per day. The supervisor is not required to be on site at all times. The supervisor or part-time supervisor shall be available to the system owner and to any other operator.
- (17) "Wastewater" (Sewage) means the water-carried human or animal waste, from residences, buildings, industrial establishments or other place, together with such groundwater infiltration and surface water as may be present. The admixture of domestic and industrial waste, or other byproducts, such as sludge, shall also be considered sewage.
- (18) "Wastewater Treatment System" (Sewage Treatment Systems) for the purpose of these rules and as defined in ORS 454.010, means any structure, equipment or process treating and disposing of domestic waste and sludge including industrial waste discharged to sewage treatment works.
- (19) "Wastewater Collection System" (Sewage Collection System) for the purpose of these rules means the trunks, arterials, pumps, pump stations, piping and other appurtenances necessary to collect domestic and/or industrial liquid wastes from a community, individual, corporation or entity, which produces sewage or other

liquid waste treatable in a community or private wastewater treatment facility.

- (20) "Wastewater Systems" means any structure, equipment or process required to collect, carry away and treat domestic waste and dispose of sewage as defined in ORS 454.010.
- (21) "Wastewater System Personnel" (Sewage System Personnel) means any person engaged in the on-site, day-to-day operation of a wastewater treatment system or a wastewater collection system. It is not intended that this title shall include city officials, county managers, engineers, directors of public works or equivalent, whose duties do not include the actual operation or on-site supervision of facilities and/or operator personnel. Other common terms that mean the same are wastewater treatment operator and wastewater collection system operator.
- (22) "WPCF" permit means a Water Pollution Control Facilities permit to construct and operate a collection, treatment and/or disposal system with no discharge to navigable waters. A WPCF permit is issued by the Department in accordance with the procedures of OAR Chapter 340, Division 14 and Division 45.

GENERAL REQUIREMENTS

340-49-015

- (1) After July 1, 1989, each wastewater system owner with an approved dry weather design flow 75,000 gallons per day or greater shall have their system supervised by one or more operators who hold a valid certificate at a grade level equal to or greater than the wastewater treatment system classification.
- (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.
- (3) After July 1, 1989, each wastewater system owner with an approved dry weather design flow less than 75,000 gallons per day shall either have their system supervised by one or more operators who hold a valid certificate at a grade level equal to or greater than the wastewater treatment system classification, or contract for part-time supervision with an operator who holds a valid certificate at a grade level equal to or greater than the wastewater treatment system classification.
- (4) Owners of on-site wastewater disposal systems permitted in accordance with ORS 454.605 are exempt from these requirements.
- (5) By July 1, 1989, and in accordance with permit conditions thereafter, each wastewater system owner shall file with the

Department the name of operators designated the responsibility of supervising the operation of their wastewater system in accordance with these rules. The wastewater system owner may redesignate or replace designated operators with other properly certified operators at any time and shall notify the Department in writing within 30 days of replacement or redesignation of operators certified in accordance with these rules.

- (6) A wastewater system may not be without an individual certified at the classification of the system more than 30 days. During this period, the system owner must ensure a person certified no less than one grade lower than the system classification is available to the system owner and to any other operator.

CLASSIFICATION OF WASTEWATER SYSTEMS

340-49-020

- (1) All wastewater systems shall be classified by the Department as a wastewater treatment system and wastewater collection system, as appropriate, in accordance with the following classification system:

- (a) Wastewater Treatment Systems:

- (A) Class I 1-30 total points.
- (B) Class II 31-55 total points.
- (C) Class III 56-75 total points.
- (D) Class IV 76 or more points.

- (b) Wastewater Collection Systems:

- (A) Class I 1,500 or less design population.
- (B) Class II 1,501 to 15,000 design population.
- (C) Class III 15,001 to 50,000 design population.
- (D) Class IV 50,001 or more design population.

- (2) Wastewater treatment system classifications shall be derived by the total points assigned based on criteria shown in Table 1, OAR 340-49-025.
- (3) The Director shall advise wastewater system owners of the classification of their system(s).
- (4) If the complexity of a wastewater treatment system is not reflected in Table 1 -- Criteria for Classifying Wastewater Treatment Systems (OAR 340-49-025), the Director may designate a classification higher than that which would be based on accumulated points upon written notice to the wastewater treatment system and in accordance with OAR 340-45-005, et seq., and OAR 340-14-005, et seq., as applicable. The designation shall be consistent with the intent of the classification system.

- (5) If deemed appropriate, the Director may designate a classification for a wastewater collection system higher than that which would be solely based on population upon written notice to the wastewater collection system and in accordance with permit issuance procedures contained in OAR 340-45-005, et seq., and OAR 340-14-005, et seq., as applicable. The designation shall be consistent with the intent of the classification system.
- (6) The Director may change the classification of a wastewater system upon written notice to the system owner in accordance with OAR 340-45-005, et seq., and OAR 340-14-005, et seq., as applicable, and shall give the owner a reasonable time to comply with the requirements of the new classification.
- (7) The wastewater system owner may appeal the classification of their system in accordance with OAR 340-49-075, Variances, and OAR 340-45-005, et seq., or OAR 340-14-005, et seq.

**MINIMUM QUALIFICATIONS FOR WASTEWATER TREATMENT OPERATOR
CERTIFICATION, NEW CERTIFICATES AND CERTIFICATE UPGRADES**

340-49-030

- (1) Classifications are established as follows: Wastewater Treatment System Operator, Grade Levels I-IV; and Provisional Wastewater Treatment System Operator; Wastewater Collection System Operator, Grade Levels I-IV, and Provisional Wastewater Collection System Operator; Combination Wastewater Treatment and Collection Systems Operator, Grade Level I and Combination Wastewater Treatment and Collection System Operator, Grade Level II.
 - (a) Wastewater Treatment System Operator Levels:
 - (A) Provisional Wastewater Treatment System Operator: Persons may qualify for a Provisional Certificate to obtain on the job training and experience to meet the Wastewater Treatment System Operator Grade Level I qualifications if they are: (1) employed at a wastewater treatment system, (2) have completed high school or equivalency, (3) are participating in or have completed a Department approved training program, and (4) are supervised full or part-time by a certified wastewater treatment system operator. The Provisional Certificate will be current for a period of 12 months after which the individual must have passed a Grade Level I exam within the 12-month period. Upon passing the Grade Level I examination and obtaining 12 months experience at a wastewater treatment system, the individual will receive a Grade Level I certificate. It shall remain valid for the remaining certification period in which the Provisional certificate was granted.

- (B) Grade Level I Wastewater Treatment System Operator Certification Qualifications. Persons may qualify for this classification and grade level if they meet the following qualifications:
- (i) Education: Completion of high school or equivalency, and
 - (ii) Experience: Twelve (12) months experience at a Class I or higher Wastewater Treatment Plant, and
 - (iii) Exam: Satisfactorily pass Wastewater Treatment Plant Operator Grade Level I examination.
- (C) Grade Level II Wastewater Treatment System Operator Certification Qualifications. Persons may qualify for this classification and grade level if they meet the following qualifications:
- (i) Education: Completion of high school or equivalency, and
 - (ii) Experience: Three (3) years at a Class I or higher Wastewater Treatment System, or

Two (2) years at a Class I or higher Wastewater Treatment System and one (1) year of post high school education, and
 - (iii) Exam: Satisfactorily pass Wastewater Treatment Operator Grade Level II examination.
- (D) Grade Level III Wastewater Treatment System Operator Certification Qualifications. Persons may qualify for Operator Grade Level III Certification if they meet the following qualifications:
- (i) Education: Completion of high school or equivalency, and
 - (ii) Experience: Eight (8) years experience, of which half must have been at a Class II or higher Wastewater Treatment System, or

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

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

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

(iii) Exam: Satisfactorily pass a Wastewater Treatment Operator Grade Level III examination.

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

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

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

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

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

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

(iii) Exam: Satisfactorily pass a Wastewater Treatment Operator Grade Level IV examination.

(b) Wastewater Collection System Operator:

(A) Provisional Wastewater Collection System Operator: Persons may qualify for a Provisional Certificate to obtain on the job training and experience to meet the Wastewater Collection System Operator Grade Level I qualifications if they are: (1) employed at a wastewater collection system, (2) have completed high school or equivalency, (3) are participating in or have completed a Department approved training program, and (4) are supervised full or part-time by a certified wastewater collection system operator. The Provisional Certificate will be current for a period of 12 months after which the individual must have passed a Grade Level I written

exam within the 12-month period. Upon passing the Grade Level I exam and obtaining 12 months experience at a wastewater collection system, the individual will receive a Grade Level I certificate current for the remaining certification period in which the Provisional certificate was granted.

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

- (i) Education: Completion of high school or equivalency, and
- (ii) Experience: Twelve (12) months at a Class I or higher Wastewater Collection System, and
- (iii) Exam: Satisfactorily pass a Wastewater Collection System Operator Grade Level 1 examination.

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

- (i) Education: Completion of high school education or equivalency, and
- (ii) Experience: Three (3) years at a Class I or higher Wastewater Collection System, or

Two (2) years at a Class I or higher Wastewater Collection System, and one year of post high school education, and
- (iii) Exam: Satisfactorily pass a Wastewater Collection System Operator Grade Level 2 examination.

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

- (i) Education: Completion of high school education or equivalency, and
- (ii) Experience: Eight years experience, of which half must have been, at a Class II or higher Wastewater Collection System, or

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

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

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

(iii) Exam: Satisfactorily pass a Wastewater Collection System Grade Operator Level 3 examination.

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

(i) Education: Completion of high school or equivalency, and

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

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

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

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

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

- (iii) Exam: Satisfactorily pass a Wastewater Collection System Operator Grade Level IV examination.
 - (c) Wastewater Treatment System and Wastewater Collection System Grade Level I Combination Certificate: Persons may qualify at renewal for this certificate provided they meet the minimum qualifications set forth in OAR 340-49-030(1)(a)(B) and 030(1)(b)(B) for wastewater treatment system and wastewater collection system personnel Grade Level I.
 - (d) Wastewater Treatment System and Wastewater Collection System Grade Level II Combination Certificate: Persons may qualify at renewal for this certification classification provided they meet the minimum qualifications set forth in OAR 340-49-030(1)(a)(C) and 030(1)(b)(C) for wastewater treatment system and wastewater collection system personnel Grade Level II.
- (2) The Department shall give credit to meet experience qualifications set forth in OAR 340-49-030(1) for related experience up to 50 percent, in any of the following areas, with the total in any of related experience credit not to exceed 6 months:
- (a) Wastewater sewage treatment systems operations.
 - (b) Wastewater collection systems operations and maintenance.
 - (c) Water treatment system operations.
 - (d) Water distribution system operations.
 - (e) Water treatment laboratory.
 - (f) Wastewater treatment laboratory.
 - (g) Wastewater treatment systems maintenance.
 - (h) Industrial waste treatment operations and maintenance.
- (3) Education credit can be gained in programs such as short schools, bona fide correspondence courses, trades schools, community colleges, formalized workshops, seminars, and other training for which CEU is given by the training sponsor.
- (4) The Department shall consider the relevance of the subject matter covered at seminars, workshops, conferences, and other training sessions when evaluating the education qualifications of an applicant for certification.
- (5) The applicant for certification has the responsibility for providing experience and education records to the Department for screening and evaluating the applicant's qualifications.

**CERTIFICATION OF WASTEWATER TREATMENT AND COLLECTION
SYSTEM PERSONNEL**

340-49-035

- (1) All applications received under the Department administered Voluntary Certification temporary rules and until September 9, 1988, shall be processed in accordance with the Voluntary Certification Program rules.
- (2) Those persons holding a current voluntary Oregon Wastewater Treatment Operator or Collection System Operator certificate issued by the Department before May 1, 1989, shall be issued certificates by the Director upon receipt of a completed renewal application. These certificates shall be issued for the same classification and grade as the certificate issued under the voluntary program, unless an upgrade certificate has been obtained.
- (3) The Director shall issue certificates to persons meeting the education and experience qualifications set forth in OAR 340-49-030, and who satisfactorily pass the exam for the classification and grade level sought.
- (4) From the date of adoption of these rules and until May 1, 1989, Wastewater Collection Personnel may apply for Collection Certification or Upgrade Collection Certification based on the education and experience qualifications. No written examination will be required. After May 1, 1989, all applicants for Wastewater collection certification will be required to meet all qualifications for certification in 340-49-030(b) including the requirement of passing a written examination.
- (5) Each certificate issued shall designate the classification and grade of the person certified.

CERTIFICATE AND RENEWAL

340-49-040

- (1) All certificates issued by the Department before May 1, 1989 shall be valid until June 30, 1989.
- (2) Beginning July 1, 1989 and thereafter, a certificate may be renewed for a two year term to those who submit a complete renewal application and payment of the fee required by OAR 340-49-065.
- (3) The Department will send each certificate holder a renewal notice at least 60 days before the certificate lapses. Notice will be mailed to the last address of record. Failure to receive notice does not relieve the holder of responsibility to renew the certificate.

- (4) For a certificate or renewal issued after May 1, 1989, the next and subsequent renewal of a certificate shall be based on demonstration of continued professional growth in the field. An operator shall submit satisfactory evidence of completion of approved training of a minimum of two (2) CEUs as a condition for renewal of the certificate. An operator holding more than one certificate issued under these rules, need only complete the training required to satisfy renewal requirements for one of these certificates.

REINSTATEMENT OF LAPSED CERTIFICATES

340-49-045

- (1) Renewal applications received by May 1, 1989 will not require reexamination if the certificate has not lapsed more than three years.
- (2) After May 1, 1989, an operator seeking renewal of a lapsed certificate may submit an application for renewal within 180 days after the certificate lapses without reexamination. Upon receipt of application, including proof that all qualifications have been met and payment of the fee required by OAR 340-49-065, the Director shall renew the certificate.
- (3) After May 1, 1989, the Department will require re-examination of an operator whose renewal application is post-marked more than 180 days after the certificate lapses.

CERTIFICATE AND RECIPROCITY

OAR 340-49-050

- (1) The Director may accord a person with a valid certificate in another state or province reciprocal treatment and issue a certificate without examination when, in the judgement of the Director, the certification requirements in the other state or province are substantially equivalent to the requirements set forth in these rules.
- (2) When such reciprocity is granted, the person shall be subject to the same requirements of renewal as any other person initially certified by these rules.

EXAMINATIONS

340-49-055

- (1) Persons applying for a new certification or to be certified at a higher grade level must be examined, except pursuant to OAR 340-

49-035(4), file a completed application and payment of the fee required by OAR 340-49-065 at least 30 days before the date set for an examination, and meet the education and experience qualifications for the classification and grade level sought.

- (2) The Department will notify the applicant of eligibility for an examination.
- (3) Persons accepted for examination shall be examined at the next scheduled examination date, unless the Department at its discretion, chooses to administer an exam at times in addition to the scheduled exams.
- (4) A minimum score of 70 percent correct answers is required to satisfactorily pass an examination.
- (5) Any person who fails an examination may repeat such examination at a later date upon submittal of a complete application and fee.
- (6) Examination shall consist of material in content and level appropriate to each classification and grade level.
- (7) Examinations shall be administered by the Department or its designee, at places and times scheduled by the Department, with 60 days public notice of the schedule. A minimum of two examinations shall be scheduled per calendar year.
- (8) The Department, at its discretion, may administer written or oral examinations at times other than those scheduled.
- (9) All examinations will be graded by the Department, or its designee, and the applicant shall be notified of grade attained and pass or fail. Examinations will not be returned to the applicant.

CERTIFICATION FEES

340-49-060

- (1) All persons applying for certification shall be subject to the fee schedule contained in OAR 340-49-065 (Table 2).
- (2) Upon the Department receipt of an application and fee, the fee shall be non-refundable, unless no action has been taken on the application, the Department determines that no fee is required, or the Department determines the wrong application has been filed.
- (3) All fees shall be made payable to the Department of Environmental Quality..

CONTRACTS FOR PART-TIME SUPERVISION

340-49-070

- (1) When a wastewater system owner enters into a contract for part-time supervision with a certified operator to comply with OAR 340-49-015(3), the contract shall include the following:
 - (a) The parties involved, including names, addresses and phone number of each, and certification class and grade of the operator(s).
 - (b) The specific starting date and expiration date of the contract.
 - (c) The minimum number of visits to be made to the wastewater treatment works system(s) by the contract supervisor.
 - (d) The duties and responsibilities of each party involved.
- (2) The contract for supervision shall be sufficient such that a contracted certified operator shall be available to respond on-site upon request of the wastewater system owner and to any other operator.
- (3) The Director may require the wastewater system owner to make changes to the contract if the wastewater treatment system is in violation with the conditions of the permit.
- (4) The owner of the wastewater treatment works systems shall maintain the contract on file for Department review.

VARIANCES

340-49-075

- (1) The Director may grant variances from requirements of wastewater system owners when it is demonstrated to the satisfaction of the Department that strict compliance with the rule would be highly burdensome or impractical due to special conditions or causes; and when the public or private interest in the granting of the variance is found by the Department to clearly outweigh the interest of the application of uniform rules.
 - (a) A request for a variance must be submitted in writing by the wastewater system owner required to comply with these rules and shall include justification for the requested variance.
 - (b) The variance request shall be evaluated and processed by the Department as a permit action in accordance with OAR 340-45-005, et seq. and OAR 340-14-005, et seq., as applicable.

- (c) The Director shall notify the wastewater system owner of the decision to grant or deny a variance in accordance with applicable permit issuance procedures, set forth in OAR 340-45-005, et seq., and OAR 340-14-005, et seq.
- (d) If the Director denies the variance, the system owner may request a hearing before the Commission or its authorized representative. Such a request for hearing shall be made in writing to the Director within 20 days of the date of mailing of the notification of the variance decision. Any hearing held shall be conducted pursuant to the regulations of the Department.

REFUSAL AND REVOCATION OF CERTIFICATE AND APPEAL PROCESS

340-49-080

- (1) The Director may refuse to issue or revoke the certificate of any person in accordance with the procedures set forth in OAR 340-11-097, et seq. Grounds for revocation of a certificate shall be:
 - (a) Obtaining a certificate by fraud, deceit, or misrepresentation, or
 - (b) Proven gross negligence, incompetence or misconduct in performance of duties as an operator, or
 - (c) Failure of the operator to comply with the lawful orders, rules or regulations of the Department, or
 - (d) False or fraudulent report or record by the operator regarding the operation or supervision of the treatment system.
- (2) If the Director believes that good cause exists to suspend or revoke a person's certificate, the Director shall give notice to the person of opportunity for hearing in accordance with 340-11-100.
- (3) The Director, after a period of twenty-four (24) months, may reinstate any person whose certificate has been revoked upon presentation of evidence satisfactory to the Director, which warrants such reinstatement. The Director may require re-examination as a condition of the certificate reinstatement.

PENALTY PROVISIONS

340-49-082

- (1) Any wastewater system owner, municipal or private, who knowingly and willfully violates any of the provisions of these rules, may be subject to:
 - (a) Criminal penalties according to provisions under ORS 448.992 or ORS 448.415(2).
 - (b) Civil penalties according to OAR Chapter 340, Division 12 for violations of provisions of NPDES or WPCF permits.
- (2) Any individual who knowingly and willfully violates any provision of these rules may be subject to revocation of certification, and criminal penalties under ORS 448.992 or 448.415(2).

ADVISORY COMMITTEE

340-49-085

- (1) By October 31, 1988, the Department shall establish an Advisory Committee to:
 - (a) Assist in developing examinations.
 - (b) Evaluate the effectiveness of the program.
 - (c) Recommend needs of the program.
- (2) Advisory Committee meetings shall be scheduled at least twice a year.
- (3) The composition of the Committee shall include, at a minimum, representatives of operators, system owners, and the educational community.

TABLE 1

OAR 340-49-025

Criteria for Classifying Wastewater Treatment Systems

<u>(1) Design Population or Population Equivalent</u>	<u>Points</u>
Less than 750	0.5 point
751 to 2000	1 point
2001 to 5000	1.5 points

5001 to 10,000	2	points
Greater than 10,000	3	points plus 1 point per 10,000

(2) Approved Dry Weather Design Flow (MGD)

Less than 0.075	0.5	point
Greater than 0.075 to 0.1 MGD	1	point
Greater than 0.1 to 0.5 MGD	1.5	points
Greater than 0.5 to 1.0 MGD.	2	points
Greater than 1.0 MGD	3	points plus, 1 point per 1 MGD

(3) Unit Processes

Pre-Treatment

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

Primary Treatment

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

Secondary Treatment

Low Rate Trickling Filter(s)	7	points
High Rate Trickling Filter(s)	10	points
Trickling Filter - Solids Contact System	12	points
Single mode activated sludge less than 0.1 MGD	6	points
Two or more modes activated sludge less than 0.1 MGD	8	points
Single mode activated sludge greater than 0.1 MGD	10	points
Two or more modes activated sludge greater than 0.1 MGD	15	points
Pure oxygen activated sludge	20	points
Activated Bio Filter Tower less than 0.1 MGD	6	points
Activated Bio Filter Tower greater than 0.1 MGD	12	points
Rotating Biological Contact 1 to 4 shafts	7	points

Rotating Biological Contact, 5 or more shafts	12	points
Stabilization Lagoons, 1 to 3 cells without aeration	5	points
Stabilization Lagoons, 2 or more cells with primary aeration	7	points
Stabilization Lagoons, 2 or more with full aeration	9	points
Recirculating gravel filter	7	points
Chemical Precipitation unit(s)	3	points
Gravity Filtration Unit(s)	2	points
Pressure Filtration Unit(s)	4	points
Nitrogen Removal, Mechanical or chemical system	4	points
Nitrogen Removal, Biological/anoxic system	2	points
Phosphorus Removal units	4	points
Effluent Microscreen(s)	2	points
Chemical Flocculation units	3	points
Anaerobic Primary Sludge Digester(s) without Mixing and Heating	5	points
Anaerobic Primary Sludge Digester(s) with Mixing and Heating	7	points
Anaerobic Primary and Secondary Sludge Digesters	10	points
Sludge Digester Gas reuse	3	points
Aerobic Sludge Digester(s)	8	points
Sludge Storage Lagoon(s)	2	points
Sludge Lagoon(s) with aeration	3	points
Sludge Drying Bed(s)	1	point
Sludge Air or Gravity Thickening	3	points
Sludge Composting, in Vessel	12	points
Sludge Belt(s) or Vacuum Press(es) /Dewatering	5	points
Sludge Centrifuge(s)	5	points
Sludge Incineration	12	points
Sludge Chemical Addition Unit(s)	2	points
Non-Beneficial Sludge Disposal	1	point
Beneficial Sludge Utilization	3	points
Liquid chlorine disinfection	2	points
Gas chlorine disinfection	5	points
Dechlorination system	4	points
Other disinfection systems including ultraviolet and ozonation	5	points

(4) Effluent Permit Requirements

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

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

Conveyance and Treatment of Industrial wastes covered by the federal pretreatment program	4	points
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(6) Sampling and Laboratory Testing

Samples for BOD, Total Suspended Solids performed by outside laboratory.	2	points
BOD, Total Suspended Solids performed at treatment plant.	4	points
Fecal Coliform analysis performed by outside laboratory.	1	points
Fecal Coliform analysis performed at treatment plant.	2	points
Nutrient, Heavy Metals, or Organics by outside laboratory.	3	points
Nutrients, Heavy Metals and/or Organics performed at treatment plants.	5	points

TABLE 2

OAR 340-49-065

Fee Schedule for Wastewater Treatment Works Systems Operator
Certification

<u>Application Type</u>	<u>Fee</u>
New Certification Includes examination	\$ 50.00
Renewal Certification (2-Year Renewal Period)	\$ 40.00
Certification to a higher grade Includes examination	\$ 35.00
Certification through Reciprocity	\$ 55.00
Reinstatement of Lapsed Certificate	\$ 50.00

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

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

Agenda Item 7, September 9, 1988, EQC Meeting

SUMMARY OF PROPOSED RULES

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

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

2. **Establish minimum qualifications for certifying persons in classifications and grade levels consistent with the classification of the wastewater treatment works to be supervised.** Qualifications specify minimum education and experience and examination requirements for both wastewater treatment and wastewater collection system operators in Operator Grade Levels I through IV. Education, experience and examination requirements increase with higher grade levels and correspond to the classification of wastewater treatment and wastewater collection systems, Classes I through IV. In addition to Wastewater Treatment System Operator Grade Levels I through IV; and Wastewater Collection Operator, Grade Levels I through IV, a combination Wastewater Treatment and Collection System Operator Grade Level I and a combination Wastewater Treatment and Collection System Operator Grade II have been added to enable operators to renew their certificates in these classifications and grade levels with a single renewal fee. Within the Wastewater Treatment Operator and Wastewater Collection System Operator classifications, rules also allow issuance of Provisional Certificates to enable on-the-job training and experience for entry level personnel. Within the Grade Levels III and IV, the Advisory Committee also recommended that the "Direct Responsible Charge" requirements of the voluntary program not be included as an experience qualification. In addition, persons would not have to be

certified sequentially from lower grades to become certified at higher grades.

3. Allow wastewater treatment works owners until July 1, 1989 to have their system supervised by a certified operator at the classification level of the system and require those systems with more than one daily shift to have the shift supervisor certified no less than one grade level below the system classification. The Advisory Committee recommended and Department staff support specifying the date in rule language by which owners must have their system supervised by an operator certified at the classification of the system or higher. Specifying a July 1, 1989 date will enable adequate opportunity for owners and supervisors to comply with these rules. This rule language applies to owners of systems less than 75,000 gallons per day who have an alternative to contract with a certified operator for part-time supervision of their system. Similarly, persons who are designated by the system owner to supervise their system must be certified by July 1, 1989.
4. Enable the Director to issue certificates under this program to persons holding a current Oregon certificate under a voluntary program provided their certificates are issued or renewed before May 1, 1989. The Director would issue certificates to persons at the same classification and grade as their voluntary certificate and the certificates would be valid until June 30, 1989. After this date, persons must either renew their certificate or obtain a higher grade level certificate to hold a current certificate. These provisions are consistent with the statute which includes a Special Certification Provision (ORS 448.420) to certify persons who hold a current certificate issued under an Oregon voluntary certification program.
5. Enable the Director to issue certificates to new applicants and those seeking to upgrade their certificate who meet the minimum education and experience qualifications and satisfactorily pass an examination at the grade level for which certification is sought. Once issued, the certificate would be current for no longer than two years, but not less than the certification period remaining once certified.
6. Allow for the Department to schedule and administer examinations at least twice per calendar year. The examinations would be scheduled with 60 days public notice, and at other times as appropriate at the discretion of the Department.
7. Enable the Director to renew certificates, without examination. After July 1, 1989, the renewal term would be every two years. For a certificate or renewal issued after July 1, 1989, the next and subsequent renewals of a certificate would be dependent upon the applicant demonstrating continued professional growth by obtaining two (2) Continuing Education Units (CEUs) within the term of the certificate or renewal.

The CEU requirement would promote continued training and development of operators in a changing and advancing technological field. Some

individuals in Class I and II level systems supervise both the treatment and collection system and would be required to hold a certificate in both systems. The Department proposes these individuals would only be required to obtain 2 CEU's for maintaining both certificates per renewal term.

Requiring renewal of certificates every two years is proposed and is viewed to be reasonable, less costly than an annual renewal requirement and reduces the cost of administering the program. The two year renewal term (\$40.00) would begin after June 30, 1989. Current certificates renewed (\$40.00) will expire June 30, 1989 and these funds will be used to help offset the cost of developing the program.

8. Enable the Director to issue certificates, without examinations, to persons holding a current certificate issued in another state provided the minimum qualifications to obtain that certificate are substantially equivalent. The applicant would be subject to the requirements of renewal, except the application fee is higher. These provisions are consistent with the statute which includes a Special Certification Provision, ORS 448.420 for reciprocity.
9. Establish a fee schedule for new certification or upgrade certification which includes an examination fee; certificate renewal; reinstatement of a lapsed certificate; and certificate through reciprocity. The proposed fees are only slightly higher than the pre-January 1988 Oregon Wastewater System Operators' Voluntary Certification Program fees. The Department has received fees to administering the EQC approved interim voluntary wastewater works system operators certification program under this same fee schedule which was reviewed by the Legislative Emergency Board in January 1988.

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

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

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

CJA:kjc
WJ958

Agenda Item -, September 9, 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 rules.

Legal Authority

Oregon Administrative Rules contain the authority for the Commission to adopt rules under OAR 340-11-010, et seq. Oregon Laws 1987, ORS 448.405 to 448.494 enables the Commission to adopt rules for classifying wastewater systems, certifying wastewater system personnel, and establishing fees to recover expenses associated with implementing a certification program.

Need for the Rule

The 1987 Oregon Legislature in enacting ORS 448.405 to 448.494 requires the Environmental Quality Commission to adopt rules to classify all sewage treatment works (sewage collection, treatment and disposal systems) and certify persons qualified to supervise these systems.

The adoption of the proposed rules will allow personnel to maintain their current certificates, apply for certification and obtain certification based on experience, training and examination criteria specified in the rules. Without the rules, sewage works system owners may not be able to comply with ORS 448.415 (2) (a) requiring their systems to be supervised by certified operators.

Principal Documents Relied Upon in this Rulemaking

The principal documents, reports or studies relied upon by the Department are:

1. Oregon Laws, Chapter 448.
2. OAR 340-11-010, et seq.
3. Agenda Item N, January 22, 1988, EQC meeting, Request for Temporary Rules.
4. Agenda Item E, April 29, 1988, EQC Meeting, Request for Hearing Authorization Public Hearing.
5. Oral and written testimony received during the public hearing process.
6. Bylaws of the Oregon Voluntary Water/Wastewater Personnel Certification Program.

These documents are available for review during normal business hours at the Department's office, Sewage Disposal Section, Fifth floor, 811 SW Sixth Avenue, Portland, Oregon.

RULEMAKING ACTIONS NOT AFFECTING LAND USE

The proposed rules do not appear to affect land use.

Land Use Consistency

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

FISCAL AND ECONOMIC IMPACT

Adoption and implementation of the proposed rules requiring certification of supervisors of sewage treatment and collection systems would result in increased costs to some system owners and operating personnel. Presently over 800 individuals are certified under a voluntary certification program. Many system owners pay the costs of fees and training. These costs could break down into two categories: (1) fees to renew certificates and upgrade to a higher level certification; and (2) training expenses to enable personnel to acquire necessary training and continuing education credit to become certified, advance to higher grades and renew certificates.

Small municipalities and businesses who own sewage collection and/or treatment systems, and the personnel who operate these systems may incur higher costs during the first and second year of the certification program. The annual costs for most systems after the first year would result in approximately a ten percent (10%) increase over the voluntary certification program that has existed for many years. This 10% increase would apply to those sewage treatment systems and personnel already participating in the voluntary program. However, historically, many small systems have not been operated by certified personnel and these wastewater system owners and personnel may be impacted with the full cost of obtaining training and certification during the first year. The first year cost to train and certify one individual for a small system may run from \$400 to \$600 dollars for both treatment and collection certification. Once certified, the renewal for a combination certificate would cost \$40 dollars for a two year period.

The requirement for two Continuing Education Units (CEU-the equivalent of 10 contact or training hours per CEU) to renew certificates may involve some training expenses. This amount of training would be normal to maintain proficiency and the knowledge of current advances in the field. Continuing to remain current in the field of wastewater collection and treatment are consistent with the needs to properly operate these systems. The small business impact would be similar to small municipal systems and also are associated with properly operating the systems.

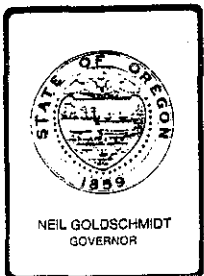
In summary, the fiscal and economic impact for most systems and personnel, should not be greater than 10% over the voluntary certification costs. For some small system owners and personnel a greater first year fiscal impact will occur.

The proposed rules contain a number of provisions that lessen the economic effect on small communities and businesses. These provisions are:

1. Combination collection and treatment certificates for Level I and II systems at renewal with a \$40 renewal fee for a two year certification term.
2. Allowing until July 1, 1989 for system owners to comply with the requirement to have a certified supervisor for each system at the classification level of the system.
3. Allowing part time supervision through contract with a certified person for systems under 75,000 gallons per day.
4. A provisional certificate allowing for on-site training and supervision of personnel by a supervisor who is certified.
5. An open enrollment period to enable collection personnel to become certified without examination.

No significant, adverse effect is anticipated in the adoption of the proposed rules.

Carl J. Andresen:kjc
WJ930
229-5370
August 12, 1988



Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Carl Andresen, Mary Halliburton, Shirley Kengla

Subject: Agenda Item No. F, September 9, 1988, EQC Meeting

Hearings Officer's Report on Certification of Personnel for Wastewater Systems.

Six public hearings on proposed rules for classifying sewage treatment works and collection systems and certifying operators of these systems were held throughout the state, as follows: (1) May 31, 1988, Albany, Oregon; (2) June 1, 1988, Coos Bay, Oregon; (3) June 1, 1988, Medford, Oregon; (4) June 2, 1988, Bend, Oregon; (5) June 2, 1988, La Grande, Oregon; and (6) June 3, 1988, Portland, Oregon.

The Department prepared and distributed a notice of the hearings to all NPDES and WPCF permitted sewage treatment/collection system owners and certified personnel. An informational packet with the proposed rules and the Department staff report also was sent to all system owners and made available to interested parties. In addition, the public hearing notice was published in the Secretary of State's Bulletin.

Mary Halliburton, Carl Andresen and Shirley Kengla, Department staff, served as Hearing Officers. Prior to receipt of testimony at the hearings, two brief presentations were made.

The first presentation covered the purpose of a public hearing, the method by which the testimony would be summarized and evaluated to incorporate appropriate revisions to the proposed rules for consideration by the Environmental Quality Commission for adoption. The procedures for presenting and recording testimony were explained.

The second presentation was a brief summary of the proposed rules and clarification of the key elements of the draft rules and how they would be implemented.

Following these two presentations, the Hearings Officer opened the record to obtain oral and written testimony. It was announced at each hearing that the record would remain open to receive any additional written testimony through June 15, 1988. Additional testimony was received after June 15, 1988 and is included in the summary of written testimony. Copies of written testimony are available from the Department of Environmental Quality upon request.

The vast majority testified in favor of the mandatory certification program. In addition to recommendations on specific rules, many commented on the need to describe how the rules would be implemented.

Twenty eight individuals testified at the six public hearings held throughout the state. Seventy submitted written testimony during the public comment period.

The majority of testimony concerned the following seven issues:

1. Forty nine individuals requested the rules allow additional time for collection system personnel to become certified without examination. Certification without examination initially was allowed under the Voluntary Certification Program administered by the non-profit corporation, but many testified that they had not been made aware of the ending deadline of this provision nor the limited time extension made by the nonprofit corporation.
2. Seven testified that the statute is unclear on who must be certified and that the rules should require more than one person be certified at larger systems.
3. A number of individuals testified that the Department utilize cost saving methods to maintain the cost of the program at a minimum to ensure reasonable fees for personnel in the certification program.
4. Many testified that training was not available in the local areas around the state, and that it is important to bring the required training close to areas of need.
5. Nine individuals requested the rules specifying individuals required to be certified include clarification of the supervisor's responsibilities, the time they are required on-site, and the period of time allowed to hire a new supervisor when the designated supervisor leaves.

6. Thirty two individuals requested those operators who had allowed their voluntary certificates to lapse more than three years be allowed to renew their certificates without having to retake a written examination.
7. Seventeen wastewater community college students requested that the certification program continue allowing graduates of a two year community college operator training program to take the Level I certification examination after completion of their schooling. They requested part of their educational credit substitute for part of the required experience in qualifying for Level I.

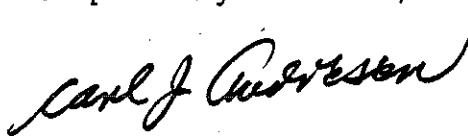
Additional testimony was received concerning a wide variety of issues suggesting that the following be considered in preparing final rules for Environmental Quality Commission consideration, and in implementing the program:

- Require industrial waste system operators to be certified.
- Address environment protection as a goal of the program rules.
- Require safety training for all personnel.
- Retain the minimum qualifications for operator certification of voluntary certification bylaws and temporary rules.
- Exempt noncomplex or nondischarging small systems from the requirement to have a certified operator.
- Clarify Continuing Education Units.
- Clarify criteria for post high school education.
- Identify the criteria for invoking penalties and revoking certificates.
- Describe the role of laboratory and maintenance personnel in the rules.
- Require DEQ field inspectors to be certified.
- Describe the requirements of collection system owners that do not own treatment systems.
- Ensure written exams address all systems and are practical.
- Develop a list of CEU approved training for the State.
- Allow other Voluntary Certification Programs such as maintenance and laboratory to be administered by the Department.
- Require sequential written exams and allow persons to take only two exams per year.
- Allow lower grade certified operator to substitute for the supervisor during short periods of time when designated supervisor is ill or on leave.
- Modify the classification of collection systems serving between 1,500 and 15,000 people to distinguish the differences.

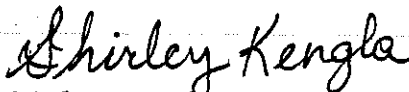
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Summaries of oral and written testimony are provided in Exhibits I and II.

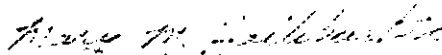
Respectfully Submitted,



Carl Andresen



Shirley Kengla



Mary Halliburton

Attachments: Exhibit I - Evaluation and Response to Oral and Written
Testimony
Exhibit II - Summary of Oral and Written Testimony
Exhibit III - OAR Chapter 340, Division 12
Exhibit IV - Advisory Committee Recommendations

Carl J. Andresen:kjc
WJ924
229-5370

**Evaluation and Response to Testimony on
Proposed Rules for Certifying Sewage Treatment Works Personnel**

1. Collection System Certification. Considerable testimony expressed the need to reopen a "grandfathering" period to enable persons to become certified in collection systems without examination. Persons should be able to apply and qualify for collections systems certification based on experience and education requirements for a limited time period.

Department's Response: At the time the Legislature passed ORS 448, a voluntary certification program was in place in Oregon for certifying both wastewater treatment and collection system personnel. Historically, the wastewater treatment personnel have obtained certification since the mid 1950s based on experience, education, and the passing of a written examination. In 1986, a separate voluntary organization was formed for certifying collection personnel. This voluntary group issued certificates to all collection personnel who applied based on experience and education. An examination was not required. In 1987, this separate collection group was incorporated into the Voluntary Water/Wastewater Certification Program and an additional open period for grandfathering into the collection program without examination was offered to collection system personnel. However, many persons who qualified did not hear of the opportunity or did not understand examinations would be required to become certified after a certain date (closing of the grandfathering period).

The Voluntary Certification Program requested the Department administer a temporary Voluntary Certification Program during the period when the Voluntary Program disincorporated and the statutory Certification Program would be in place. Temporary rules for certification were approved by the EQC on January 22, 1988, for 180 days. These rules required examination for new certification. Twenty applications for collection grandfathering that had arrived after the closing date for grandfathering were included with the files and records of the Voluntary Certification program turned over to the Department. Since that time, and during the public hearings process, numerous requests (49) were received to provide an additional opportunity for collection system personnel to obtain certification without examination. Many persons explained they had not received notice of, nor had the opportunity to become certified. The Advisory Committee also received many comments from individuals expressing that many had not heard about the prior period for grandfathering. Considering the number of requests, the Department concurs that a specific period of time to enable collection system certification without written examination would allow all qualified collection personnel equal opportunity to become certified. After this open enrollment period, the proposed

criteria for certification of collection personnel would require the passing of a written examination for each level of certification.

Department staff and Advisory Committee concur that during the period from rule adoption until May 1, 1989, individuals may apply for new and upgrade certification and become certified without examination provided the education and experience criteria are met. The proposed final rules will be modified to reflect this.

2. Provisional Certificates. The State of Oregon has two Community Colleges with Associate Degree programs in Wastewater Systems. Students feel that the proposed rules do not recognize the training they receive. They expressed that the provisional certificate which replaces the "Voluntary Operator in Training Certification" denies them the ability to take a written examination to demonstrate to future employers their level of competency. Under the draft rules for provisional certification, there is no distinction or difference between those who have received specialized education in the field of wastewater treatment and others who have other educational background but no direct experience. They would like "experience" credit for the specialized training they have received and an ability to become "provisionally" certified before they search for a job.

Department's Response: Department staff and Advisory Committee concur that obtaining a two year degree is commendable and believe the degree will stand on its own merits for those who apply for jobs. The degree should not qualify both for experience and education credit. The provisional certificate should be available to those employed in collection and treatment systems and supervised by certified personnel. After some experience is obtained, the two year certificate may enable persons to advance to higher grades more quickly.

The Advisory Committee also recommended the term of the provisional certificate be for 12 months. If a Level I exam is passed at any time during the 12 month period, the individual would complete the remainder of two year certification term with a Level I system certificate. Individuals may take the Level I exam at any time during the 12 months of the provisional certification, and be issued the Level I certificate after satisfying the required 12 months experience. The Department does not propose any restrictions on the number of times a person may be provisionally certified.

3. Combination Certificates. Many requested the proposed rules include a combination certification for both Levels I and II in wastewater certification and with water distribution and treatment Levels I and II. In addition, a number of individuals felt that combination certification should be available for Level I water and Level II wastewater. The combination certificates should be made available for those individuals whose responsibility covers many areas requiring certification.

Departments's Response: The proposed rules included provision to obtain a combination certificate for Level I wastewater

collection/operations upon renewal of these certificates. They also proposed a combination certificate with water treatment and distribution Level I. These combination certificates were intended to reduce the cost of renewing certificates for those whose responsibilities in small systems require them to maintain and renew multiple certificates. The Department reviewed the request to include Level II systems and recommend the final rules include this provision. Rule language has been added to enable renewal of Level II wastewater collection and Level II wastewater treatment under a combination certificate for a single fee of \$40.00.

As a result of discussions with Health Division staff, the Department's original proposal to provide a water/wastewater combination certificate was premature. The Health Division did not propose a combination certificate for wastewater/water systems in their rules and believe they are limited in their ability to collect what would amount to a partial fee. They also questioned how the fees would be collected and how the transfer of responsibilities between agencies would occur because the statute distinguishes the responsibilities of the two different agencies. Both agencies agree to relate the desire to water/wastewater combination certificates and make recommendations for changes in the statute in the agencies' report to the Legislature in January, 1989.

4. Supervisory Responsibilities. Questions about responsibilities and availability requirement of supervisors who are required to be certified were raised. Additionally, some testified that it is unreasonable for a contract supervisor to a small system be required to be on-call 24 hours a day.

Department's Response: The statute requires at least one person certified at the classification level of the system for systems with design flows above 75,000 gallons per day. Review of the Legislative Committee meeting minutes indicated a certified supervisor does not have to be on-site at all times. The intent of the "supervisory" aspects of the Legislation is to ensure at least one person is certified as meeting the qualification criteria to oversee operation of the system. At most systems, supervisors are either on-site, on-call or leave instructions (written or oral) to individuals who are operating the system. Some large systems (approximately 30) have more than one daily shift where shift supervisors are designated by the owner to be responsible for the system.

Department staff recommend the definition of supervisor be defined as the person to whom the permittee (system owner) designates the authority for establishing and executing the specified practices and procedures for operating the wastewater treatment system in accordance with the policies of the owner of the system and the permit requirements and that this definition apply to shift supervisors, if any, as well. In addition, rule language is added stating the system owner has the responsibility to ensure their system has a certified individual, either the designated supervisor or another certified individual, at all times to respond on-site. If the designated

supervisor will be unavailable for more than 30 days (i.e., departs), the permittee must submit notice of the new designated supervisor having the appropriate certification level consistent with the plant classification. This means that if the person required by the owner to be certified at a level consistent with the classification of the system is not available to respond on-site because of departure, sick leave, or vacation, the owner must have a back-up certified person available to respond. This person must be certified not less than one grade level lower than the classification of the system. Shift supervisors similarly, must be certified at no less than one grade level lower than the classification of the system.

5. Training. Many respondents expressed concern that training was not available in the local areas throughout the state and the training available did not always meet the needs required for safe, efficient operation of systems.

Department's Response: Department staff and the Advisory Committee are in full agreement that continued efforts are needed to coordinate practical training statewide consistent with the needs of the system personnel. A member of the Advisory Committee is coordinating, through the community college network, a program to enable qualified instruction and low or no cost training to reach all areas of the state.

Department staff have worked with the Environmental Services Advisory Committee (ESAC) in redefining the training approved for Continuing Education Units (CEUs). On-site training and local workshops will now qualify for CEU credit. Training by certified personnel conducted in local areas will also qualify for CEU credit.

In addition, the Department intends to:

- a. Develop examinations consistent with the level of certification required to operate various levels of systems;
 - b. Develop a list of materials, references materials, and sources of information for individuals to use as reference for study;
 - c. Coordinate with individuals, training companies, and community colleges and other agencies such as Workers' Compensation on safety, to ensure each area of the state has training available to all individuals.
6. Terminology of the Wastewater Field. Many individuals testified that the term "Sewage" in the rules be replaced with "Wastewater". The profession has adopted this terminology.

Department's Response: The Department staff and Advisory Committee concur with this request and propose to substitute the term "wastewater" for "sewage" in the proposed rules. It must be recognized that the statutory requirement for certification apply only to sewage

treatment works systems and not to industrial waste treatment systems that also treat wastewater.

7. Objective of the Rules with Regard to Environmental Protection. Individuals expressed that public health protection is not the only objective of the rules.

Department's Response: The Department has added language under the preface of the rules to reinforce that the purpose of the rules include environmental protection in addition to public health and water resource protection through proper operation and maintenance of systems.

8. Program Costs. Testimony recommended the DEQ and Health Division make every effort to keep the cost of running the program as low as possible. The testimony suggested the use of combination certificates at renewal, a three year renewal period, and administration of the program under a single agency.

Department's Response: Efforts have been made to minimize the cost of implementing the certification program. The proposed rules include the provision for combination certificate at renewal for individuals certified at Grade Levels I and II in both collection and treatment. The Department and Health Division will report to the legislature the desire for combination certificates for those certified in water treatment and distribution and wastewater collection and treatment systems. The statute establishes that the Health Division and Department administer the certification program for their respective jurisdictions. The Department's report to the legislature will include the desire of some to have one agency oversee the program. While this may be advantageous in terms of cost, some view the expertise of each agency to necessitate separation of the responsibilities.

The statute requires this program to be fee supported and it is necessary to reevaluate the cost of developing and implementing the program under the fee schedule projected to cover the expenses after determining the number of individuals who participate in the program.

9. Who must be certified. Many expressed that the original bill presented for Legislative review and made public differed from the bill submitted for the floor vote at the 1987 Legislative session. The major difference involved concerns who is required to be certified. The original bill required all operators of a system to be certified, but now the Department is only requiring one to be certified. Statutory language is unclear because one paragraph specifies that anyone who performs the duties of an operator must be certified.

Department's Response: The Department staff and Advisory Committee spent considerable time discussing this issue. The statute is not explicit concerning who must be certified but the Department believes that the Legislative intent was to require system owners to have a minimum of one certified person. The Department agrees with the Advisory Committee recommendation that those systems having more than

one daily shift should have certified shift operators. Thus, the proposed rules encourage all who qualify to be certified at the highest grade level consistent with their education and experience, but only require a system owner to have a minimum of one certified operator, unless the system has more than one daily shift. Shift supervisors would be required to be certified no less than one grade lower than the classification of the system. This is consistent with the legislative intent to ensure systems be properly operated and maintained and qualified personnel are available to system owners and other operators.

10. DEQ Inspectors. Testimony suggested the Department require individuals who inspect wastewater systems be certified at the level of classification of the system.

Department's Response: The Department can appreciate that some operators may be frustrated that Department employees who inspect system may not be intimately familiar with sewage treatment plant operations. However, the role of DEQ inspectors is to evaluate compliance of systems with permit conditions and limitations. This requires knowledge of the Department's rules and familiarity with wastewater treatment and control facilities. It is not the Department's intent to have its employees guide operators on the day-to-day operation of their systems. System owners are responsible for assuring their system is operated and maintained by adequate numbers of qualified staff to comply with limitations for which the system was designed and constructed. Within the arena of DEQ employee training programs, more comprehensive inspection training is being developed with assistance from the U.S. Environmental Protection Agency.

11. Supervision and Part-time Supervision. Testimony recommended that rules more clearly define the responsibilities of the certified person who supervises a system on a full time basis or part-time basis under contract with a system owner.

Department's Response: The Department envisions several situations whereby a system owner may choose to contract with a certified operator to satisfy the rule requirements. These include the following:

- a. A municipality or other permittee wholesale contracts the operation and maintenance of their system with an established firm that specializes in operation and maintenance of sewage collection and treatment systems. Several permittees have chosen this method of fulfilling their responsibilities as system owners. The system owner (permittee) still retains responsibility for complying with the permit limitations and conditions. The terms of these contracts are between the system owner and the contracting firm. The Department does not review the contracts, nor does it specify how the contract arrangements are to be fulfilled since the systems vary widely and the time and effort needed to ensure effective and efficient operation vary considerably. This type of service has been utilized by a number of permittees to provide full time operational staff for their systems in lieu of the municipality employing separate staff.

- b. A permittee contracts with a neighboring community who has a certified operator or with an individual or firm to provide part-time supervision of a system less than 75,000 gallons per day on a long- or short-term basis in lieu of employing a person certified at a grade level consistent with the system classification. Similar to the example above, it is the owner of the system (permittee) who is responsible for assuring compliance of the system with the permit. To satisfy the specific rules that a certified operator be available to respond on-site at the request of the system owner, the permittee must determine the specific details of the contract and negotiate with the contractor for services. If the Department, in evaluating the system performance, documents that the system is not in compliance, the Department may require the permittee to provide a greater level of supervision by a certified operator.

National Pollutant Discharge Elimination System (NPDES) regulations require that the owner of a system (either an elected public official or corporation officer or individual owner or that person's authorized representative be knowledgeable about the performance of the system and any submittal of a report for purposes of satisfying a permit condition by that person or their authorized representative. The authorized representative must be designated and provide notice to the Department of their name or title. Thus, unless specified by contract with written notice to the Department of an authorized representative other than the permit holder, the permittee is ultimately responsible and must sign all reports submitted to DEQ. Duties of the certified person, frequency of visits, etc., should be specified in any contract and reviewed by attorneys representing both parties. The Department proposes only to require the contract to be available for review and include a minimum number of elements.

- c. Those system owners with Class I systems who choose to employ individuals with "provisional certificates" will have to have that person supervised by a person certified at a level consistent with the classification of the system until the provisionally certified individual acquires the necessary education or experience and passes a Grade Level I exam. The statute does not require contract-supervision, but the Department suggests that formal arrangements be made for the supervision of a person holding a provisional certificate. The Department requires the person holding the provisional certificate receive adequate guidance and on-the-job training to ensure proper operation of the system but does not feel it appropriate to specify in rules the level of supervision that may be necessary. It will largely depend on the type of system and the background of the person who is provisionally certified. The Department only requires that the person have completed or is participating in a training program approved by DEQ.

12. Fines, penalties and revocation of certificates. Testimony requested the rules clarify the criteria for imposing penalties, fines and revoking certificates.

Department's Response: The proposed rules have been modified to reflect that the Department intends to implement the requirements of system owners to have certified personnel via the Water Pollution Control Facilities (WPCF) and National Pollutant Discharge Elimination System (NPDES) permits. Violations of permit requirements are subject to civil penalties of between \$50 and \$10,000 dollars per day as specified in OAR 340, Division 12 (Exhibit III).

Individuals who violate the statute may be subject to criminal misdemeanor charges resulting in fines or jail by a prosecuting attorney.

Certificates may be revoked by the Director. The individual would be provided legal notice of intent to revoke a certificate whereby the individual may request a contested case hearing as provided under OAR Chapter 340, Division 12. Decisions of the Director may be appealed to the Commission. The rule language references these procedures by rule number.

13. Industrial Waste Systems. Testimony recommended requiring certified personnel for industrial waste treatment systems because these systems, can impact the public health, state waters and the environment.

Department's Response: The Department recognizes that it may be desirable to certify operators of industrial waste systems. The statute, however, is explicit in that it only addresses sewage treatment works and water distribution and treatment systems.

14. Collection Systems. Testimony suggested the rules clarify that collection systems which transport wastewater to a neighboring wastewater facility are required to have their collection system supervised by a certified individual.

Department's Response: The rules apply to all collection systems whether or not the owners of these systems provide treatment. The Department requires these collection systems to be under a Water Pollution Control Facility (WPCF) general permits. Some system owners may not be familiar with this requirement and the Department will endeavor to communicate these requirements and get all separately owned collection systems under this type of permit.

15. Direct Responsible Charge and Certification Criteria. Some testified that direct responsible charge and a minimum of two years should not be deleted as criteria for obtaining certification at Grade Level III and IV. These criteria were qualifications under the Voluntary Certification Program and served the program well.

Department's Response: The Advisory Committee and Department evaluated the certification criteria of the voluntary program.

Operator sections also attended some of the Advisory Committee meetings. The majority of input centered on assuring that barriers to certification at high grade levels be eliminated. These included eliminating a condition that to be certified at higher levels, individuals first must be certified sequentially at lower levels. Additionally, direct responsible charge (DRC) was viewed as a barrier to equal advancement because the DRC requirement does not distinguish between the responsibility of: (1) a complete wastewater system; (2) a component of a wastewater system; (3) a complex or simple wastewater system component and other DRC responsibilities have been interpreted differently by system owners.

No one definition of DRC is commonly accepted, or equally applied, to ensure the fair application of the requirement under a qualification to be certified.

Experience recognizes a common exposure to a certain wastewater system classification and allows employers to evaluate this experience in relationship to the required supervisory experience required for their system.

16. Exceptions to the Requirements. Several owners of small systems requested they be exempt from the requirement to have a certified supervisor. A public official of a town served by individual on-site sewage disposal systems also requested their town be exempt.

Department's Response: First, the statute specifically exempts systems under 5,000 gallons per day that are permitted under the On-site Sewage Disposal rules (OAR Chapter 340, Division 71). Thus, a town such as Adams, where the population is served by individually owned on-site systems, are automatically exempt. The statute provides that owners of systems under 75,000 gallons per day design flow may contract with a certified operator for part-time supervision in lieu of employing a certified operator. Additionally, owners may request a variance to rules and, provided there is sufficient justification for cause, the Director may allow a variance as appropriate to enable owners additional time to comply with the rules.

17. Lapsed Certificates. Several operators with lapsed certificates (not renewed during the last three years) in the Voluntary Certification Program, but who are still working in wastewater systems, requested that be allowed to renew their certificate without having to pass a written examination.

Department's Response: The proposed rules would allow certificate renewal before May 1, 1989 without examination provided the last certificate had not lapsed for longer than three years. This issue was discussed at length by the Advisory Committee. While three years appears arbitrary, it is carried over from the voluntary certification bylaws for a limited time period. The Advisory Committee recommended this was a reasonable time frame for those who chose not to keep their certificate current. The statute specifically allows those who are currently certified under a voluntary program to be certified under the

mandatory program. After July 1, 1989, renewal without examination will be allowed unless the certificate has lapsed more than 180 days. If individuals allow their certificate to lapse more than 180 days without making application for renewal, an examination will be required to renew.

18. Laboratory/Maintenance. Some who testified requested the role of laboratory and maintenance personnel under the certification program administered by the Department be clarified. Other testimony suggested that at some point in the future, the voluntary certification committee for maintenance personnel may request that the Department administer the program.

Department's Response: First, the statute does not require those individuals involved solely in maintenance or laboratory aspects of sewage treatment systems be certified. The Department recognizes the talents of these employees in ensuring treatment systems are properly maintained and that laboratory data are representative of the operating conditions and performance of the system. These groups have generated an interest in developing and implementing certification programs distinguished from treatment and collection system operations. The Department supports and has encouraged this voluntary association as a means to promote professionalism and advance better training. Language has been added to the preface of the rules to reflect this position.

It does not appear that the statute would prevent the Department from administering a program for certifying maintenance and laboratory personnel of sewage treatment systems on a voluntary basis. However, the Department would have to carefully evaluate whether the additional responsibilities could be undertaken on a fee supported basis if a formal request was submitted by a voluntary certification committee for either laboratory or maintenance personnel. Additionally, any program the Department would administer would require development of rules, hearings, and approval by the EQC.

19. CEU requirements for certificate renewal. Testimony presented requested both a requirement for 1.6 CEUs be required for certificate renewal, and 3.0 or more CEUs be required for certificate renewal. The requests concerned the need to coordinate the required CEUs with those received for attending the annual short school and the belief training should be required yearly to keep operators abreast of new technology.

Department's Response: The proposal of a two year renewal period requiring two CEUs is consistent with the requirements of many certification programs, however, two CEUs required over two years allows individuals to choose various available training specific to their systems and professional growth, and establishes a minimum standard for all personnel who work in the wastewater field.

20. Add system classification points for nutrient parameters. Testimony presented requested the Department assign points in System Classification for nutrient parameters.

Department's Response: Classification points for nutrient parameters are included in Table 1 (6) Sampling and Laboratory Testing in the criteria for classifying systems.

21. Collection System Classification. Testimony presented expressed a concern that Collection System Classification for systems between 1,500 and 15,000 population should not be classified at the same level. It was believed that this was too broad a range for one classification.

Department's Response: The collection system classification criteria is based on population served. The size and complexity of a collection system is more consistent with the hydraulic capacity and is designed to accommodate a wide range of flows. The rules allow for collection systems designed with more complexity to be classified higher than the population served would classify the system by the Director for cause. This would be implemented through the permit issuance process. The proposed classification criteria will properly classify most collection system in Oregon.

22. Examination schedule. Testimony presented expressed concern that examinations should not be given more than two times per year and exams should be taken in sequence.

Department's Response: The Department proposes to schedule two examinations annually, in May and November. However, the Department believes that examinations given at other than scheduled times are necessary to respond to special circumstances that would place undue hardship on individuals, greatly increase the cost of examining, or restrict the Department's ability to administer oral examinations. The Department believes when an individual meets the qualifications of a specific grade level of certification, they should be able to take the written examination without the requirement of taking exams in sequence. Each examination should stand on its own merit and reflect the requirements for the given wastewater systems.

SUMMARY OF ORAL TESTIMONY

Tuesday, May 31, 1988, Linn County Armory, Albany, Oregon, 6:00 P.M.

Woodie Muirhead, City of Corvallis--Mr. Muirhead expressed support for the proposed certification program rules and proposed that the rules specify environment protection as an objective of the rules. Mr. Muirhead felt that although the bill did not address industrial waste systems, personnel who operate and supervise industrial treatment systems also should be certified. He expressed concern that the bill focused on small systems more than large systems and would support a requirement that more than one operator be certified in larger systems. Mr. Muirhead felt the bill was unclear and confusing on who should be certified. In addition, he suggested that the 24 hour on-call requirements proposed to apply to contract operators serving systems less than 75,000 gallons per day was inconsistent with the requirements of larger systems to have a certified person available. Mr. Muirhead expressed concern about the cost of the program. Because it is to be a fee supported program, the Department and Health Division should combine as many aspects of the two programs as possible to reduce costs, i.e., examinations, one staff person to run both programs. In addition, the Department should seek funding through grants, etc., to help run the program.

Lila Jenkins, Hillsboro, Oregon--Ms. Jenkins expressed that more than one person needs to be certified in the larger systems. Ms. Jenkins noted that the proposed rules downplay the need for all persons to be certified.

Wednesday, June 1, 1988, Neighborhood Facility Bldg.,
Coos Bay, Oregon, 9:30 a.m.

Phil Christiana, Coos Bay, Oregon--Mr. Christiana expressed support for the proposed rules and program. He would like to see the fees paid by the employers and expressed that those supervisors directly in charge should be certified. In addition, he expressed that safety training should be required each year for all personnel and that requiring Continuing Education Units (CEU) is good for the program.

Dick Miller, Lakeside, Oregon--Mr. Miller expressed support for the rules and that a commendable job was done. Mr. Miller questioned the use of only one certified person being required, especially in larger systems, and testified that all persons should be certified or at least trained in the area of safety. Mr. Miller felt safety training also should be part of the provisional certification requirements. In addition, he expressed that combination certificates should be available for grade levels above Level I, possibly Level I and II, or combinations of these levels. Mr. Miller testified that training needs to be available in all areas of the state and supported the CEU requirement for certificate renewal.

Dick Miller, Lakeside, Oregon, (representing Umpqua Basin Operator Section)

--Mr. Miller expressed concern that only one person is required to be certified. The Operator Section requests combination certificates to be available to Grade Level II. In addition, CEU credit should be available for technical training conducted at Operator Section meetings.

Dennis Barlow, Brookings, Oregon--Mr. Barlow expressed concern about a lack of information available on statewide programs in the Brookings area, and the need for the Department to promote good communication with the operators. Mr. Barlow expressed that because of their location and the difficulty to get to other locations for training, local training needs to be made available. In addition, Mr. Barlow expressed the many in the area were not made aware of the ability to gain collection system certification without examination, nor of the deadline. He would like to see the rules extend this opportunity.

Tony Rogers, Roseburg, Oregon--Mr. Rogers supported the rules and the recognition of operators as professionals. Mr. Rogers believes the Department should budget for training DEQ inspectors and require the inspectors to be certified at similar levels as operators.

Darlene Mohlsick, Roseburg, Oregon--Ms. Mohlsick expressed that a certified operator needs to be on-site at all times and non-certified staff should not be supervised from off-site. Ms. Mohlsick also believes the combination certifications need to be extended to higher grade levels to reduce the cost for those who need to be certified in more than one area. She also expressed that DEQ inspectors need to be certified.

Terry Vatland, Roseburg, Oregon--Mr. Vatland declined to testify formally, but seconded what had already been submitted for record.

Leo Lightle, City of Brookings, Brookings, Oregon--Mr. Lightle expressed support for the proposed certification program. Mr. Lightle would like a time extension for collection system certification without examination because many in their area were not aware of the previous opportunity. He also sees a need for DEQ inspector training to ensure they are knowledgeable in all aspects of the systems. He believes CEU requirements and training should address safety. In addition, Mr. Lightle is concerned that those in contract operations will not be monitored when providing a service. He believes laboratory and maintenance personnel should remain a voluntary program, the certified supervisor should not have to be on site, and not all personnel should be required to be certified.

Paul Strader, Brookings, Oregon--Mr. Strader supported the program and rules requiring a minimum of two CEUs per renewal period. Mr. Strader expresses that the supervisor and lead personnel should be certified and the rules should specify the time allowed to replace a departing supervisor.

Dennis Gehrke, Port Orford, Oregon--Mr. Gehrke expressed concern about the cost to those who have to maintain all certificates in both water and wastewater. He believes those at Class II systems who must be certified in

both programs should be able to obtain a combination certificate for both types of certificates to reduce the cost.

Stan Sharp, Coos Bay, Oregon--Mr. Sharp expressed the need for all operators to be certified at least at Level I. Mr. Sharp expressed that the responsibilities of collection system owners who do not treat their wastes need to be clarified. In addition, Mr. Sharp would like to see provisions to enable collection system certification without examination for a short period of time.

Dave Hudson III, Coos Bay, Oregon--Mr. Hudson believes the rules should require basic training, especially safety training, for all personnel including temporary employees.

Additional comments after all registered to give testimony had completed their comments for record:

Dick Miller, Lakeside, Oregon--Mr. Miller expressed that the requirement for 24 hour on-call for contract operators and supervisors be deleted from the proposed rules. Mr. Miller would like the rules to clearly specify how long a system can be without a certified supervisor due to vacation, sick leave, etc. In addition, he would like the rules to specify that larger systems must use certified personnel to fill in temporarily when the designated supervisor is not available.

Open discussion period for the record:

During the open discussion period, after formal recording of testimony, some recommended the rules clearly define the procedures for issuing penalties, written exams include questions about alternative collection systems, and that the rules be enforced.

Wednesday, June 1, 1988, Medford City Hall, Medford, Oregon, 6:00 p.m.

Mike Osterman, Medford, Oregon--Mr. Osterman expressed there is a need to maintain a strong certification program. Mr. Osterman expressed that it is a step backward when the proposed rules require less education than was required under the Voluntary Certification Program. The proposed education requirements do not equal the education requirements of the established Associated Board of Certification. He recommended a minimum of two years of post high school education be required for the Grade Level IV certificate. Two years of additional experience do not equal the one year of post high school education that was part of the Voluntary Program requirements.

Jon D. Nutter, Rogue River, Oregon--Mr. Nutter testified that mandatory certification is a good idea. Mr. Nutter expressed that safety training for all personnel is needed and possibly more than two CEUs should be required for certificate renewal.

Bob Dorey, White City, Oregon--Mr. Dorey testified that better communication with system personnel is needed. Mr. Dorey expressed that southwest Oregon did not receive good information on certification, especially about collection systems. During the voluntary collection grandfathering period when examinations were not required, the area was missed and now those in the area have to fight for equality. Mr. Dorey feels that another opportunity for collection personnel to be certified without examination needs to be provided.

Thursday, June 2, 1988, State of Oregon Office Bldg., Bend, Oregon,
9:00 a.m.

Tony Owen, Sunriver, Oregon--Mr. Owen testified that the requirement for direct responsible charge (DRC) in Levels III and IV should not be dropped. DRC was the professional approach and enabling others to be certified at higher levels without a DRC requirement is unfair to those who do all aspects of operation. Much effort was made to acquire the positions in responsible charge and now this is of no benefit, as others are not now being required to obtain this experience.

Michael Elmore, Bend, Oregon--Mr. Elmore stated that he has been in wastewater operation since 1970 and is in favor of the mandatory certification program. He expressed concern that it is too costly to travel far to receive training and local training should be made available. In addition, he recommended requiring training as part of certification. He asked that the rules clarify the type of training for which CEU credit can be obtained and the methods for obtaining accreditation.

Thursday, June 2, 1988, La Grande City Hall, La Grande, Oregon, 6:00 p.m.

Don Caldwell, Hermiston, Oregon--Mr. Caldwell recommended that rules covering the provisional certification spell out specifics on how much or what kind of supervision is required. If too much direct supervision of the person holding a provisional certificate is required, then the cost to a small community would be too high. Mr. Caldwell also expressed that contractual supervision by a certified operator should not specify a maximum or minimum number of site visits. The owner of a system under 75,000 gallons per day should set the number of visits by a certified supervisor. In addition, Mr. Caldwell requested that the testimony and proposed rule changes be reviewed with the Advisory Committee before the final proposed rules are submitted to the Environmental Quality Commission.

Ron Gross, La Grande, Oregon--Mr. Gross agreed with the rules for a two year certificate renewal period to reduce costs. Mr. Gross thanked the Department and Advisory Committee for a job well done. He expressed the need for the Department and Health Division to combine some of the administrative duties common to both programs to save costs in administering the programs. In addition, Mr. Gross encouraged the Department to provide more combination certificate options, and ensure training is made available in the local area.

Glenn Hogue, La Grande, Oregon--Mr. Hogue expressed his support of the certification program. Mr. Hogue expressed that local training needs to be made available in eastern Oregon.

Friday, June 3, 1988, Department of Environmental Quality
Headquarters, Portland, Oregon, 9:00 a.m.

Kenneth Lee, Portland, Oregon, (Northwest Oregon Operators Section)--Mr. Lee expressed that many operators feel they should not be downgraded if they previously were certified at top levels. They should be able to renew certificates that have been lapsed more than three years. Many operators changed address or did not renew because they had disagreements with the administration of the voluntary program. They once passed a written exam sufficient to become certified and should be able to renew without examination if they pay back-due fees. They do not expect a free ride. This would bring many operators back into the program and help fund the program. He expressed that many operators believe all persons should be certified to maintain operator professionalism. In addition, many operators of the Section felt the proposed changes in the education and experience qualification requirements were inconsistent with the requirements of a professional organization.

John Hollingsworth, Salem, Oregon, (Oregon State Parks)--Mr. Hollingsworth expressed that operators of small systems should only pay one fee for all the certificates required. He supported combining both water and wastewater certificates under one fee. Mr. Hollingsworth expressed that State Parks did not receive notification of the opportunity to obtain collection personnel without examination and recommended this opportunity again be provided to be fair and equal for all.

Michael Mathews, Tigard, Oregon--Mr. Mathews recommended that the rules require at least one person be certified at the same level of the system classification and all other personnel be certified at some level. He also recommended that all personnel with lapsed certificates be automatically certified in position, if they have been employed for a number of years, that their certificate be frozen in grade unless they examine for a higher level. In addition, Mr. Mathews requested a clarification of the proposed rule regarding revocation of certificates (OAR 340-49-080(1)(c)--Failure of the operator to comply with lawful orders, rules or regulations of the Department).

Richard Nelson, Vancouver, Washington, (City of Tigard)--Mr. Nelson expressed that all personnel should be certified at some level and there should be a distinction or clarification between the collection and treatment requirements and qualifications. Mr. Nelson also recommends that the exams be relevant to the duties of the personnel doing the work.

John Roy, Hillsboro, Oregon--Mr. Roy was unaware of the opportunity to become certified in collection systems without examination and feels the opportunity should be made available again. He expressed that collection system contractors, or at least those who inspect the work of the

contractor, be trained. In addition, Mr. Roy recommends more on-site training; not just classroom training should be made available. He recommended reclassifying collection systems between 1,500 and 15,000 gallons per day because the range is too great and the experience needed to operate and maintain systems within this range is different. He would also like a clarification on how oral examinations will be given and what stipulations and requirements will be set.

Michael Read, Oregon City, Oregon--Mr. Read expressed that rule language should clarify supervisory responsibility, specify who must be operating the plant and state whether the supervisor will be required to be on-call over weekends. Mr. Read stated that being on-call usually means some form of pay. He suggested that the rules allow an operator with a lower grade of certification to substitute for the supervisor when not on-site. In addition, the rules should allow initial renewal of certificates that have lapsed over three years and laboratory and maintenance personnel should be addressed in the rules.

SUMMARY OF WRITTEN TESTIMONY

(Fr.) Paschal Phillips, Trappist Abbey, PO Box 97, Lafayette, OR 97127; May 11, 1988 letter. Fr. Phillips believes the Abbey system is too small, and not complex enough, to be required to have a certified operator. He believes some systems should be exempt from the requirement for a certified operator when no danger to the environment or public health exists at a system.

Russell J. Milks and Dan Leonard, Unified Sewerage Agency, 150 N. First Ave., Hillsboro, OR 97124; November 17, 1987 letter. Mr. Milks and Mr. Leonard submitted a list of 32 individuals working for USA who let their certificates lapse between 1977 and 1986. All persons listed would appreciate having their certificates brought "in line with the new rules being established".

Robert F. Dratwa, City of Dufur, PO Box 145, Dufur, OR 97021; May 20, 1988 letter. Mr. Dratwa did not receive any information on the opportunity to apply for a collection system certificate without examination and would take advantage of grandfathering into the program if it was included in the new rules.

Gay B. Malvin, City of Dufur, PO Box 145, Dufur, OR 97021; May 20, 1988 letter. Mr. Malvin did not hear about the opportunity to apply for collection system certificate without examination and would like the new rules to allow an opportunity to become certified without examination for a short period of time.

Leo Lightle, Cecil Smith, Dennis Barlow, Bob Schaefer, Jay Klapperich, Mike Batty, John Appanaitis, Paul Strader, Lee Perry, Steve Curtis, Bill Sharp, City of Brookings, 898 Elk Drive, Brookings, OR 97415; May 20, 1988 letter. Information concerning grandfathering for collection personnel did not reach all areas of the state and the information was confusing. They would support a window of opportunity of 30 to 60 days to obtain a collection personnel certificate without examination.

Jerry Betts, City of the Dalles, 313 Court Street, The Dalles, OR 97058; May 4, 1988 letter. Mr. Betts did not have an opportunity to grandfather into the collection system program because he had received no notification of the opportunity. He would like the opportunity to be certified in the collection systems without examination.

Wayne Weaver, Bear Creek Valley Sanitary Authority, 3915 S. Pacific Hwy., Medford, OR 97501; November 24, 1987 letter. Mr. Weaver requested the Department accept applications for collection system certification because BCVSA was not notified that certification without examination had been made available under the voluntary program administered by the nonprofit corporation.

Cliff West, PO Box 904, Rainier OR 97048; Feb 22, 1988 letter. Mr. West endorsed the new certification program, offered his assistance, and recommended Continuing Education Units (CEU) for maintaining a certificate and supervisors as well as operators be trained.

Wayne Riccetti, City of Willamina, PO Box 629, Willamina, OR 97396; May 25, 1988 letter. The City of Willamina requested that collection system certification without examinations be allowed for a short time. The persons in the City running the collection system are experienced and knowledgeable.

Charles R. Brainard, Bear Creek Valley Sanitary Authority, 3915 S. Pacific Hwy, Medford, OR 97501; May 27, 1988 letter. Mr. Brainard was disappointed to learn that those in his area missed the opportunity to become certified for collection systems without examination because they did not hear about it. He expressed that reopening these provisions is the only way to rectify the unfair situation that occurred.

Gerald A. Blair, Browns Landing, 50565 Brown's Landing Crt, Scappoose, OR 97056; June 7, 1988 letter. Mr. Blair expressed there is no logical reason to include small nongovernment sewage systems in the rules. The expense is too burdensome. He believes this is just another way to get money for the Department's budget and he does not believe certification will make a difference.

Jack Harris, City of Depoe Bay, PO Box 8, Depoe Bay, OR 97341; May 26, 1988 letter. Mr. Harris expressed a desire to "grandfather" collection system personnel. However, he expressed that DEQ needs to be sure those brought in are qualified.

Bob Dorey, 3851 Old Military Rd, Central Point, OR 97502; June 1, 1988 letter. Mr. Dorey has twelve and one-half years in the wastewater business. He did not learn of the opportunity to obtain collection system certification with examination until it was too late. He expressed DEQ should have an open period for becoming certified in collection systems for those in the southern part of the state.

Gordon Andrews, 39604 Little Fall Creek Rd., Fall Creek, OR 97438; May 26, 1988 letter. Mr. Andrews is a Linn-Benton Community College student in the two year wastewater treatment program. He expressed that under the voluntary program, small systems could hire recent Associate Degreed persons because they had taken the Grade Level I exam. Under the proposed program, examination would not be allowed without being employed in the field, thus it will be hard to get a job. His understanding of the proposed rules is the first level can be bypassed with provisional certification, but what about Level II, since some small systems are Class II? He expressed a need for some kind of waiver process at this level. He and the co-signed students feel it is unfair and there is no advantage to the years of study in wastewater when an untrained person can do a little workshop work to pass the test and get a job without really understanding the biological, chemical, etc. part of the business. He and the co-signed persons suggested:

- (a) When no Level II certified person is available to a wastewater system that requires that grade level, the rules should allow a Level I certified operator or degreed person in wastewater to assume responsibility for the plant until the next test period.
- (b) Operators in Training who have one year of education in a wastewater school should be accredited 3 months experience so that after they work 9 more months, they would meet the experience criteria required for Level I certification. This would be equivalent to one year experience without community college training.
- (c) Operators in Training with two years of education in a wastewater school (AS Degree) should be accredited 6 months experience so when 6 additional months experience is obtained, it would equal one year experience.

Mr. Andrews and the co-signed expressed these recommendations encourage training and build a professionalism within the business. They are fair to both employers and operators, and satisfy state concerns with competence.

The following co-signed this written testimony: Mark Hubbs, Paul Zimmerman, D.S. Stryker, W.S. Bros, Richard Linlsey, Mike Hiles, Sheila Rae Bates, Mark Z., Danial Gammell, B. Hagby, S. Trieman, James Nash, Sohn Nitely, J. Howell, Michael Parker, Tom Downey, and Lenard Thomas.

Betty J. Marquardt, 69173 Bay Drive, PO Box 1138, Sisters, OR; May 28, 1988 letter. Ms. Marquardt supported the certification program. She expressed all workers in wastewater system should be certified, not just the supervisors. Ms. Marquardt expressed many accidents happen because not all workers are aware of the importance of doing their job correctly. She believes this generation needs to do a better job than the last generation in protecting our water resources.

Mr. Pete Fetter, Georgia-Pacific Corporation, PO Box 1618, Eugene, OR 97440; May 27, 1988 letter. The Georgia-Pacific treatment facility (Prairie Road Plant) is a septic tank that discharges to a holding pond. It is self-contained without complexity, except for a pump for chlorination. Mr. Fetter believes since no rules or regulations currently pertain to this system, there should be an exemption from certification requirements on this system. Mr. Fetter requested this exemption.

Mr. Mark Beam, Odell Sanitary Dist, PO Box 28, Odell, OR 97044; June 1, 1988 letter. Mr. Beam requested an extension of the grandfathering provisions for collection personnel. Either he did not receive notice or did not understand the meaning of the material that was sent. He would like to have the opportunity to obtain collection system certification without examination.

Larry Rogers, (Bear Creek Valley Sanitary Authority) 2130 College Way, Medford, OR 97504; May 27, 1988 letter. Mr. Rogers expressed disappointment that grandfathering for collection system personnel was not communicated in

his area. Mr. Rogers expressed that it is unfair not to have the same opportunity as others in the state had.

Mr. Jerry Sackett, 3035 Burrell Rd, Medford OR 97501; June 3, 1988 letter. Mr. Sackett supported allowing collection system certification without examination for a period. He expressed his experience and education qualifies him to hold a certificate. Mr. Sackett believes that this should be all that is necessary to be included with others who were previously grandfathered.

Mr. George V. Kneese, Hillsboro, OR; April 16, 1988 letter. Mr. Kneese would like to see the grandfathering of collection personnel be reopened. He would like to request a higher level due to the additional experience he has obtained. Mr. Kneese is concerned about all the requirements for mathematics and chemistry required to obtain the higher levels through examination. He feels his experience fulfills the requirements for the next level.

Mr. Jack Perry, City of Milwaukie, 10722 SE Main St., Milwaukie, OR 97222; letter. Mr. Perry will be the person required to hold certification in collection systems. He looked into the situation and feels he should be able to obtain a certificate as others were able. Had he known he would be the person to supervise, he would have taken advantage of the opportunity to grandfather into the program.

Mr. Jim Kanoff, Redmond School District, 716 West Evergreen, Redmond, OR 97756-2294; June 9, 1988 letter. Mr. Kanoff requested his system be exempt from the requirement to have a certified operator.

Mr. Joe Bergh; June 7, 1988 letter. Mr. Bergh requests the collection system grandfathering be reopened.

Mr. Gerald A. Anderson, City of Wood Village, 2055 NE 238th Dr., Wood Village, OR 97060-1095; June 7, 1988 letter. The City of Wood Village requested consideration be given to extending the grandfather clause for collection system personnel. To his knowledge, the City was not notified of the grandfathering option. The City has three employees that wish to obtain certification by experience. They are: John R. Ashley (12 yrs exp.); Vance Hardy (8 yrs exp.); and Larry Stoffer (3 yrs exp.). The City urged DEQ to reopen the grandfather certification period to allow these employees equal opportunity at certification.

Both Mr. John R. Ashley, Jr. and Mr. Larry Staffer of the City of Wood Village sent separate letters requesting reopening of the grandfathering opportunity.

Mr. Will Haapala, City of Portland Wastewater Treatment Plant, 5001 N. Columbia Blvd., Portland, OR 97203; June 10, 1988 letter. Mr. Haapala suggested the following:

- (a) Use the term Wastewater (not Sewage) Treatment Facilities.
- (b) Specify points for nutrient limits in the classification system.
- (c) Increase the renewal term to three years and increase the CEU requirements to renew.
- (d) Clarify how many contact hours equal 1 CEU.
- (e) Clarify eligibility of laboratory and maintenance personnel. (He supported certification for laboratory and maintenance personnel.)
- (f) Modify the term "Grade Level I" to "Grade I" to eliminate redundancy.
- (g) Compile a list with examples of "post high school education".

Mr. Martin K. "Sam" Stout, Douglas County Engineering Dept., Room J, 103 Justice Bldg., Roseburg, OR 97470; June 8, 1988 letter. Mr. Stout works as an Engineer Technician but still maintains certification. He suggested that 8 hours be equal to one CEU. He wants local section meetings to qualify for CEU credit and feels DEQ should explain what training counts for CEU credit. Mr. Stout suggested a different term, more professional, be used for sewage collection systems. In addition, he believes DEQ should expand collection system classifications:

Mr. Steven A. Marshall, Clackamas County Department of Utilities, 902 Abernethy Rd, Oregon City, OR 97045; June 7, 1988 letter. Mr. Marshall suggested a change from 2.0 CEU requirement to 1.6 CEU per renewal period because an eight hour course day equals 0.8 CEU and most training courses are two days (1.6 CEU). This would allow one training course to satisfy the requirements and not force someone to go to one more full course to get the 0.4 more CEUs required. Mr. Marshall also suggested a price break for those who hold more than one certificate. The 400 plus maintenance personnel may want to enter the program as voluntary members but feel some price break for multiple certificates is needed. This could greatly enhance the prospect of the maintenance group wanting to have their program administered by DEQ.

Mr. Neil Christensen, Oregon Maintenance Section Certification Program, 3125 SE River Rd, Hillsboro, OR 97123; June 14, 1988 letter. Mr. Christensen submitted comments from the Voluntary Maintenance Program as follows:

- (a) The maintenance personnel support the CEU requirements but feel the requirements should be 0.8 CEU per year as other agencies require. Also, the State should have some statewide no cost training at a minimum, and all additional CEU training would be up to the individual to pay.
- (b) The maintenance personnel support combination certificates and feel that renewal fees should be just enough to cover the additional paperwork and expenses. Their personnel should not be double or triple hit to maintain professional status.

- (c) The maintenance personnel feel that persons should not have to be certified sequentially from lower to higher grades.

If the Department could adopt these recommendations, the maintenance group would request DEQ to administer their voluntary program.

Mr. Robert Rist, Northwest Oregon Maintenance Section, 14308 SE River Rd., Milwaukie, OR 97267; June 14, 1988 letter. Mr. Rist supported those concerns identified in the June 14, 1988 letter from the Oregon Maintenance Group.

Mr. Peter R. Caine, President, Round Lake Utilities, Inc.; June 14, 1988 letter. The Round Lake Utilities system is small (40 services). Mr. Caine suggested a classification one level less than the present Level I. Personnel at this level should be tested for safety rather than the technical aspects which they do not need. Also, he would prefer granting certification in place without testing. Regarding contract operation, Mr. Caine suggested that a semi-annual on-site inspection should be adequate with more frequent on-site inspections as the complexity of a system increases.

Mr. William T. Morris, City of John Day, 240 South Canyon Blvd, John Day, OR 97845; June 10, 1988 letter. Mr. Morris suggested that deleting sequentially testing from I to IV Grade Levels be for a short period only and not permanent. Professionalism requires that the requirements of the lower grades be met before going higher. In addition, he feels DEQ should only allow two examinations be taken a year. Mr. Morris does not agree with provisions to allow emergency testing. He also feels new operators should be allowed one year (two tests) to get certification.

Mr. Mike Osterman, Medford WWTP, 1100 Kirtland Road, Central Point, OR 97502; June 14, 1988 letter. Mr. Osterman expressed strong concern about reducing the qualification for Grade Level IV from two years of post-high school education to only one year. ABC and other state programs require two years of post-high school education and this should be the same in Oregon. He believes much sacrifice went into previous operator efforts to get the two years, and requiring less is a step backwards in protecting our environment. Because of the hazardous chemicals and gases in the sewage treatment business, he feels it is important that the supervisor and operators be certified no less than one step below the level of the treatment system.

Mr. Michael Santana, PO Box 1001, McMinnville, OR 97128; June 10, 1988 letter. Mr. Santana missed the opportunity to be certified without examination in collection systems. He qualifies for Level III and wants to see a grandfather provision added to the rules.

Mr. Douglas L. Gruber, 61587 Rockway Terrace, Bend, OR 97702; June 2, 1988 letter. Mr. Gruber and others grandfathered into the program for collection certification. If the grandfathering provision is added to the rules, they would like to reapply because they would now have more experience and would be able to become certified at a higher level.

Mr. Chad Seibel, 839 Vine, McMinnville, OR 97128; June 10, 1988 letter.
Mr. Seibel was not aware of collection certification grandfathering and would like to become certified without examination since he has the experience and qualifications required.

Mr. Rod Smith, City of McMinnville, 1228 Cedor St. McMinnville, OR 97128; June 12, 1988 letter. Mr. Smith missed the opportunity to become certified in collection systems without examination.

Mr. Roger Taylor, 1015 Oakwood Circle, McMinnville, OR 97128; letter.
Mr. Taylor missed the opportunity to become certified in collection systems and would like to do so now without examination.

Mr. Michael B. Mathews, USA, Manager East Basin, 150 N. First Ave. Hillsboro, OR 97124; June 13, 1988 letter. The Unified Sewerage Agency supports the statewide certification program. The following are his comments on the proposed rules:

- (a) All operators should be certified at some level.
- (b) Each person should be grandfathered into the program at the position and facility classification where they work as of a certain date, if they have held the position for a certain number of years. They would have to be examined to go to the higher grade in their plant or go to another plant.
- (c) If a supervisor is unable to be at the plant due to illness, etc., for a short period of time, a person certified at one level below the supervisor should be able to perform the responsibilities of the supervisor.
- (d) The rules should be more clear on who can be fined or jailed. Changes should be made to clearly reflect the intent of the penalty system.

Mr. Alex W. Kindred, 230 E. 2nd St. McMinnville, OR 97128; June 10, 1988 letter. Mr. Kindred missed the opportunity to be grandfathered in collection systems without examination and wants another opportunity.

Mr. Ernie Strahm, Box 103, Grand Ronde, OR 97347; June 13, 1988 letter.
Mr. Strahm just became aware that others obtained collection system certificates without examination and he would like the same opportunity.

Mr. Rod Smith and Mr. Chad B. Seibel, City of McMinnville Wastewater Treatment Plant, 230 East Second St., McMinnville, OR 97128; June 23, 1988 letter. Mistrs Smith and Seibel hope that special considerations will be given to those individuals who were not grandfathered into the collection system certification program. If individuals meet the requirements, they should have an equal opportunity to become certified without examination. Both feel some form of combination certification should be available at all levels to lessen the costs to maintain more than one certificate. This

would especially be needed if maintenance and/or laboratory personnel came into the program.

Ms. Diana Glynn, City of Halfway, PO Box 738, Halfway, OR 97834; June 14, 1988 letter. Ms. Glynn requested the rules contain an opportunity to allow collection system certification without examination. The City has one person who does both water and wastewater systems. The City also requests that some form of combination certificates be available to lessen the cost to the City's single operator.

Mr. Larry Staffer, City of Wood Village, 2055 N.E. 238th Dr., Wood Village, OR 97060-1095; June 15, 1988 letter. Mr. Staffer requests an extension of the opportunity to grandfather into the wastewater collection program.

Mr. Jack Harris, City of Depoe Bay, PO Box 8, Depoe Bay, Oregon 97341; May 26, 1988 letter. Mr. Harris supports extending the opportunity to grandfather into the collection systems program, so long as those individuals are qualified.

Mr. Clarence A. Gross, PO Box 63, Adams, OR 97810; April 4, 1988 letter. Mr. Gross expressed that the City of Adams City is small and on septic tanks. Mr. Gross spends considerable time helping in the protection of good water. The cost to the City for a certified person will cost \$500.00 dollars and they must carry a \$10 million insurance policy. He believes this is too out-of-line.

OREGON ADMINISTRATIVE RULES

CHAPTER 340. DIVISION 12 - DEPARTMENT OF ENVIRONMENTAL QUALITY

DIVISION 12

CIVIL PENALTIES

Introduction

340-12-005 [DEQ 33, f. 12-17-71, ef. 1-1-72;
Repealed by DEQ 78,
f. 9-6-74, ef. 9-25-74]

Notice Provisions

340-12-010 [DEQ 33, f. 12-17-71, ef. 1-1-72;
Repealed by DEQ 78,
f. 9-6-74, ef. 9-25-74]

Classification and Schedule for Violation of Air Quality

340-12-015 [DEQ 33, f. 12-17-71, ef. 1-1-72;
Repealed by DEQ 78,
f. 9-6-74, ef. 9-25-74]

Classification and Schedule for Violation of Water Quality

340-12-020 [DEQ 33, f. 12-17-71, ef. 1-1-72;
Repealed by DEQ 78,
f. 9-6-74, ef. 9-25-74]

Classification and Schedule for Violation of Solid Waste

340-12-025 [DEQ 33, f. 12-17-71, ef. 1-1-72;
Repealed by DEQ 78,
f. 9-6-74, ef. 9-25-74]

Definitions

340-12-030 Unless otherwise required by context, as used in this Division:

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

(2) "Director" means the Director of the Department or the Director's authorized deputies or officers.

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

(4) "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, 467, or 468.

(5) "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.

(6) "Respondent" means the person against whom a civil penalty is assessed.

(7) "Violation" means a transgression of any statute, rule, standard, order, license, permit, compliance schedule, or any part thereof and includes both acts and omissions.

Stat. Auth.: ORS Ch. 468

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 22-1984, f. & ef. 11-8-84

Consolidation of Proceedings

340-12-035 Notwithstanding that each and every vio-

lation 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.

Stat. Auth.: ORS Ch. 468

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74

Notice of Violation

340-12-040 (1) Except as 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 advance 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; or

(F) The penalty to be imposed is for a violation of ORS 459.410 to 459.450 and 459.460 to 459.690, or rules adopted or orders or permits issued pursuant thereto.

Stat. Auth.: ORS Ch. 459 & 468

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 25-1979, f. & ef. 7-5-79; DEQ 22-1984, f. & ef. 11-8-84; DEQ 16-1985, f. & ef. 12-3-85

Mitigating and Aggravating Factors

340-12-045 (1) In establishing the amount of a civil penalty to be assessed, the Director may consider the following factors:

(a) Whether the respondent has committed any prior violation, regardless of whether or not any administrative, civil, or criminal proceeding was commenced therefore;

(b) The 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 opportunity and degree of difficulty to correct the violation;

(h) The respondent's cooperativeness and efforts to correct the violation for which the penalty is to be assessed;

OREGON ADMINISTRATIVE RULES

CHAPTER 340, DIVISION 12 - DEPARTMENT OF ENVIRONMENTAL QUALITY

(i) The cost to the Department of investigation and correction of the cited violation prior to the time the Department receives respondent's answer to the written notice of assessment of civil penalty; or

(j) Any other relevant factor.

(2) In imposing a penalty subsequent to a hearing, the Commission shall consider factors (a), (b), and (c), of section (1) of this rule, and each other factor cited by the Director. The Commission may consider any other relevant factor.

(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.

Stat. Auth.: ORS Ch. 468
Hills: DEQ 78, f. 9-6-74, cf. 9-25-74; DEQ 22-1984, f. & cf. 11-8-84

Air Quality Schedule of Civil Penalties

340-12-050 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 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.

(3) Not less than twenty-five dollars (\$25) nor more than ten thousand dollars (\$10,000) for any other violation.

Stat. Auth.: ORS Ch. 468
Hills: DEQ 78, f. 9-6-74, cf. 9-25-74; DEQ 5-1980, f. & cf. 1-28-80; DEQ 22-1984, f. & cf. 11-8-84

Noise Control Schedule of Civil Penalties

340-12-052 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 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 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.

Stat. Auth.: ORS Ch. 467 & 468
Hills: DEQ 101, f. & cf. 10-1-75; DEQ 22-1984, f. & cf. 11-8-84

Water Pollution Schedule of Civil Penalties

340-12-055 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 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 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;

(c) Any discharge of wastewater 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 twenty-five dollars (\$25) nor more than ten thousand dollars (\$10,000) for any other violation.

(4)(a) In addition to any penalty which may be assessed pursuant to sections (1) through (3) 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 (3) 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.

Stat. Auth.: ORS Ch. 468
Hills: DEQ 78, f. 9-6-74, cf. 9-25-74; DEQ 22-1984, f. & cf. 11-8-84; DEQ 17-1986, f. & cf. 9-18-86

On-Site Sewage Disposal Systems Schedule of Civil Penalties

340-12-060 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 systems by service of a written notice of assessment of civil penalty upon the respondent. The amount of such civil penalty shall be determined consistent with the following schedule:

(1) No less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) upon any person who:

WASTEWATER SYSTEMS PERSONNEL CERTIFICATION
ADVISORY SUBCOMMITTEE MEETING

Friday, July 29, 1988

DEQ Headquarters

Portland, Oregon

10 a.m. to 2 p.m.

Committee Members Present: Chris Mack, Chairperson
Thom Day
Don Caldwell
Wayne McGehee
Woodie Muirhead

Others Present: Carl Andresen, DEQ
Mary Halliburton, DEQ
Shirley Kengla, DEQ

Ms. Chris Mack, Chairperson, opened the meeting. The minutes of the April 18, 1988, meeting were approved.

The Committee opened discussion on the Department of Environmental Quality draft summary of issues developed from the oral and written testimony received during the public hearings period. The issues discussed were:

1. Allowing a period of time for personnel to qualify for the collection system certification through criteria of a combination of experience and education identified in the voluntary collection certification program with the exception that no written examination be required (Grandfathered).

The Committee discussed the length of time for the open enrollment, allowing new applications and reapplication for a higher grade, means by which the experience submitted can be confirmed, and the need to ensure all collection personnel will receive information on the opportunity to make application.

COMMITTEE RECOMMENDATION. The proposed rules should allow individuals who qualify to apply for a new collection certification or a upgrade of a current collection certification until May 1, 1989. Each application should include an affidavit confirming experience that includes the individuals who may be contacted to confirm the acquired experience.

2. Allowing personnel in the Voluntary wastewater certification program who had allowed their certificate to lapse more than three years, to renew their certificate without having to reexamine.

The Committee discussed the testimony submitted concerning the renewing of lapsed certificates under the voluntary certification program and proposed final rules.

COMMITTEE RECOMMENDATION. All personnel who have not renewed their voluntary certificate for a period over three years must reexamine and pass a written exam in order to become current in the voluntary program. During the period until May 1, 1989, individuals who have a certificate that has not lapsed longer than three years may apply for renewal and obtain certificates, if qualified, without examination. The proposed final rules should specify renewal within 180 days. If a renewal application is not submitted within 180 days of the renewal date, a new application, including examination, would be required to become recertified.

3. Clarifying the criteria for the provisional certificate and the allowance for students in a wastewater two year degree program to receive some experience credit for their training under the provisional certificate.

The Committee discussed the length of time a provisional certificate was valid, when the Grade Level I exam may be taken, the requirement to be employed to receive a provisional certificate, and whether credit should be allowed in the criteria for experience for a two year degree in wastewater.

COMMITTEE RECOMMENDATION. Qualifications for the provisional certificate should require an individual to be employed and supervised by certified personnel. The term of the provisional certificate should be for 12 months within which the person must successfully pass of the Level I examination. This would allow the individual to be certified at Level I for the time period remaining in the certification period. The provisional certificate would be valid for a minimum of 12 months and, if the individual does not pass the Level I exam during that period, a reapplication for the provisional certificate must be made. Individuals may take the Level I exam at any time during the 12 months of the provisional certificate. The Committee recommended the proposed rules for the criteria of the provisional certificate remain the same and no credit be given for experience to those who have received special education experience in wastewater. Experience credits should be actual experience gained by working in a wastewater system.

4. Testimony requesting that combination certificates be allowed for both Level I and Level II certification and systems.

The Committee discussed combination, water/wastewater, wastewater collection/operator certification, the fees for combination certificates, and the examination requirements for combination certificates.

COMMITTEE RECOMMENDATION. Combination certificate be provided at renewal for wastewater system personnel who hold a operator and collection system certificate in Level I or II. The combination certificate would require the individual to pay a renewal fee (\$40.00) for only one of the certificates of the combination certificate. Since the Health Division and DEQ have been unable to resolve the issue of allowing a combination certificate for water/wastewater, the Committee recommends that both agencies include in their report to the 1989 Legislature the need to change the language in the statute to allow this combination certificate.

5. The definition and responsibilities of a designated supervisor, and the need of a part-time supervisor to be on-call 24 hours per day.

The Committee discussed the need to specify in the rules that a individual acting as a designated supervisor would not have to be physically available at all times. There is a need to allow for normal periods of time, such as vacation or sick leave, that a supervisor may be off-site and not physically available. The proposed requirement that a part-time supervisor under contract with an owner of a system under 75,000 gallons per day be available on-call 24 hours a day is too stringent.

COMMITTEE RECOMMENDATION. The definition of supervisor in the proposed rules remain as presently stated unless legal counsel finds that rules to require shift supervisors be certified can be adopted. That the rules allow the system owner a period of time to replace the designated supervisor. The rules should state that the system owner has the responsibility to ensure their system has a certified individual, either the designated supervisor or a certified individual be available to respond on-site.

6. The requirement that the qualifications for certification include part of the experience required for Levels III and IV be in direct responsible charge.

The Committee discussed testimony received.

COMMITTEE RECOMMENDATION. That direct responsible charge requirement not be included in the qualifications and the proposed rules remain as stated, requiring that experience in Class III and IV systems replace year for year the requirement for direct responsible charge experience.

7. Penalties, fines, and certificate revocation.

The statute, under Health Division administrative rule, does not have the authority to impose civil penalties, but only impose misdemeanor penalties. The statute does allow for the revoking of a certificate according to the language in the statute.

COMMITTEE RECOMMENDATION. The Department should pursue further legal counsel interpretation on the ability to fulfill the requirements of the statute regarding civil penalties. In addition, the Department should pursue adding an addendum to existing permits for each system that requires each system to comply with the statute for system personnel certification or be in violation of their permit.

8. Who must be certified. What are the statutory requirements concerning the individuals who must be certified.

Legal counsel review of the statute is needed to establish whether the rules can require shift operators to be certified. The statute is not explicit concerning who must be certified. Would any uncertified operator be subject to criminal penalties? It is imperative the proposed rules do not put individuals who operate wastewater systems in jeopardy.

COMMITTEE RECOMMENDATION. DEQ staff will obtain an Attorney General's recommendation concerning the statutory requirements. That DEQ staff will incorporate the legal findings, as necessary into the proposed rules concerning who must be certified and notify the Committee members of the legal review.

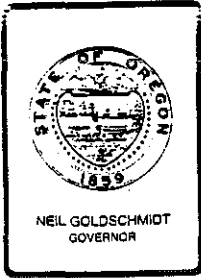
9. Clarifications of the required contact hours for each CEU and the number of CEUs required for renewal of a certificate.

COMMITTEE RECOMMENDATION. Two CEUs should be required for each renewal period and that Department staff support and assist training in all areas of the state. DEQ should include in the Agency's report to the Legislature the need to fund some type of training for the wastewater field.

10. COMMITTEE RECOMMENDATION. The remaining issues on the Department summary of issues be incorporated as stated. These issues are:

- a. The term "sewage" in the proposed rules be replaced by the term "wastewater".
- b. Words should be added to the proposed rules that the goal of the statute should be to protect the environment as well as the public health.
- c. The DEQ and Health Division should make every effort to coordinate the two programs to help keep the costs of the programs as low as possible.
- d. Although industrial waste systems are not covered by the statute, the DEQ should recommend to the Legislature in its 1989 report that these industrial systems also require certified supervisors as their systems impact the environment and the public health and should be included in future legislation.

- e. Exemptions, requests for exclusions and other special requests should be addressed by the Department under the proposed rules for variances.



Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item E, April 29, 1988 EQC Meeting

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

Background and Problem Statement

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

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

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

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

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

Alternatives and Evaluation

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

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

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

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

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

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

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

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

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

- c. Provisions that allow sewage treatment works owners until July 1, 1989 to have their system supervised by a certified operator at the classification level of the system. The statute specifies the Commission adopt rules to implement the program by September 27, 1988. The Advisory Committee recommended and Department staff support specifying the date in rule language by which owners must have their system supervised by an operator certified at the classification of the system or higher. Specifying a July 1, 1989 date will enable adequate opportunity for owners and supervisors to comply with these rules. This rule language is also specified for owners of systems less than 75,000 gallons per day who have an alternative to contract with a certified operator for part-time supervision of their system. Similarly, persons who are designated by the system owner to supervise their system must be certified by July 1, 1989.
- d. Provisions enabling the Director to issue certificates under this program to persons holding a current Oregon certificate under a voluntary program provided their certificates are issued or renewed before May 1, 1989. The Director would issue certificates to persons at the same classification and grade as their voluntary certificate and the certificates would be valid until June 30, 1989. After this date persons must either renew their certificate or obtain a higher grade level certificate to hold a current certificate. These provisions are consistent with the statute which includes a Special Certification Provision, ORS 448.420 to certify persons who hold a current certificate issued under an Oregon voluntary certification program.
- e. Provisions enabling the Director to issue certificates to new applicants and those seeking to upgrade their certificate who meet the minimum education and experience qualifications and satisfactorily pass an examination at the grade level for which certification is sought. Once issued, the certificate would be current for no longer than 2 years, but not less than the certification period remaining once certified.

- f. Provisions for the Department to schedule and administer examinations at least twice per calendar year. The examinations would be scheduled with 60 days public notice, and at other times as appropriate at the discretion of the Department.
- g. Provisions enabling the Director to renew certificates, without examination. After July 1, 1989, the renewal term would be every two years. For a certificate or renewal issued after July 1, 1989, the next and subsequent renewals of a certificate would be dependent upon the applicant demonstrating continued professional growth by obtaining two (2) Continuing Education Units (CEUs) within the term of the certificate or renewal. The continued education requirements is advocated by the Advisory Committee and supported by Department staff.

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

- h. Provisions enabling the Director to issue certificates, without examinations, to persons holding a current certificate issued in another state provided the minimum qualifications to obtain that certificate are substantially equivalent. The applicant would be subject to the requirements of renewal, except for the application fee. These provisions are consistent with the statute which includes a Special Certification Provision, ORS 448.420 for reciprocity.
- i. A fee schedule for new certification or upgrade certification which includes an examination fee; certificate renewal; reinstatement of a lapsed certificate; and certificate through reciprocity. The proposed fees are only slightly higher than the Pre-January 1988 Oregon Wastewater System Operators' Voluntary Certification Program fees (Attachment D). Presently the Department is receiving fees for administrating the EQC approved interim voluntary sewage works system operators certification program under this same fee schedule which was reviewed by the Legislative Emergency Board in January 1988.

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

- j. Provisions establishing an advisory committee to assist the Department in preparing examination and evaluating the needs of the certification program. This provision in the rules would enable continued representation of the operators and owners in advising the Department on examination preparation and program needs.
- k. Provisions that enable variances to rules, refusal to issue and revocation of certificates; and penalties for violation of rules. The statute specifies that variances to rules may be granted according to criteria developed by the Commission. The statute also specifies fines of not more than \$500 per day of violation or imprisonment for not more than six months or both. Criteria for assessing penalties and the appeal process are identified in the proposed rules. The proposed rules also allow the Director to revoke a certificate if rules are violated or any person knowingly makes any false statement, representation or certification in any application, record, report plan or other document filed or required to be maintained under the certification statute or any rule adopted pursuant to the statute. The Director may reinstate a revoked certificate of a person after 24 months if, in the Director's judgement, it is appropriate to do so.

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

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

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

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

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

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

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

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

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

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

1. Establish criteria for classifying sewage treatment works.
2. Define qualifications for certifying persons by classification and grade.
3. Enable the director to issue a certificate to persons who hold a current certificate issued under an Oregon voluntary operator program without examination until May 1, 1989.
4. Enable the Director to issue certificates including renewal certificates, renewal of lapsed certificates and certification through reciprocity.
5. Define the requirement that by July 1, 1989 all sewage treatment systems owners must be supervised by an operator who holds a valid certificate of a grade level equal to or higher than the sewage treatment works classification. For systems under 75,000 gallons per day flow, owners may contract for part-time supervision of their system with a certified operator.

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

Summation:

1. The 1987 Oregon Legislature enacted ORS 448 requiring the Environmental Quality Commission adopt rules by September 1988 to implement a program for certifying operators to supervise sewage works systems and to establish a schedule of fees to support the administration of the program.
2. The rule development process with the assistance of an Advisory Committee involved a review and evaluation of the voluntary certification program, the certification programs of other states, and appropriate requirements to comply with the legislation. The Advisory Committee solicited and received input from many operators and communities.
3. One alternative would be to adopt the voluntary certification rules presently being administrated by DEQ. This would result in rules that do not address the supervisory requirements of ORS 448, nor the recommendations of the Advisory Committee. Another alternative would be to adopt the proposed rules developed with the assistance of the Advisory Committee.
4. The Department of Environmental Quality has developed proposed rules to take to public hearing which substantially incorporate the recommendations of the Advisory Committee. The proposed rules address the statutory requirements of the Environmental Quality Commission. They are consistent with Legislative intent to help protect public health and Oregon's water resources through proper operation and maintenance of sewage treatment works systems by establishing requirements for personnel who supervise the operation of these systems (Attachment B).

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April 29, 1988
Page 10

Director's Recommendation:

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

Fred Hansen

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

WC3159

Chapter 448

1987 REPLACEMENT PART

Swimming Facilities; Water and Sewage Systems

SWIMMING FACILITIES

- 448.006 Definitions for ORS 448.005 to 448.080
- 448.011 Authority of Health Division
- 448.015 Applicability of ORS 448.005 to 448.080
- 448.020 Permit required to construct swimming facilities
- 448.030 Permit application; contents; issuance or denial; plan review and construction permit fees
- 448.035 Annual license required to operate; fees; expiration date
- 448.037 Variance; application; fee
- 448.040 Entry on premises for inspection purposes; reports
- 448.051 Inspection of facilities; suspension or revocation of permit or license; hearings on suspension or revocation
- 448.060 Closing facility
- 448.080 Disposition of moneys
- 448.085 Natural bathing places exempt
- 448.100 Delegation to county to administer ORS 448.005 to 448.060; standards; fees; suits involving validity of administrative rule

WATER SYSTEMS

(Generally)

- 448.115 Definitions for ORS 448.115 to 448.285
- 448.119 Application of ORS 448.119 to 448.285 to water systems
- 448.123 Purpose
- 448.127 Short title

(Administration)

- 448.131 Water quality, construction and installation standards; effect on existing facilities
- 448.135 Variances; notice to customers; compliance schedules; notice; hearing
- 448.140 Operation on permit
- 448.145 When permit may be issued; compliance schedule; hearing; notice
- 448.150 Duties of division
- 448.155 Personnel training; public information
- 448.160 Emergency plans
- 448.165 Local government water service plans
- 448.170 Division agreement to authorize local government to exercise duties
- 448.175 Division authority to order compliance
- 448.180 Waiver of construction standards
- 448.250 Remedy when system a health hazard; special master; sale of system
- 448.255 Notice of violation; content; hearing; order; appeal

- 448.285 Prohibited actions; nuisance abatement

(Federal Safe Drinking Water Act Administration)

- 448.273 Federal Safe Drinking Water Act administration
- 448.277 Health Division as administrator

(Civil Penalties)

- 448.280 Civil penalties; notice
- 448.285 Penalty schedule; factors to be considered in imposing penalty
- 448.290 When penalty due; notice; hearing; order as judgment

(Jurisdiction of Cities)

- 448.295 Jurisdiction of cities over property used for system or sources
- 448.300 City ordinance authority
- 448.305 Special ordinance authority of certain cities
- 448.310 Investigation of complaints
- 448.315 Special police to enforce ORS 448.295
- 448.320 Jurisdiction over violations of city ordinances
- 448.325 Injunction to enforce city ordinances

(Water Pipes and Fittings)

- 448.330 Moratorium of pipe and fittings for potable water supply; acceptability criteria; exceptions

OPERATOR CERTIFICATION FOR SEWAGE TREATMENT WORKS AND POTABLE WATER TREATMENT PLANTS

(Generally)

- 448.405 Definitions for ORS 448.405 to 448.470
- 448.407 Advisory committee to commission and division
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448.325 Injunction to enforce city ordinances. In cases of violation of any ordinance adopted under ORS 448.300 or 448.305 any city or any corporation owning a domestic water supply source or the community water supply system for the purpose of supplying any city or its inhabitants with water may have the nuisance enjoined by civil action in the circuit court of the proper county. The injunction may be perpetual. [Formerly 449.340]

(Water Pipes and Fittings)

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

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

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

(4) Notwithstanding subsection (1) or (3) of this section, the Assistant Director for Health

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

OPERATOR CERTIFICATION FOR SEWAGE TREATMENT WORKS AND POTABLE WATER TREATMENT PLANTS

(Generally)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Note: See note under 448.405.

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

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

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

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

Note: See note under 448.405.

(Sewage Treatment Works)

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

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

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

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

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

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

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

Note: See note under 448.405.

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

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

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

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

Note: See note under 448.405.

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

Sec. 20. Sections 3, 4, 8, 10, 11 and 15 of this Act [448.415, 448.453, 448.992, 448.994] first become operative one year after [September 27, 1987.] the effective date of this Act. [1987 c.635 §20]

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

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

Note: See note under 448.405.

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

Note: See note under 448.405.

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

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

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

Note: See note under 448.405.

(Potable Water Treatment Plants)

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

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

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

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

(d) Subject to the approval of the Joint Ways and Means Committee of the Legislative Assembly, or the Emergency Board if the legislature is not in session, establish a schedule of fees for certification under paragraph (c) of this subsection.

The fees established under the schedule shall be sufficient to pay the cost of the division in carrying out the provisions of ORS 448.450 to 448.470, 448.992 and 448.994.

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

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

Note: See note under 448.405.

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

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

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

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

Note: See notes under 448.405 and 448.415.

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

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

Note: See note under 448.405.

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

Note: See note under 448.405.

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

Note: See note under 448.405.

PENALTIES

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

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

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

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

(c) ORS 448.265 or 448.315 (2)(a). (Amended by 1967 c.344 §8; subsections (2) to (5) enacted as 1973 c.935 §177; 1975 c.254 §18; part renumbered subsection (5) of 468.990; 1983 c.271 §4)

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

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

Note: See notes under 448.405 and 448.415.

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

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

Note: See notes under 448.405 and 448.415.

PROPOSED
OREGON ADMINISTRATIVE RULES
DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 340
DIVISION 49
REGULATIONS PERTAINING TO CERTIFICATION OF SEWAGE TREATMENT WORKS
OPERATOR PERSONNEL

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Preface

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

- (a) Establish criteria for classifying sewage treatment works systems;
 - (b) Define the requirements of sewage treatment works system owners whose systems must be supervised by an operator who holds a valid certificate at a grade level equal to or greater than sewage treatment works classification.
 - (c) Define the minimum qualifications for certifying personnel who supervise the operation of sewage treatment works systems in accordance with sewage treatment works classifications;
 - (d) Define the requirements and fees for persons who apply for certification, and obtain certificates, including examination requirements, renewal certificates and certification through reciprocity.
 - (e) Establish criteria for variances from the rule requirements;
 - (f) Establish penalties for violations of these rules; and
 - (g) Assure a reservoir of qualified sewage treatment works operators that are certified to operate and maintain sewage treatment works systems in Oregon.
- (2) Certification, under these regulations, is available to all operators who meet the minimum qualifications in a given classification and grade. All operators are encouraged to apply for certification in the highest classification and grade consistent with their qualifications.

Definitions

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

- (1) "Approved Dry Weather Flow" means the average dry weather design capacity of the sewage treatment system as approved by the Department, or the population equivalent design of the system.
- (2) "Commission" means the Environmental Quality Commission.
- (3) "Continuing Education Unit (CEU)" means a nationally recognized unit of measurement for assigning credits for education or training that

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

- (4) "Contract Operations" means the sewage works system owner has a written contract with a sewage treatment systems operations company or individual for supervising the operation of the sewage works system in accordance with these rules.
- (5) "Department" means the Department of Environmental Quality.
- (6) "Director" means the Director of the Department of Environmental Quality or any official designee of the Director.
- (7) "Industrial Waste" means liquid wastes from an industrial or commercial process discharged into the sanitary sewer system for conveyance and treatment.
- (8) "NPDES" permit means a waste discharge permit issued in accordance with requirements and procedures of the National Pollutant Discharge elimination system authorized by the Federal Act and OAR Chapter 340, Division 45.
- (9) "Oral Examination" means an examination administered by the Department where the applicant verbally answers to written examination questions.
- (10) "Population" means the design population of the sewage works system represented as the number of people or the population equivalent the system is designed to serve. Equivalent population ordinarily is determined based on 70 gallons per person per day approved dry weather design flow or 0.17 lbs BOD₅ per person per day whichever is greater.
- (11) "Provisional Certificate" means a temporary certificate issued by the Department to a person meeting the requirements of OAR 340-49-030(1)(a)(A) and OAR 340-49-030(1)(a)(B).
- (12) "Post High School Education" means education acquired through programs such as short schools, bonafide correspondence courses, trade schools, community colleges, colleges, formalized workshops, seminars, etc. for which continuing education credit or college credit is issued by the training sponsor. One year of post high school education is equal to 30 college semester hours, 45 college quarter hours, or 45 CEUs.
- (13) "Sewage" means the water-carried human or animal waste, from residences, buildings, industrial establishments or other place, together with such groundwater infiltration and surface water as may be present. The admixture of domestic and industrial waste, or other byproducts, such as sludge, shall also be considered sewage.

- (14) Sewage treatment works, as defined in ORS 454.010, means any structure, equipment or process treating and disposing of domestic waste and sludge including industrial waste discharged to sewage treatment works. Other common terms that means the same are wastewater treatment systems, sewage works, and sewage works systems.
- (15) "Sewage Collection System" means the trunks, arterials, pumps, pump stations, piping and other appurtenances necessary to collect domestic and/or industrial liquid wastes from a community, individual, corporation or entity, which produces sewage or other liquid waste treatable in a community or private sewage treatment facility. Another common term that means the same is wastewater collection system.
- (16) "Sewage Treatment System Operator" means any person engaged in the on-site, day-to-day operation of a sewage treatment works system. It is not intended that this title shall include city or county managers, engineers, directors of public works or equivalent, whose duties do not include the actual operation or on-site supervision of facilities and/or sewage treatment works operator personnel. Other common terms that mean the same are wastewater treatment works operator and wastewater collection system operator.
- (17) "Supervise" means responsible for the technical operation of a sewage treatment works system performance which may affect the performance or the quality of the effluent produced by such works.
- (18) Supervisor means the person vested with the authority for establishing and executing the specific practice and procedures for operating the sewage treatment works system in accordance with the policies of the owner of the system and the permit requirements. The supervisor may be employed part-time when acting as the supervising party in a contractual agreement for sewage works systems with an approved dry weather design flow of less than 75,000 gallons per day. The supervisor is not required to be on site at all times. The supervisor or part-time supervisor must be available to the system owner and to any other operator.
- (19) "WPCF" permit means a Water Pollution Control Facilities permit to construct and operate a disposal system with no discharge to navigable waters. A WPCF permit is issued by the Department in accordance with the procedures of OAR Chapter 340, Division 14, and Division 45.

General Requirements

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

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

- (3) After July 1, 1989, any person employed to supervise the operation of a sewage treatment works system shall be certified at a grade level equal to or greater than the system classification that person supervises.
- (4) Owners of on-site sewage disposal systems permitted in accordance with ORS 454.605 are exempt from these requirements.
- (5) By July 1, 1989, and in accordance with permit conditions thereafter, each owner of a sewage treatment works shall file with the Department the name of the operator designated the responsibility of supervising the operation of their sewage treatment works system in accordance with these rules. The sewage treatment works system owner may redesignate or replace the designated operator with another properly certified operator at any time and shall notify the Department in writing within 30 days of replacement or redesignation of the operator certified in accordance with these rules.

Classification of Sewage Treatment Works Systems

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

(a) SEWAGE TREATMENT SYSTEMS

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

(b) SEWAGE COLLECTION SYSTEMS

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

- (2) Sewage treatment system classifications shall be derived by the total points assigned based on criteria shown in Table 1, OAR 340-49-025.
- (3) If the complexity of a sewage treatment system is not reflected in Table 1--Criteria for Classifying Sewage Treatment Systems (OAR 340-49-025), the Director may establish a classification consistent with the intent of the classification system, upon written notice to the sewage treatment system owner.

- (4) If deemed appropriate by the Director, sewage collection systems may be classified at a higher level based on the complexity of the system and/or the number of pump stations.
- (5) The Director will advise sewage treatment works system owners covered by a WPCF or NPDES permit of the classification of their system(s).
- (6) The Director may change the classification of a sewage treatment works system upon written notice to the system owner and shall give the owner a reasonable time to comply with the requirements of the new classification.
- (7) The sewage system owner may submit a written request to appeal the classification of their system in accordance with OAR 340-49-075, variances.

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

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

(a) Sewage Treatment System Operator Levels.

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

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

Education: Completion of high school or equivalency, and

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

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

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

Education: Completion of high school or equivalency, and

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

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

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

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

Education: Completion of high school or equivalency, and

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

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

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

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

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

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

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

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

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

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

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

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

(b) Sewage Collection System Operator

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

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

Education: Completion of high school or equivalency, and

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

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

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

Education: Completion of high school education or equivalency, and

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

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

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

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

Education: Completion of high school education or equivalency, and

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

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

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

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

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

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

Education: Completion of high school or equivalency, and

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

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

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

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

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

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

- (c) **Sewage Treatment System and Water System Grade Level 1 Combination Certificate.** Persons may qualify at renewal for this certification classification provided they meet the minimum qualifications set forth in OAR 340-49-030(1)(a)(A) and OAR 333-61-260 for Sewage Treatment System and Water Treatment System Operator Grade Level 1.
- (d) **Sewage Treatment System and Sewage Collection System Grade Level 1 Combination Certificate.** Persons may qualify at renewal for this certification classification provided they meet the minimum qualifications set forth in OAR 340-49-030(1)(a)(B) and 030(1)(b)(B) for Sewage Treatment System and Sewage Collection System Operator Grade Level 1.
- (2) The Department shall give credit to meet experience qualifications set forth in OAR 340-49-030(1)(a) through 030(21)(c) for related experience up to 50 percent, but not to exceed 6 months of experience in the following areas:

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

- (3) Education credit can be gained in programs such as short schools, bonafide correspondence courses, trades schools, community colleges, formalized workshops, seminars, and other training for which CEU is given by the training sponsor.
- (4) The Department shall consider the relevance of the subject matter covered at seminars, workshops, conferences, and other training sessions when evaluating the education qualifications of an applicant for certification.
- (5) The applicant for certification has the responsibility for providing experience and education records to the Department for screening and evaluating the applicant's qualifications.

Certification of Sewage Treatment Works Operators

- 340-49-035 (1) The Director shall issue certificates to persons holding a current voluntary Oregon sewage treatment operator or collection system certificate provided the certificate was issued or renewed before May 1, 1989. These certificates shall be issued for the same classification and grade as the certificate issued under the voluntary program and shall be valid until June 30, 1989.
- (2) The Director shall issue certificates to persons meeting the education and experience qualifications set forth in OAR 340-49-030, and who satisfactorily pass the exam for the classification and grade level sought. Upon filing of these rules and until May 1, 1989 certificates issued shall be valid until June 30, 1989. Thereafter, issued certificates shall be valid for the term of the certificate.
 - (3) Each certificate issued shall designate the classification and grade.

Certificate and Renewal

- 340-49-040 (1) Upon filing of these rules, and until May 1, 1989, renewal certificates shall be valid until June 30, 1989.
- (2) Beginning July 1, 1989 and thereafter, a certificate may be renewed for a two year term to those who submit a complete renewal application and payment of the fee required by OAR 340-49-065.
 - (3) The Department will send each certificate holder a renewal notice at least 60 days before the certificate lapses. Notice will be mailed to the last address of record. Failure to receive notice does not relieve the holder of responsibility to renew the certificate.
 - (4) For a certificate or renewal issued after May 1, 1989, the next and subsequent renewal of a certificate shall be based on demonstration of continued professional growth in the field. An operator shall submit satisfactory evidence of completion of approved training of a minimum of two (2) CEUs as a condition for renewal of the certificate. An

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

Reinstatement of Lapsed Certificates

- 340-49-045 (1) An operator who seeks renewal of a lapsed certificate may submit an application for renewal within 180 days after the certificate lapses. Upon receipt of application, including proof of compliance with OAR 340-49-040(4), and payment of the fee required by OAR 340-49-065, the Director will renew the certificate.
- (2) The Department, at its discretion, may require re-examination of an operator whose renewal application is received more than 180 days after the certificate lapses.

Certificate and Reciprocity

- OAR 340-49-050 (1) The Director may accord a person with a valid certificate in another state or province reciprocal treatment and issue a certificate without examination when, in the judgement of the Director, the certification requirements in the other state or province are substantially equivalent to the requirements set forth in these rules.
- (2) When such reciprocity is granted, the person shall be subject to the same requirements of renewal as any other person initially certified by these rules.

Examinations

- 340-49-055 (1) Persons applying for a new certification or to be certified at a higher grade level must be examined, file a completed application and payment of the fee required by OAR 340-49-065 at least 30 days before the date set for an examination, and meet the education and experience qualifications for the classification and grade level sought.
- (2) The Department will notify the applicant of eligibility for an examination.
- (3) Persons accepted for examination shall be examined at the next scheduled examination date, unless the Department at its discretion, chooses to administer an exam at times in addition to the scheduled exams.
- (4) A minimum score of 70 percent correct answers is required to satisfactorily pass an examination.
- (5) Any person who fails an examination may repeat such examination at a later date upon submittal of a complete application and fee.

- (6) Examination shall consist of material in content and level appropriate to each classification and grade level.
- (7) Examinations shall be administered by the Department or its designee, at places and times scheduled by the Department, with 60 days public notice of the schedule. A minimum of two examinations shall be scheduled per calendar year.
- (8) The Department, at its discretion, may administer written or oral examinations at times other than those scheduled.
- (9) All examinations will be graded by the Department, or its designee, and the applicant shall be notified of grade attained and pass or fail. Examinations will not be returned to the applicant.

Certification Fees

- 340-49-060 (1) All persons applying for certification shall be subject to the fee schedule contained in OAR 340-49-065 (Table 2).
- (2) Upon the Department receipt of an application and fee, the fee shall be non-refundable, unless no action has been taken on the application, the Department determines that no fee is required, or that the Department determines the wrong application has been filed.
 - (3) All fees shall be made payable to the Department of Environmental Quality.

Contracts for Part-Time Supervision

- 340-49-070 (1) When an owner enters into a contract for part-time supervision with a certified operator to comply with OAR 340-49-015 (2), the contract shall include the following:
- (a) The parties involved, including names, addresses and phone number of each, and certification class and grade of the operator(s).
 - (b) The specific starting date and expiration date of the contract.
 - (c) The minimum number of visits to be made to the sewage treatment works system(s) by the contract supervisor.
 - (d) The duties and responsibilities of each party involved.
- (2) The contract for supervision shall be sufficient such that the contracted certified operator shall be available on 24-hour call and able to respond on-site upon request.
 - (3) The Director may require changes to the contract if the sewage treatment system is in violation with the limitations of the permit.

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

Variances

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

Refusal and Revocation of Certificate and Appeal Process.

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

- (a) Obtaining a certificate by fraud, deceit, or misrepresentation, or
 - (b) Proven gross negligence, incompetence or misconduct in performance of duties as an operator, or
 - (c) Failure of the operator to comply with the lawful orders, rules or regulations of the Department, or
 - (d) False or fraudulent report or record by the operator regarding the operation or supervision of the treatment system.
- (2) If the Director believes that good cause exists to suspend or revoke a person's certificate, the Director shall give notice to the person of opportunity for hearing in accordance with 340-11-100.
- (3) The Director, after a period of twenty-four (24) months, may reinstate any person whose certificate has been revoked upon presentation of evidence satisfactory to the Director, which warrants such reinstatement. The Director may require re-examination as a condition of the certificate reinstatement.

Advisory Committee

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

- (a) Assist in developing examinations.
- (b) Evaluate the effectiveness of the program.
- (c) Recommend needs of the program.

- (2) Advisory Committee meetings shall be scheduled at least twice a year.
- (3) The composition of the Committee shall include, at a minimum, representatives of operators, system owners, and the educational community.

TABLE 1

OAR 340-49-025

Criteria for Classifying Sewage Treatment Systems

(1) <u>Design Population or Population Equivalent</u>	<u>Points</u>
Less than 750	0.5 point
751 to 2000	1 point
2001 to 5000	1.5 points
5001 to 10,000	2 points
Greater than 10,000	3 points plus 1 point per 10,000
(2) <u>Approved Dry Weather Design Flow (MGD)</u>	
Less than 0.075	0.5 point
Greater than 0.075 to 0.1 MGD	1 point
Greater than 0.1 to 0.5 MGD	1.5 points
Greater than 0.5 to 1.0 MGD	2 points
Greater than 1.0 MGD	3 points plus, 1 point per 1 MGD
(3) <u>Unit Processes</u>	
<u>Pre-Treatment</u>	
Comminution	1 point
Grit Removal, Gravity	1 point
Grit Removal, Mechanical	2 points
Screen(s), Mechanical	1 point
Influent Pump Station	2 points
Flow Equalization Unit	1 point
<u>Primary Treatment</u>	
Community Septic Tank(s)	2 points
Clarifier(s)	5 points
Flotation Clarifier(s)	7 points
Chemical Addition System	2 points
Imhoff Tank	3 points
<u>Secondary Treatment</u>	
Low Rate Trickling Filter(s)	7 points
High Rate Trickling Filter(s)	10 points
Trickling Filter - Solids Contact System	12 points
Single mode activated sludge less	6 points

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

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

(4) Effluent Permit Requirements

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

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

Conveyance and Treatment of Industrial wastes covered by the national pretreatment program	4	points
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(6) Sampling and Laboratory Testing

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

outside laboratory.

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

TABLE 2

OAR 340-49-065

Fee Schedule for Sewage Treatment Works Systems Operator Certification.

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

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

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

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

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

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

The Sewage Works Operator Certification Advisory Subcommittee members are:

1. Ms. Chris Mack, Chairperson, representing sewage works personnel and systems in Northwest Oregon.
2. Wayne McGehee, representing sewage treatment works personnel and systems in Mid and North Coast Oregon.
3. Bob Clausen, Oregon Community Colleges, representing the educational community.
4. Jean Chamberlain, Oregon Nurses Association, private citizen.
5. Don Caldwell, representing sewage treatment works operators and systems in Eastern Oregon.
6. Woodie Muirhead, representing sewage treatment works personnel and systems in Central and Southern Oregon.
7. Thom Day, representing Contract Operations.
8. Phil Fell, League of Oregon Cities, representing small communities statewide.
9. Mike Wolski, representing sewage collection system operators.

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

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

RECOMMENDATIONS FOR DRAFT RULES

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

Classification of Sewage Treatment Works

1. Use the four classifications of sewage treatment and sewage collection systems of the present voluntary operators certification program modified to reflect the following:
 - a. Create seven criteria for classifying sewage treatment systems as follows: population or population equivalent, raw waste variation and unit processes, design flow, permit effluent limitations and sampling and laboratory testing.
 - b. Modify the points for elements within each of these criteria to eliminate duplication.
 - c. Establish four classes of sewage collection systems based on approved dry weather design flow and complexity such as the number and type of pump stations.
 - d. Add language to enable the Director to change the classification of a system with proper notice to the sewage treatment works system owner.

Qualifications for Personnel to be Certified

1. Use the education and experience criteria of the present voluntary operators certification program, but change the requirements for education and experience in each grade level to reflect the qualifications they recommended area appropriate to supervise the four levels of systems. Have the certification grade level correspond to the classification level of the sewage treatment system.
2. Eliminate the "Direct Responsible Charge" requirements as an element of the experience requirements for Grade Levels 3 and 4.
3. Delete the condition of sequential certification to upgrade certification.

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

Who must be Certified?

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

1. Require all operators be certified, or alternatively,

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

Require certified operator or part-time supervisor who is certified at the grade level corresponding to the system classification.
2. Allow additional time after September 1988 for sewage system personnel and owners to comply with these rules.
3. Request the Department seek council and review on who must be certified in accordance with ORS 448.

Fee Schedule

1. Use the fee schedule of the DEQ sewage treatment works temporary rules for new certification, renewals, examination, reciprocity and reinstatement lapses, but change the term of the certificates and renewals to two years.
2. Coordinate with the Health Division to provide for a combined water/sewage certification renewal for Grade Level 1 operators.
3. Provide for a combined sewage treatment/sewage collection certification renewal for Grade Level 1 Operators.

Renewal Certification Training Requirements

1. Require two CEUs within the two year renewal period for each level of certification.
2. Recommend the Department establish a list of approved training that qualifies for CEU credit and is available around the state.

Examination

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

Reciprocity

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

Contract Operations

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

Variances and Penalties

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

Advisory Committee

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

WJ390

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

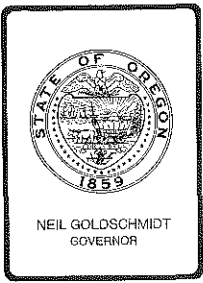
Comparison of Total Fees for Certification
for a Two Year Certification Term

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

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

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

WC3160



Environmental Quality Commission

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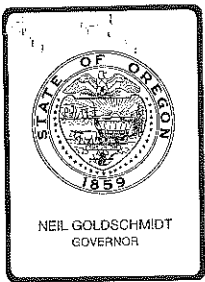
Agenda Item No. 9: Appeal of On-Site Sewage Disposal System Variance Denial by Lester W. and Norma J. Fread

Action on this agenda item was deferred from the July 8, 1988, Commission meeting to afford the Freads the opportunity to personally appear before the Commission.

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 area's 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.

Sherman Olson, Dr. Robert Paeth, and Mark Ronayne of the Water Quality Division and Don Branhall with the Department's Central Region office are present to answer any questions you might have.

WJ696



Environmental Quality Commission

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EXECUTIVE SUMMARY

To: Environmental Quality Commission
From: Fred Hansen, Director *Russell Taylor*
Subject: Agenda Item 6, September 9, 1988, EQC Meeting.

Appeal of On-Site Sewage Disposal System Variance Denial by
Lester W. and Norma J. Fread

Lester and Norma Fread own two adjoining lots (Lots 46 and 50, Deschutes River Tracts) near Tumalo, Oregon. They currently live in a residence on one lot (Lot 50) and wish to locate a mobile home on the other lot (Lot 46) so they can attend to the needs of elderly relatives who require periodic care. The Fread lots are in an unsewered area where residents discharge their sewage to individual septic tank-soil absorption systems. Although a public water supply is available to the lots in the residential subdivision where the Freads live, many property owners, including the Freads and their nearest neighbors, obtain their drinking water from individual domestic wells.

Wells withdraw groundwater from a shallow aquifer (20 feet to the static water level). The aquifer is overlain by coarse textured soils (loamy sand) of volcanic origin which are rapidly to very rapidly draining. Soils are underlain by a mixture of unconsolidated stream deposited materials (e.g., pumice, boulders and ash) which extend to the aquifer. Like the soils above, geological materials are considered to be rapidly to very rapidly draining.

To locate a mobile home on Lot 46, the Freads need to either construct an individual septic tank-soil absorption system on that lot, or, under an on-site rule permitted hardship Authorization Notice, pipe septic tank effluent from the proposed mobile home to the on-site system currently serving their residence on Lot 50.

The Freads prefer to develop a standard septic tank-soil absorption system on Lot 46. However, inadequate area exists on the lot to develop the desired system due to the presence of wells on both Fread lots and on neighboring lots immediately north, south, east, and west of Lot 46. Oregon on-site rules require a minimum 100 feet separation distance between a septic tank-soil absorption system and the nearest well. The individual sewage disposal system proposed by the Freads would be about 60 feet from two wells. Minimum well setbacks required under Oregon on-site rules were

established to reduce the likelihood of well contamination from inadequately treated septic tank effluent that might move into well bores under conditions of saturated flow.

The Freads were unable to acquire the septic tank-soil absorption system permit they desired because of the inability to meet minimum separation distances between wells and on-site systems. They applied for a variance from rules which specify minimum on-site system to well setbacks in accordance with procedures established by statute. The Freads request for variance was denied. The Department's variance officer was not able to find that strict adherence to on-site rules and standards was inappropriate for cause; nor was he able to determine that special physical conditions exist which rendered strict rule compliance unreasonable, burdensome, or impractical.

The Freads are appealing the variance officer's decision to the Commission.

At issue is whether the public health and groundwater would be adequately protected if the Commission were to grant the Freads the right to construct a septic tank-soil absorption system on Lot 46 when the area required for the system's development would be located about 60 feet from two wells. In considering this question, it is important to note that the closer wells are to on-site systems, the more likely they are to becoming contaminated by inadequately treated septic tank effluent. The possible presence of water laid strata which might cause inadequately treated septic tank effluent to quickly move laterally to well bore locations increase the chance for well contamination. Thus, there would be a potential for greater risk to public health and groundwater quality if an on-site system would be located closer (60 feet) from wells rather than 100 feet or more from wells.

If the EQC does elect to grant the Freads the right to place an on-site system on the lot in question without abandoning wells on that lot and Lot 50 under Water Resource Commission Rules, the Commission could specify the type of on-site system to be permitted or it can leave system selection to the discretion of Deschutes County.

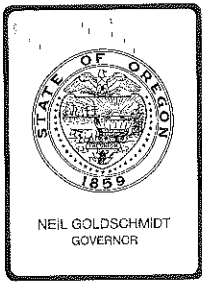
Of the various types of on-site systems available, a sand filter system would afford the greatest level of treatment; result in the lowest potential risk to the public health; and have the least significant impact on groundwater. Oregon experimental intermittent sand filter studies have demonstrated BOD₅, suspended solids, total nitrogen, fecal coliform, and total coliform were reduced 98%, 93%, 49%, 3 logs and 2 logs, respectively. In contrast, a standard gravity feed soil absorption system would provide the least amount of protection to the public's health and groundwater due to its tendency to allow inadequately treated effluent to move from trenches under conditions of saturated flow. Another variety of system which might be considered for placement on Lot 46 would be a pressure distribution system. Oregon experimental studies indicate pressurized distribution of septic tank effluent under controlled application rates will prevent swift movement of septic tank effluent through rapidly draining soil and

geological materials. A third option would be to allow the installation of an individual septic tank-gravity fed soil absorption system. This system would occupy approximately the same area as a pressurized distribution system. However, localized areas of disposal field could be prone to rapid, saturated movement of insufficiently treated effluent to groundwater or stratum draining to existing wells. This variety of system would be the least desirable due to the more extensive area it requires to accommodate system placement and the relative risk it would pose to wells and groundwater.

It is important to note that two viable options appear to be available to the Freads which would facilitate their placement of a mobile home on Lot 46. If they abandon wells on Lots 46 and 50 according to Water Resource Commission rules, sufficient area would exist to accommodate the construction of an on-site sewage treatment and disposal facility which met EQC on-site rules. Under this option, the Freads could secure water for drinking and irrigation purposes from the Laidlaw Water District.

The Freads also have the option to locate a mobile home on Lot 46 via a hardship Authorization Notice issued by Deschutes County. Under this option, a septic tank would be located on Lot 46 to receive sewage from the mobile home. Drainage from the septic tank would be piped to the on-site system serving the Freads existing residence. No abandonment of wells would be required.

Since at least two viable means appear to exist which would accommodate mobile home placement on Lot 46, it does not appear reasonable for the Commission to grant the Freads the right to locate an individual on-site system closer than 100 feet from existing wells.



Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission
From: Director *Spacia Taylor*
Subject: Agenda Item 9, September 9, 1988, EQC Meeting

Appeal of On-Site Sewage Treatment and Disposal System
Variance Denial by Lester W. Fread and Norma J. Fread

Problem Statement

Lester and Norma Fread own a 0.37 acre parcel (Lot 46, Deschutes River Tracts). They desire to locate a mobile home and standard septic tank-soil absorption system on that lot. Wells where the Freads proposed locating their soil absorption system were too close to the on-site system placement area to allow Deschutes County to issue a system construction permit. The Freads applied to the Department of Environmental Quality for variances from on-site rules which specify minimum well and property line setbacks.

The variance officer, Sherman Olson, denied granting the Fread's variance request. He did not find that strict compliance with on-site rules and standards were inappropriate for cause, nor was he able to determine that special physical conditions rendered strict rule compliance unreasonable, burdensome or impractical. In making his determination, the variance officer evaluated information related to the nature of soil and geological materials of the site; the depth to groundwater used for drinking purposes; the relationships between wells and the proposed on-site system; the potential for contamination of wells by the placement of the desired septic tank-soil absorption system; and the fact that an acceptable public water supply was readily available to Lot 46. The variance officer was unable to conclude that a reduction of separation distance between the prospective on-site sewage disposal system and nearby wells would be adequate to protect the public health and welfare and state waters as required under law.

In the Department's denial letter, the Freads were advised that if they abandoned wells on their existing homesite and the property in question by a method acceptable under State Water Resource Commission Rules, they could approach Deschutes County for a construction-installation permit which would facilitate the placement of an on-site system on Lot 46 and would meet EQC rules. As an additional option, the Freads were advised that they could approach Deschutes County for a personal hardship Authorization Notice. An Authorization Notice would allow the Freads to place the mobile home they desired on Lot 46 without the abandonment of any wells. Wastewater generated by the mobile home would drain to a septic tank located on the

lot. Septic tank effluent would be piped to the existing on-site system currently serving the Freads' residence on Lot 50.

The Freads have appealed the denial to the EQC. It appears they view the nature of soil and geological materials, depth to the watertable, and distance to wells adequate to protect public health and prevent groundwater degradation if a standard system were to be placed on that property.

Background

The pertinent legal authorities are summarized in Attachment A.

Lester and Norma Fread own a 0.37 acre tract near Tumalo, Oregon in Deschutes County (Lot 46, Deschutes River Tracts). The lot was evaluated and determined unsuitable for on-site sewage disposal system placement by Deschutes County on September 23, 1987 (Attachment B).

The Freads initially filed a variance application with DEQ's Bend office (Attachment C) after Deschutes County and DEQ Central Region staff advised Mr. Fread that a variance might be possible. Mr. Fread had indicated that an on-site system could be installed on Lot 46 which would be at least 90 feet from the nearest wells on neighboring lots.

The Department's Bend office directed the variance application to the Department's Portland office for processing. The application was received by the Water Quality Division on December 28, 1987. On December 30, 1987, Department staff called Mr. Fread and requested that he furnish a land use clearance statement from Deschutes County and a \$225 processing fee. On December 31, the Department received a land use clearance letter from Deschutes County. The Department's fiscal office received the necessary variance processing fee from the Freads on January 7, 1988.

Through their variance application, the Freads sought approval of a standard septic tank-soil absorption system. They indicated a soil absorption system (initial system and reserve area for a replacement system) could be developed that would be a minimum of 90 feet from adjacent wells to the north and south. The Freads applied for variances from the following Oregon Administrative Rules:

1. OAR 340-71-150(4)(a)(A)&(B)---which require all criteria for approval identified in standard system rule OAR 340-71-220 and/or alternative systems rules 340-71-260 through 340-71-360 to be met, and mandate each parcel contain sufficient usable area to accommodate an initial and replacement on-site system;
2. OAR 340-71-220(2)(i); Table 1, Item 1---which requires a soil absorption facility be at least 100 feet from groundwater supplies, including wells; and

3. OAR 340-71-220(2)(i); Table 1, Item 10---which requires a soil absorption facility be at least 10 feet from property boundaries.

On January 5, 1988, Sherman Olson, DEQ variance officer, conducted a variance hearing held at the Fread residence, (located on Lot 50, adjacent to the subject property). During the hearing, Mr. Fread stressed he needed a quick decision on the variance because he had to make a decision to purchase a mobile home by noon, January 7, 1988. Prior to the hearing, Mr. Olson evaluated the proposed on-site development area, and with the aid of Don Bramhall, DEQ Central Region, made measurements from four (4) wells on abutting properties to the north, south, east, and west (Attachment D). At that time, Mr. Olson noted the application did not indicate all relevant wells. He also observed that the 90 foot separation distance represented in discussions prior to the hearing and in the application were inaccurate. Mr. Olson determined the maximum distance that could be maintained between the proposed soil absorption system development area on Lot 46 and wells on adjacent lots to the north and south was about 60 feet. This was substantially different than the 90 foot separation distance noted in the variance application.

Oregon Administrative Rules governing on-site system siting require a 100 foot minimum separation distance between groundwater supplies, including wells and on-site system placement areas. In the past, variances to minimum well to system setback requirements have been granted, on a case-by-case basis, when a variance officer determined the type of on-site system proposed, well construction, soil, and geological characteristics were adequate to prevent groundwater degradation. During the hearing, Mr. Fread was advised that the record would be kept open to (1) receive additional information from the Watermaster about nearby wells and area geological conditions; and (2) allow the Department to contact the Laidlaw Water District to determine if community water would be available to Lot 46 since an existing service main is located along Elm Lane (immediately south of the subject property). The Watermaster's opinion was considered important since his knowledge of well construction and the hydrogeology of the area and his familiarity with Water Resource Commission Rules governing well construction and abandonment were necessary to help define potential groundwater contamination risks and appropriate well abandonment procedures.

On January 7, 1988, Mr. Olson contacted Bob Main, District 11 Watermaster. Mr. Main advised he had not observed the formal abandonment of a well on the subject property. Based on the description of the abandonment method followed by Mr. Fread, Mr. Main concluded it did not appear the well had been properly abandoned. The variance officer desired this information to help determine if the procedure Mr. Fread described for abandoning his well on Lot 46 was adequate to prevent the contamination of groundwater by the entry of insufficiently treated septic tank effluent at that point. After discussing the proposed variance and evaluating well logs from wells adjacent to the subject property, Mr. Main recommended that at least 100

feet separation be maintained between any well and on-site system. He noted he would not authorize development of a well less than 100 feet from the proposed soil absorption system area because of the geological properties in the area (mixed volcanic pumice and ash) and the shallow proximity to the static groundwater table.

On January 7, 1988, following his discussion with the Watermaster, Mr. Olson called Mr. Fread, and advised him that his variance would probably be denied. However, Mr. Olson noted a final decision would not be made until further information was received from the Watermaster, the Laidlaw Water District, and Deschutes County.

Before making the final decision on the variance proposal, Mr. Olson contacted the State Health Division to verify information on the potability of the Laidlaw Water District's water supply. The Health Division advised the Laidlaw Water District provided potable water suited for domestic use. In addition, Mr. Olson received well log information from the Watermaster (Attachment E). Other well log data had accompanied the original variance application (Attachment F). Mr. Olson also received information from the Water District (Attachment G), and Deschutes County (Attachment H). The Laidlaw Water District reported they had ample water to meet Mr. Fread's domestic and irrigation needs at Lot 46 and noted they would assess a \$450 connection fee if they were requested to supply water to the lot. The site was also revisited by Don Bramhall, DEQ Central Region, and Jay Langley, Deschutes County Community Development Department, to recheck measurements to affected wells since original measurements were made when the site was covered by about one foot of snow.

The District 11 Watermaster advised the Department that he would require at least 100 feet separation between a new well and an existing on-site system based on his knowledge of the area's geology. Well log information submitted to the Department was inadequate to demonstrate the actual nature of geological materials between ground surface and the shallow aquifer. Unfortunately, no standardized system of nomenclature is used by well drillers in Oregon to describe well log information in a precise, uniform manner. As a consequence, terms like "clay" and "conglomerate" are subject to broad interpretation. For this reason, the Department relied more heavily on the training and experience of the District 11 Watermaster and his knowledge of the proposed on-site development area's hydrogeology than it did on actual well log information reported by well drillers.

Shallow aquifers located beneath rapidly and very rapidly draining soil and geological materials like those which are common in the area of Lot 46 are also particularly susceptible to contamination by nitrate nitrogen since little organic matter (necessary for nitrate assimilation) is present in these materials. Nitrate nitrogen is a natural septic tank effluent breakdown product. Studies have shown that excess nitrate nitrogen in groundwater has been responsible for causing a condition know as

methemoglobinemia in young infants. Severe instances of this disorder have resulted in infant deaths.

The 100 feet minimum separation distance between wells and soil absorption systems required under on-site rules was established to help protect well bores against the entry of inadequately treated septic tank effluent. If setbacks between wells and the Freads' desired on-site system were decreased from 100 feet to about 60 feet, there would be greater potential for the channelized flow of untreated septic tank effluent to contaminate nearby wells.

In addition, a community water supply is available to the property. This would allow the applicant to properly abandon wells on Lots 46 and 50 so an on-site system could be developed on the subject property that fully complied with on-site rules.

Under Oregon on-site statutes and rules, the Department must find that compliance with rules for on-site system installation are inappropriate for cause, or that special physical conditions render strict compliance unreasonable, burdensome, or impractical. However, the public health and welfare and the waters of the state must be adequately protected in order to grant a variance. The variance officer was unable to conclude that reduction of separation distance between the prospective on-site sewage disposal system and nearby wells would provide adequate protection to the public health and welfare and state waters as required under law. Also, the variance officer was unable to conclude that compliance with on-site sewage disposal rules would be unreasonable, burdensome, or impractical. As a result, the variance was denied.

By certified letter dated April 27, 1988, Mr. and Mrs. Fread were notified that their variance request was denied (Attachment I). The variance officer noted an on-site system could be installed on the Lot in question (Lot 46) in full compliance with existing rules of the EQC if existing wells on Lots 46 and 50 were abandoned in accordance with requirements of the Department of Water Resources (Attachment J).

Well abandonment would facilitate the construction of an on-site sewage disposal system (with room for a full replacement system) on Lot 46 which would comply with Commission rules. Both the initial system and reserve area for a replacement system could be located at least 100 feet from all remaining wells.

Department of Water Resource Rules (OAR 690-220-005 through OAR 690-220-140) provide minimum standards for well abandonment. Where a cased well is to be abandoned and the casing will not be removed, the casing must be thoroughly ripped or perforated and the annular space between the casing and the drill hole wall must be completely filled with cement grout that has been applied under pressure. The remainder of the well is required to be filled with

cement grout or concrete in a manner that will effectively check vertical movement of water within the well bore throughout the depth of the water bearing horizon.

Mr. Fread advised the Department that he abandoned his well on Lot 46 by batch mixing and hand applying approximately 1/2 cubic yard of concrete. Under this process, Mr. Fread did not thoroughly rip or perforate the casing, no cement grout was used, and the concrete was not introduced into the well under pressure. Thus, the procedure followed did not meet minimum Water Resources Rules. Mr. Fread indicated he elected to abandon his well himself rather than have it abandoned by a commercial well driller because he was concerned about the cost of abandonment. One well driller (Orvail Buckner Well Drilling) contacted by the Department estimated it would normally cost around \$910 to abandon a 6" cased well like the Freads in compliance with Water Resource Commission Rules.

Since Lots 46 and 50 are adjacent lots co-owned by the Freads, the variance denial letter also advised the Freads that it might be possible for them to place a mobile home on Lot 46 to house elderly family members requiring their periodic attention under on-site hardship Authorization Notice rules (Attachment K).

On May 13, 1988, the Director received a May 9, 1988, letter from Lester Fread appealing the Department's decision to deny on-site variances sought by the Freads (Attachment L). In that letter, Mr. Fread opined it would be unreasonable for the Department to require formal sealing and abandonment of wells on Lots 46 and 50. Further, Mr. Fread contested the interpretation by state Watermaster concerning the adequacy of well seals in the area of the subject property. In addition, he cited he had understood Dr. Paeth viewed vertical separation distance between soil absorption facilities and watertable levels more important than lateral separation distances and Mr. Fread emphasized distance to static water level below Lot 46 was considerably greater than the four foot minimum separation required under on-site rules.

In his letter, Mr. Fread placed significant emphasis on comments made by Dr. Bob Paeth, DEQ's chief soil scientist, that septic tank effluent treatment quality is based on vertical separation distance from the watertable rather than lateral distance from wells. Before Mr. Fread's variance hearing, Dr. Paeth responded by telephone to a general information request from Jay Langley, Deschutes County Environmental Health Division. Dr. Paeth noted his response had been misinterpreted and inappropriately applied. He had been asked whether he thought vertical separation from the watertable was more or less important than horizontal separation from a well. No specific situation was described as the basis for the question. Dr. Paeth indicated he viewed vertical separation to be more critical. This was a general statement since Dr. Paeth was not asked to visit the site and offer an opinion. After considering the actual facts surrounding the Freads'

variance proposal, Dr. Paeth viewed a variance permitting the desired well setbacks to be inappropriate.

Alternatives and Evaluation

Pursuant to ORS 454.660, decisions of a variance officer to grant variances may be appealed to the Environmental Quality Commission. Alternatives available to the EQC include either upholding the decision of the variance officer or granting variances which would allow the installation of some kind of on-site system on Lot 46. The Commission must find that strict compliance with rules or standards regulating the installation of an on-site sewage disposal system are inappropriate for cause, or that specific physical conditions render strict compliance unreasonable, burdensome, or impractical if it elects to grant variance requests.

The alternatives are as follows:

1. Uphold the variance officer's decision. Under this alternative, it appears the Freads could:
 - a. Abandon the wells on Lots 46 and 50 in accordance with the rules of the Water Resources Commission. According to an estimate Orvail Buckner Well Drilling provided the Department, it would cost approximately \$660 for that company to abandon the existing well on Lot 50 in accordance with Water Resource Commission Rules. And it would cost around \$910 to abandon the well on Lot 46 since special equipment would be required to remove existing concrete from the well bore in order to facilitate proper well abandonment. If wells were abandoned in an acceptable manner, Deschutes County could issue an on-site construction-installation permit in full compliance with EQC rules. Water from the Laidlaw Water District is available to both Lots 46 and 50 at a service connection cost of \$450 per lot; or
 - b. The Freads could apply to Deschutes County for a hardship Authorization Notice. If granted, the Notice would allow the Freads to apply for temporary housing for a relative suffering hardship for the duration of the hardship. No well abandonment would be required under this option. This alternative would likely be the least expensive for the Freads and would not require Commission action.
2. In cases of extreme or unusual hardship, the EQC could grant the Freads variances to enable them to develop Lot 46 as desired provided they sufficiently demonstrated:
 - a. Need to care for an aged, incapacitated or disabled relative; and

- b. Insignificant environmental impact would occur if an on-site system were installed.

Under this option, the Commission may impose special conditions affecting the type of system installed (e.g., a sand filter or pressurized distribution system which would more adequately protect state waters and be more likely to prevent saturated flow of septic tank effluent from occurring, rather than the standard system desired by the Freads) and use of the system (such as limiting the number of residents using the system and requiring the abandonment of the system upon cessation of the hardship) if the hardship variance were to be granted.

3. Grant the Freads the right to install either a sand filter system or a pressurized distribution system rather than the standard gravity feed drainfield system they desire.

Under this option, the Commission could direct Deschutes County to issue a sand filter system permit. Oregon sand filter system studies have demonstrated BOD₅, suspended solids, total nitrogen were reduced 98%, 93%, 49%, respectively and substantially reduced total and fecal coliform bacteria levels. A sand filter system would provide the greatest level of treatment on Lot 46 and would help assure a higher level of groundwater protection than any other type of on-site system allowed under EQC rules. A primary disadvantage of this system is cost. Sand filter systems placed on sites like those owned by the variance applicant typically cost around \$3,500 to construct.

Alternatively, the Commission could direct Deschutes County to issue a permit for a pressurized distribution system. Pressurized distribution systems are designed to prevent saturated flow from occurring beneath or to the sides of beds or trenches to check the rapid lateral or downward migration of inadequately treated septic tank effluent. Although this system is less expensive to construct than a sand filter (approximately \$2,500) its installation requires more area than a sand filter and pressure systems lack the special treatment sand necessary to assure maximum effluent treatment.

4. Grant the Freads' request to develop the system as proposed.

Under Oregon statute and Commission rules, the variance officer did not find that compliance with rules for on-site system installation were appropriate for cause nor did he determine that special physical conditions rendered strict compliance unreasonable, burdensome, or impractical and other alternatives exist which would allow the Freads to establish a mobile home on Lot 46. In addition, the variance officer was unable to conclude that a separation distance of less than

100 feet would adequately protect the public health and welfare and waters of the state required under law.

Summation

1. Lester and Norma Fread filed a variance application dated December 19, 1987, and a transmittal letter which was received by the Department's Portland office on December 28, 1987.
2. On January 5, 1988, following the evaluation of relationships between existing wells and the area proposed for on-site system development at Lot 46, Sherman Olson, DEQ variance officer, conducted a variance hearing at the Fread home, which is on a lot immediately adjoining the subject property. At that time, Mr. Fread was advised that the variance record would remain open pending receipt of additional information from the District 11 Watermaster concerning the disposition of the construction of nearby wells, additional related information on the geological and groundwater characteristics in the proximity of wells and proposed on-site development area; and information from the Laidlaw Water District concerning the availability of water from that source. During the course of the hearing, Mr. Fread indicated he needed a quick decision on the variance because he had to make a decision to purchase a mobile home for the lot in question by noon January 7, 1988.
3. After discussion with the Watermaster, a representative from Laidlaw Water District, and a representative with the state Health Division, and reviewing information submitted from the Watermaster as well as that which was previously part of the variance application file, Mr. Olson could not find that it was reasonable to grant variances from on-site sewage disposal rules which would be necessary to allow the development of a subsurface sewage system on Lot 46.
4. April 27, 1988, Mr. Olson advised the Freads, by letter, that on-site variances sought would not be granted due to the presence of a number of wells near the proposed on-site system development site; the uncertain quality of their construction; the rapidly draining nature of geological materials lying between ground surface and the aquifer; and the relatively shallow depth to the aquifer. The variance officer concluded the potential existed for partially treated septic tank effluent to drain to the shallow groundwater table where contaminants could be picked up by wells used for drinking water. In addition, it appeared other alternatives were available which would facilitate placement of a mobile home on Lot 46.
5. Lester Fread filed an appeal to the Commission on May 9, 1988, because he viewed soil and geological materials underlying Lot 46 would be

adequate to prevent groundwater degradation if an on-site system were placed on that property.

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 siting 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.

Fred Hansen

Attachments (12)

- Attachment A-Pertinent Legal Authorities
- Attachment B-Deschutes County Site Evaluation Report Letter
- Attachment C-Variance Application Form/Fread Cover Letter
- Attachment D-Well to Proposed On-site System Relationships
- Attachment E-Well Logs from Adjoining Property Mr. Fread Supplied to Mr. Olson by District 11 Watermaster
- Attachment F-Well Logs Provided Mr. Olson by Mr. Fread
- Attachment G-Letter from Laidlaw Water District to Mr. Olson
- Attachment H-Letter from Deschutes Board of County Commissioners to Mr. Olson
- Attachment I-Sherman Olson Variance Denial Letter
- Attachment J-Water Resources Commission Well Abandonment Rules
- Attachment K-Personal Hardship Authorization Notice Rules
- Attachment L-Appeal Letter from Mr. Fread to Fred Hansen

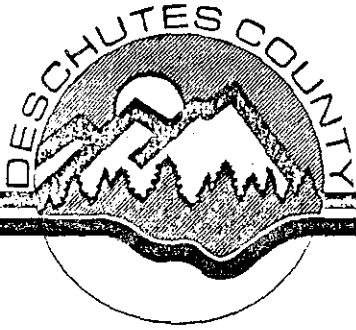
Mark P. Ronayne:kjc
WJ739
229-6442
June 13, 1988

ATTACHMENT A

Agenda Item No. 6, September 9, 1988, EQC Meeting.

1. Administrative rules governing subsurface sewage disposal are provided for by Statute: ORS 454.625.
2. The Environmental Quality Commission has been given statutory authority to grant variances from the particular requirements of any rule or standard pertaining to subsurface sewage disposal systems if, after hearing, it finds that strict compliance with the rule or standard is inappropriate for cause or special physical conditions render strict compliance unreasonable, burdensome or impractical: ORS 454.657.
3. The Commission has been given statutory authority to delegate the power to grant variances to special variance officers appointed by the Director of the Department of Environmental Quality: ORS 454.660.
4. Mr. Olson was appointed as a variance officer pursuant to the Oregon Administrative Rules: OAR 340-71-030.
5. Decisions of the variance officers to grant variances may be appealed to the Commission: ORS 454.660.

Mark P. Ronayne:kjc
WJ673
229-6442
June 10, 1988



Community Development Department

Administration Bldg./1130 N.W. Harriman/Bend, Oregon 97701
(503) 388-6575

Planning Division
Building Safety Division
Environmental Health Division

September 24, 1987

Mike Boyle
8408 Owensmouth
Canoga Park, CA 91311

RE: FEASIBILITY #87-171 T16-R12-S31D TAX LOT 5200

Dear Mr. Boyle:

This letter is in response to your on-site sewage disposal site evaluation conducted on September 23, 1987. The test pits showed that this site was unsuitable for any on-site sewage disposal system.

Well setbacks cannot be maintained in accordance with OAR 340-71, Table 1.

You may have additional test pits examined by this division within 90 days of the initial site evaluation with no additional charge, or you may apply for a denial review. This review is conducted by the Department of Environmental Quality, Central Region Office. A written request must be submitted within 30 days of this denial notification. A \$60 denial review fee is charged by that agency. You may also apply for a variance through the Department of Environmental Quality, located at 2150 N.E. Studio Road, Bend, Oregon 97701. A \$225 fee will be charged.

Sincerely,

ENVIRONMENTAL HEALTH DIVISION

Jay E. Langley
Jay E. Langley, Director
JEL:tlf
Enclosure

SITE EVALUATION WORKSHEET

FEAS. # 87-171

Applicant Mike Boyle

Subdivision _____ L _____ B _____ T 16 R 12 S 310 TL 5207

EVALUATOR: J. Langley

Soil Matrix Color & Mottling (notation), *Coarse fragments, roots, structure, layer limiting effective soil depth, etc.

Depth	Texture	
<u>0-48</u>	<u>l.s.</u>	
<u>0-48</u>	<u>l.s.</u>	

Handwritten note: Don't (with a large diagonal line through the table)

Landscape notes _____

Slope _____ Aspect _____ Groundwater _____

Other site notes _____

Residential Commercial _____ Filter Fabric _____

Type system: Initial _____ System Sizing _____ /150 g. Max depth absorption facility (in) _____

Replacement _____ System Sizing _____ /150 g. Max dept. adsorption facility (in) _____

Special conditions: no area less than 100ft. from neighbors wells

Application for Variance from Administrative Rules
Regulating On-Site Sewage Disposal Systems

Please complete this application form and submit the application fee* (\$225) and required attachments to:
Department of Environmental Quality, On-Site Sewage Systems Section, P.O. Box 1760, Portland, Oregon 97207

REFERENCE INFORMATION--Please Print

<u>Lester W. Freed</u> <u>Norma J. Freed</u>		<u>16</u>	<u>12</u>	<u>31</u>
Name of Owner		Township	Range	Section
<u>19929 Fir Ln</u>		<u>5200</u>	<u>1613</u>	<u>31D</u>
Address		Tax Lot or Account No.		Parcel Size
<u>Bend</u>	<u>Or</u>	<u>Deschutes River Tract</u>		<u>150' x 110' x 102' x 150'</u>
City	State	Zip Code	Subdivision Name	
		<u>97701</u>		
<u>382-5629</u>		Lot <u>216</u>	Block _____	
Business Phone		Home Phone		

ATTACHMENTS

Provide The Following Items:

1. Complete and accurate directions to the property. A locator map would be helpful.
2. Two (2) copies of the parcel's legal description (metes and bounds, warranty deed, sales contract, or approved subdivision plat). Include the protective covenants, deed restrictions and easements, if applicable.
3. Two (2) copies of an assessor or title company plat map or a surveyor plat map.
4. Two (2) copies of a land use compatibility statement from the appropriate land use authority that your proposed land use is compatible with the LCDC acknowledged comprehensive plan or statewide planning goals.
5. Copies of all correspondence and field notes relating to past evaluations for septic tank-drainfield development on the subject property. A copy of the site evaluation report must be included.
6. Two (2) copies of narrative description of your variance proposal including the system construction specifications. Please list the step-by-step procedures that you propose to be followed for the installation of this system.
7. On a plot plan draw to a defined scale not smaller than one inch equals thirty feet, show the location and dimensions of the proposed drainfield and its replacement area. Indicate separation distances between disposal trenches, wells, springs, water courses, agricultural drainage tile, ditches, drainage ways, waterlines, buildings, roads, embankments, and other identifying features which help demonstrate parcel to drainfield relationships. Please provide two (2) copies.
8. Two (2) copies of a profile view of the proposal which illustrates the projected drainfield layout, trench dimensions, backfill depth, boundaries, (in cases where a crown over the drainfield is proposed), slope direction and percent of slope.

Hardship variances may be considered in cases of extreme and unusual hardship. The following factors may be considered: Advanced age or bad health of applicant; need of applicant to care for aged, incapacitated or disabled relative; and relative insignificance of the environmental impact of granting a variance. Documentation of hardship must be provided. **FOR HARDSHIP CONSIDERATION MARK THIS BOX.**

A minimum of two test pits must be provided within the specific area where the actual variance system is being proposed. The pits should be approximately two feet wide, four feet long, and excavated to either bedrock or to a depth of five (5) feet. Similar pits must be provided in the area of the repair system. The Variance Officer may require the proposed drainfield and the future replacement drainfield be staked out.

Please note that it is your responsibility to present all of the facts and the reasoning which you feel justifies the granting of the variance.

By my (our) signature(s), I (we) request the Department of Environmental Quality act on this application and hereby grant permission to enter onto the above described property.

<u>Lester W. Freed</u>	<u>12-19-87</u>	<u>Norma J. Freed</u>	<u>12/19/87</u>
Signature of Owner	Date	Signature of Owner	Date

NOTE: All owners must sign this application form. If there are more than two (2) owners, attach additional duplicate applications.

- * Pursuant to ORS 454,662, the applicant is not required to submit the application fee if, at the time of filing the application, the applicant is 65 years of age or older, is a resident of the State of Oregon, and has an annual household income, as defined in ORS 310.630, of \$15,000 or less. Appropriate documentation must be submitted with the application.

December 20, 1987

Sir;

We hope the enclosed maps are adequate for your needs. They are drawn to show a well clearance of 90', for which we are asking in our variance request.

This request is being made do to the need to re-locate two elderly ladies nearer to us, for closer supervision and care.

They are at this time residing in a retirement home in Bend. They have recently been notified of a rent increase of ¹130.00 per month. This increase puts the cost well beyond their means.

One of these ladies is our mother, who is 77yrs. old. The other is a family friend who is over 80 yrs. old. We also have our other mother to care for who is 84 years old , but still able to care for herself at this time in her home.

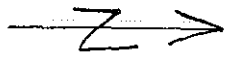
We take these ladies to town and to the doctor appointments and grocery shopping each week. We must now move the two ladies, and feel we could better care for them if they were living next door to us. We must help them with their house work and laundry once a week, and check on them once a day, yet they remain independant which is most important to them.

We sincerely hope you will consider this request as soon as possible, as we must do something soon for these ladies.

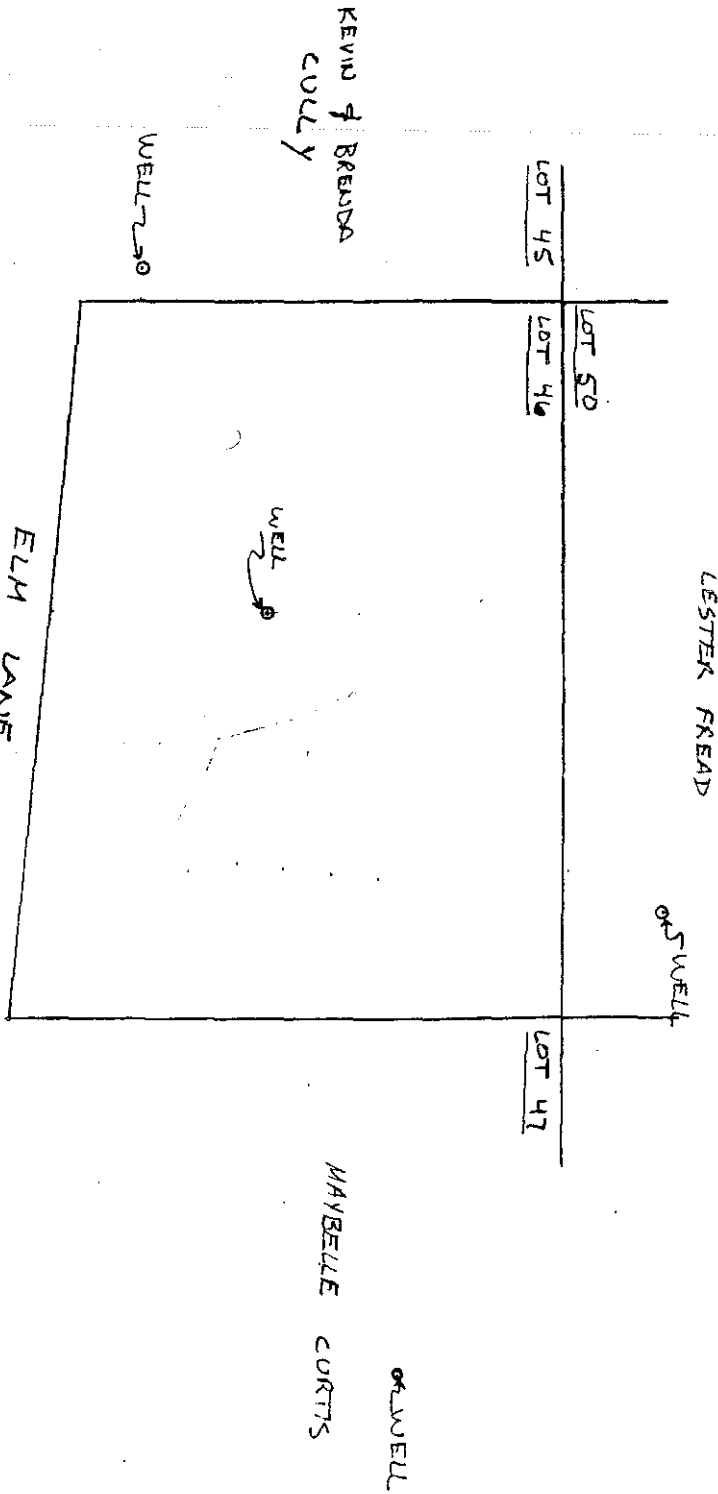
Thank You,

Sincerely,

Mrs Lister W. Fread



T. 16 S.
R. 12 E.
SEC. 31



KEVIN & BRENDA
COULY

ERVIN
STEIGMAN

SCALE: 1" = 40'

The original and first copy of this report are to be filed with the

WATER RESOURCES DEPARTMENT. SALEM, OREGON 97310 within 30 days from the date of well completion.

WATER WELL REPORT ATTACHMENT E

STATE OF OREGON (Please type or print)

(Do not write above this line)

RECEIVED

State Well No. 16.5/DE-313

AUG 1 1978

State Permit No.

WATER RESOURCES DEPT.

(1) OWNER:

Name Ervin Steigman Address 19939 Elm Lane Tumalo, Oregon

(2) TYPE OF WORK (check):

New Well [x] Deepening [] Reconditioning [] Abandon []

If abandonment, describe material and procedure in Item 12.

(3) TYPE OF WELL:

Rotary [] Driven [] Cable [x] Jetted [] Dug [] Bored []

(4) PROPOSED USE (check):

Domestic [x] Industrial [] Municipal [] Irrigation [] Test Well [] Other []

(5) CASING INSTALLED:

6" Diam. from 0 ft. to 28 ft. Gage 250 5 9/16" Diam. from 24 ft. to 45 ft. Gage 188

(6) PERFORATIONS:

Type of perforator used Torch Size of perforations 8 in. by 1/8 in. 20 perforations from 31 ft. to 45 ft.

(7) SCREENS:

Well screen installed? [] Yes [x] No manufacturer's Name Type Model No. Diam. Slot size Set from ft. to ft.

(8) WELL TESTS:

Drawdown is amount water level is lowered below static level Was a pump test made? [] Yes [x] No Yield: gal./min. with ft. drawdown after hrs. Bailer test 30 gal./min. with 1 ft. drawdown after 1 hrs.

(9) CONSTRUCTION:

Well seal—Material used cement Well sealed from land surface to 27 ft. Diameter of well bore to bottom of seal 10 in. Diameter of well bore below seal 6 in. Number of sacks of cement used in well seal 6 How was cement grout placed? as a drive shoe used? [x] Yes [] No Plugs Size: location ft. and any strata contain unusable water? [] Yes [x] No Type of water? depth of strata Method of sealing strata off Was well gravel packed? [] Yes [x] No Size of gravel: Gravel placed from ft. to ft.

(10) LOCATION OF WELL:

County Deschutes Driller's well number 14 1/4 Section 310 T16 R. 12 W.M. Bearing and distance from section or subdivision corner

(11) WATER LEVEL: Completed well.

Depth at which water was first found 32 ft. Static level 25 ft. below land surface. Date 7-25-78 Artesian pressure lbs. per square inch. Date

(12) WELL LOG:

Diameter of well below casing 6" Depth drilled 45 ft. Depth of completed well 45 ft. Formation: Describe color, texture, grain size and structure of materials; and show thickness and nature of each stratum and aquifer penetrated.

Table with columns: MATERIAL, From, To, SWL. Rows include: Siol brown (0-1), cobble-boulders grey (1-12), Cinders black (12-19), Pumice pink (19-32), Pumice pink W.B. (32-45) with SWL 25.

Steigman Well

Work started 8-22 1978 Completed 7-25 1978 Date well drilling machine moved off of well 7-25 1978

Drilling Machine Operator's Certification:

This well was constructed under my direct supervision. Materials used and information reported above are true to my best knowledge and belief. [Signed] Robert Stites Date 7-31, 1978 (Drilling Machine Operator) License No. 776

Water Well Contractor's Certification:

This well was drilled under my jurisdiction and this report is true to the best of my knowledge and belief. Name A.C. Stites (Person, firm or corporation) (Type or print) Address 28290 S. Dryland Rd. Canby, Oregon [Signed] A.C. Stites (Water Well Contractor) Contractor's License No. 533 Date July 31, 1978

STATE ENGINEER, SALEM, OREGON-97210 (Please type or print)
 within 30 days from the date of well completion. SALEM OF OREGON (Do not write above this line)

State Well No. 1102126-31
 State Permit No. _____

(1) OWNER:

Name MELVIN CURTIS
 Address 10327 S.E. STARK ST. PORTLAND, OREGON

(2) TYPE OF WORK (check):

New Well Deepening Reconditioning Abandon
 If abandonment, describe material and procedure in Item 12.

(3) TYPE OF WELL:

Rotary Driven
 Cable Jetted
 Dug Bored

(4) PROPOSED USE (check):

Domestic Industrial Municipal
 Irrigation Test Well Other

CASING INSTALLED:

Threaded Welded
6" Diam. from 0 ft. to 50 ft. Gage 250
 " Diam. from _____ ft. to _____ ft. Gage _____
 " Diam. from _____ ft. to _____ ft. Gage _____

PERFORATIONS:

Perforated? Yes No.
 Type of perforator used AC4
 Size of perforations 1/8 in. by 6 in.
40 perforations from 20 ft. to 50 ft.
 perforations from _____ ft. to _____ ft.
 perforations from _____ ft. to _____ ft.

(7) SCREENS:

Well screen installed? Yes No
 Manufacturer's Name _____
 Type _____ Model No. _____
 Diam. _____ Slot size _____ Set from _____ ft. to _____ ft.
 Diam. _____ Slot size _____ Set from _____ ft. to _____ ft.

(8) WELL TESTS:

Drawdown is amount water level is lowered below static level
 Was a pump test made? Yes No If yes, by whom?
 Yield: _____ gal./min. with _____ ft. drawdown after _____ hrs.
 " " " " " "
 " " " " " "
 Baller test 35 gal./min. with 0 ft. drawdown after 2 hrs.
 Artesian flow _____ g.p.m.
 Temperature of water 5 / Depth artesian flow encountered _____ ft.

(9) CONSTRUCTION:

Well seal—Material used CEMENT
 Well sealed from land surface to 20 ft.
 Diameter of well bore to bottom of seal 10 in.
 Diameter of well bore below seal 6 in.
 Number of sacks of cement used in well seal 4 sacks
 Number of sacks of bentonite used in well seal _____ sacks
 Brand name of bentonite _____
 Number of pounds of bentonite per 100 gallons _____
 of water _____ lbs./100 gals.
 Was a drive shoe used? Yes No Plugs _____ Size: location _____ ft.
 Did any strata contain unusable water? Yes No
 Type of water? _____ depth of strata _____
 Method of sealing strata off _____
 Was well gravel packed? Yes No Size of gravel: _____
 Gravel placed from _____ ft. to _____ ft.

(10) LOCATION OF WELL:

County Deschutes Driller's well number _____
N 1/4 SE 1/4 Section 31 T. 16 S. R. 12E W.M.
 Bearing and distance from section or subdivision corner _____

(11) WATER LEVEL: Completed well.

Depth at which water was first found 20 ft.
 Static level 15 ft. below land surface. Date 6-15-73
 Artesian pressure _____ lbs. per square inch. Date _____

(12) WELL LOG:

Diameter of well below casing _____
 Depth drilled 50 ft. Depth of completed well 50 ft.
 Formation: Describe color, texture, grain size and structure of materials; and show thickness and nature of each stratum and aquifer penetrated, with at least one entry for each change of formation. Report each change in position of Static Water Level and indicate principal water-bearing strata.

MATERIAL	From	To	SWL
<u>cong - med</u>	<u>0</u>	<u>13</u>	
<u>CLAY - Brown</u>	<u>13</u>	<u>20</u>	<u>15</u>
<u>20% Ash + Cong</u>	<u>20</u>	<u>50</u>	

Curtis Well

Work started 6-14 1973 Completed 6-15 1973
 Date well drilling machine moved off of well 6-16 1973

Drilling Machine Operator's Certification:

This well was constructed under my direct supervision. Materials used and information reported above are true to my best knowledge and belief.
 [Signed] Roy House Date 8/24 1973
 (Drilling Machine Operator)
 Drilling Machine Operator's License No. 555

Water Well Contractor's Certification:

This well was drilled under my jurisdiction and this report is true to the best of my knowledge and belief.
Davidson Drilling Service
 Name _____ (Type or print)
 Address 626 NW Pershall Way Redmond, Ore
 [Signed] Frank Davidson Davidson
 (Water Well Contractor)
 Contractor's License No. 548 Date Aug 21 1973

are to be filed with the
 WATER RESOURCES DEPARTMENT,
 SALEM, OREGON 97310
 within 30 days from the date
 of well completion.

WATER WELL REPORT

STATE OF OREGON AUG 10 1981

State Well No. 1125/30-3/07

(Please type or print)

WATER RESOURCES DEPT. Permit No. _____

(Do not write above this line) SALEM, OREGON

(1) OWNER:

Name Jim St. John
 Address 19920 Elm Ln, BEND, ORE.

(2) TYPE OF WORK (check):

New Well Deepening Reconditioning Abandon
 If abandonment, describe material and procedure in Item 12.

(3) TYPE OF WELL:

Rotary Driven
 Cable Jetted
 Dug Bored

(4) PROPOSED USE (check):

Domestic Industrial Municipal
 Irrigation Test Well Other

(5) CASING INSTALLED:

Threaded Welded
6" Diam. from +1 ft. to 60 ft. Gage 250
 " Diam. from " ft. to " ft. Gage
 " Diam. from " ft. to " ft. Gage

(6) PERFORATIONS:

Perforated? Yes No.
 Type of perforator used TORCH
 Size of perforations 1/16 in. by 8 in.
50 perforations from 40 ft. to 60 ft.
 perforations from " ft. to " ft.
 perforations from " ft. to " ft.

(7) SCREENS:

Well screen installed? Yes No
 manufacturer's Name _____
 Type _____ Model No. _____
 Diam. _____ Slot size _____ Set from _____ ft. to _____ ft.
 Diam. _____ Slot size _____ Set from _____ ft. to _____ ft.

(8) WELL TESTS:

Drawdown is amount water level is lowered below static level
 Was a pump test made? Yes No If yes, by whom?
 Yield: 25 gal./min. with 5 ft. drawdown after 1 hrs.
 " " " " " "
 " " " " " "
 Baller test 30 gal./min. with 10 ft. drawdown after 1 hrs.
 Artesian flow NONE g.p.m. -
 Temperature of water 56 Depth artesian flow encountered _____ ft.

(9) CONSTRUCTION:

Well seal—Material used CEMENT GROUT
 Well sealed from land surface to _____ ft.
 Diameter of well bore to bottom of seal 10 in.
 Diameter of well bore below seal 8 in.
 Number of sacks of cement used in well seal 6 sacks
 How was cement grout placed? POURED THRU TRENCH PIPE, PLACED FROM BOTTOM UP.
 as a drive shoe used? Yes No Plugs _____ Size: location _____ ft.
 and any strata contain unusable water? Yes No
 Type of water? _____ depth of strata _____
 Method of sealing strata off _____
 Was well gravel packed? Yes No Size of gravel: 1/4 MIN.
 Gravel placed from 20 ft. to 60 ft.

(10) LOCATION OF WELL:

County Oregon Driller's well number 98
N.W. 1/4 N.E. 1/4 Section 31 T. 16S R. 12E W.M.
 Bearing and distance from section or subdivision corner _____

(11) WATER LEVEL: Completed well.

Depth at which water was first found 28 ft.
 Static level 25 ft. below land surface. Date 8-5-81
 Artesian pressure NONE lbs. per square inch. Date _____

(12) WELL LOG:

Diameter of well below casing _____
 Depth drilled 60 ft. Depth of completed well 60 ft.
 Formation: Describe color, texture, grain size and structure of materials; and show thickness and nature of each stratum and aquifer penetrated, with at least one entry for each change of formation. Report each change in position of Static Water Level and indicate principal water-bearing strata.

MATERIAL	From	To	SWL
TOP SOIL	0	1	
GRAVEL & CLAY	1	8	
YELLOW CLAY	8	28	
W/B. GRAVEL	28	35	
MED. COARSE SAND	35	55	
BR. SANDSTONE	55	60	

Cully Well

Work started 8-7-81 1981 Completed 8-5 1981
 Date well drilling machine moved off of well 8-5 1981

Drilling Machine Operator's Certification:
 This well was constructed under my direct supervision. Materials used and information reported above are true to my best knowledge and belief.
 [Signed] Curt Clauson Date 8-6, 1981
 (Drilling Machine Operator)
 Drilling Machine Operator's License No. 1237

Water Well Contractor's Certification:
 This well was drilled under my jurisdiction and this report is true to the best of my knowledge and belief.
 Name CLAUSON Well Drilling
 (Person, firm or corporation) (Type & print)
 Address RT. Box 780 PAINEVILLE, OR
 [Signed] Curt Clauson
 (Water Well Contractor)
 Contractor's License No. 741 Date 8-6, 1981

The original and first copy of this report are to be filed with the

WATER WELL REPORT

WATER RESOURCES DEPARTMENT.
SALEM, OREGON 97310
within 30 days from the date
of well completion.

STATE OF OREGON
(Please type or print)

State Well No. 162/12E-317E

State Permit No. 107-250

(Do not write above this line)

(1) OWNER:

Name LESTER FREAN
Address 19924 FIR LN. TUMALO, ORE.

(2) TYPE OF WORK (check):

New Well Deepening Reconditioning Abandon

If abandonment, describe material and procedure in Item 12.

(3) TYPE OF WELL:

Rotary Driven
Cable Jetted
Dug Bored

(4) PROPOSED USE (check):

Domestic Industrial Municipal
Irrigation Test Well Other

(5) CASING INSTALLED:

Threaded Welded

6" Diam. from 7.1 ft. to 50 ft. Gage 250
" Diam. from ft. to ft. Gage
" Diam. from ft. to ft. Gage

(6) PERFORATIONS:

Perforated? Yes No.

Type of perforator used TORCH
Size of perforations 1/16 in. by 6 in.
60 perforations from 30 ft. to 50 ft.
perforations from ft. to ft.
perforations from ft. to ft.

(7) SCREENS:

Well screen installed? Yes No

Manufacturer's Name
Type Model No.
Diam. Slot size Set from ft. to ft.
Diam. Slot size Set from ft. to ft.

(8) WELL TESTS:

Drawdown is amount water level is lowered below static level

Was a pump test made? Yes No If yes, by whom?
Yield: gal./min. with ft. drawdown after hrs.
" " " " " "
" " " " " "
Bailer test 30 gal./min. with 10 ft. drawdown after 1 hrs.
Artesian flow NONE g.p.m. -
Temperature of water 56 Depth artesian flow encountered ft.

(9) CONSTRUCTION:

Well seal—Material used CEMENT GROUT
Well sealed from land surface to 18 ft.
Diameter of well bore to bottom of seal 10 in.
Diameter of well bore below seal 8 in.
Number of sacks of cement used in well seal 8 sacks
How was cement grout placed? POURED THRU TAPPING PIPE, PLACED FROM BOTTOM UPWARD.
Was a drive shoe used? Yes No Plugs Size: location ft.
Did any strata contain unusable water? Yes No
Type of water? depth of strata
Method of sealing strata off
Was well gravel packed? Yes No Size of gravel: 1/4 INCHES
Gravel placed from 18 ft. to 50 ft.

(10) LOCATION OF WELL:

County DESCHUTES Driller's well number 57-C
N.W. 1/4 Section 31 T. 16 S. R. 12E W.M.
Bearing and distance from section or subdivision corner

(11) WATER LEVEL: Completed well.

Depth at which water was first found 25 ft.
Static level 25 ft. below land surface. Date 3/3/80
Artesian pressure NONE lbs. per square inch. Date

(12) WELL LOG:

Diameter of well below casing
Depth drilled 50 ft. Depth of completed well 50 ft.

Formation: Describe color, texture, grain size and structure of materials; and show thickness and nature of each stratum and aquifer penetrated, with at least one entry for each change of formation. Report each change in position of Static Water Level and indicate principal water-bearing strata.

MATERIAL	From	To	SWL
<u>TOP SOIL</u>	<u>0</u>	<u>3</u>	
<u>BOULDERS & CLAY</u>	<u>3</u>	<u>24</u>	
<u>COARSE PUMICE SAND</u>	<u>24</u>	<u>50</u>	<u>25</u>

Work started 3/3 1980 Completed 3/3 1980
Date well drilling machine moved off of well 3/3 1980

Drilling Machine Operator's Certification:

This well was constructed under my direct supervision. Materials used and information reported above are true to my best knowledge and belief.

[Signed] Curt Clauson Date 3/3, 1980
(Drilling Machine Operator)

Drilling Machine Operator's License No. 1237

Water Well Contractor's Certification:

This well was drilled under my jurisdiction and this report is true to the best of my knowledge and belief.

Name Clauson Well Drilling
(Person, firm or corporation) (Type or print)

Address Rt. 1, Box 780 Prineville, ORE.

[Signed] Curt Clauson
(Water Well Contractor)

Contractor's License No. 741 P2 3/3, 1980

(1) OWNER:
 Name **Fred Graham**
 Address **Rt. 2 Box 489 Tule, Ore**

(2) TYPE OF WORK (check):
 New Well Deepening Reconditioning Abandon
 If abandonment, describe material and procedure in Item 12.

(3) TYPE OF WELL: (4) PROPOSED USE (check):
 Rotary Driven Domestic Industrial Municipal
 Cable Jetted Irrigation Test Well Other
 Dug Bored

CASING INSTALLED:
 Threaded Welded
 6" Diam. from 0 ft. to 41 ft. Gage 250
 " Diam. from ft. to ft. Gage
 " Diam. from ft. to ft. Gage

PERFORATIONS:
 Perforated? Yes No.
 Type of perforator used **Cutting torch**
 Size of perforations **1/16 in. by 6 in.**
 35 perforations from 21 ft. to 41 ft.
 perforations from ft. to ft.
 perforations from ft. to ft.

(7) SCREENS:
 Well screen installed? Yes No
 Manufacturer's Name
 Type Model No.
 Diam. Slot size Set from ft. to ft.
 Diam. Slot size Set from ft. to ft.

(8) WELL TESTS:
 Drawdown is amount water level is lowered below static level
 Was a pump test made? Yes No If yes, by whom?
 Yield: gal./min. with ft. drawdown after hrs.
 " " " " " "
 " " " " " "
 Bailer test **30** gal./min. with **5** ft. drawdown after **1** hrs.
 Artesian flow **None** g.p.m.
 Temperature of water **56** ° Depth artesian flow encountered **None** ft.

(9) CONSTRUCTION:
 Well seal—Material used **Bentonite**
 Well sealed from land surface to **21** ft.
 Diameter of well bore to bottom of seal **9** in.
 Diameter of well bore below seal **6** in.
 Number of sacks of cement used in well seal **None** sacks
 Number of sacks of bentonite used in well seal **2** sacks
 Brand name of bentonite **U.A.H. Jell**
 Number of pounds of bentonite per 100 gallons of water **Dry** lbs./100 gals.
 Was a drive shoe used? Yes No Plugs **None** Size: location **12** ft.
 Did any strata contain unusable water? Yes No
 Type of water? depth of strata
 Method of sealing strata off
 Is well gravel packed? Yes No Size of gravel:
 Gravel placed from ft. to ft.

(10) LOCATION OF WELL:
 County **Deschutes** Driller's well number **109**
 Section **31** T. **T16** N. **12** E. W.M.
 Bearing and distance from section or subdivision corner

(11) WATER LEVEL: Completed well.
 Depth at which water was first found **25** ft.
 Static level **18** ft. below land surface. Date **July 21/71**
 Artesian pressure **None** lbs. per square inch. Date

(12) WELL LOG:
 Diameter of well below casing
 Depth drilled ft. Depth of completed well ft.
 Formation: Describe color, texture, grain size and structure of materials; and show thickness and nature of each stratum and aquifer penetrated. with at least one entry for each change of formation. Report each change in position of Static Water Level and indicate principal water-bearing strata.

MATERIAL	From	To	SWL
Sand, Gravel & boulders	0	11	
Soft Clay	11	21	
White pumice (water bearing)	21	34	
Gravel (water bearing)	34	38	
yellow pumice (water bearing)	38	41	18
0			

Fresh Well

Work started **July 21** 19 **71** Completed **July 21** 19 **71**
 Date well drilling machine moved off of well **July 21** 19 **71**

Drilling Machine Operator's Certification:
 This well was constructed under my direct supervision. Materials used and information reported above are true to my best knowledge and belief.
 [Signed] **Archie Fox** Date **July 21**, 19 **71**
 (Drilling Machine Operator)
 Drilling Machine Operator's License No. **389**

Water Well Contractor's Certification:
 This well was drilled under my jurisdiction and this report is true to the best of my knowledge and belief.
 Name **Archie Fox** (Type or print)
 (Person, firm or corporation)
 Address **2277 Lincoln Rd. Prineville**
 [Signed] **Archie Fox**
 (Water Well Contractor)
 Contractor's License No. **444** Date **July 21**, 19 **71**

April 21, 1988

RECEIVED
APR 27 1988

Water Quality Division
Dept. of Environmental Quality

Mr. Sherman Olson
Dept. of Environment Quality
Water Quality Division
811 S.W. 6th Ave.
Portland, Or 97204

Dear Sir,

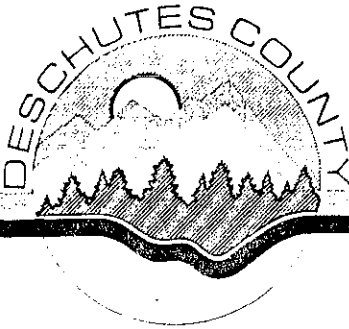
Regarding our telephone conversation on April 20, 1988 concerning lot #46 and lot #50 of the Dechutes River Tract. Laidlaw Water District will be able to provide domestic drinking water for both lots.

Also thank you for connecting me with Air Quality control.

Sincerely,

Linda L. Brooks

Linda L. Brooks
Acting Chairman



Board of Commissioners

Administration Bldg. / Bend, Oregon 97701 / (503) 388-6570

April 5, 1988

RECEIVED
APR 8 1988
Lois Bristow Prante
Dick Maudlin
Tom Throop

Sherm Olson
Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, Oregon 97204

Water Quality
Dept. of Environmental Quality

Dear Sherm:

Enclosed is a copy of a letter you recently received from Jay E. Langley, the Director of Deschutes County's Environmental Health Division, on the Lester Freed variance.

We concur strongly in Jay Langley's comments and suggestions to you on the Freed variance. Deschutes County understands the reason for the discrepancy between your views on lateral distance to a well and Bob Paeth's views on vertical distance to a water table. In the Freed's case, the setback variance is warranted, as there is latitude between the respective positions between you and Bob Paeth and DEQ approval for the variance to avoid hooking up to a limited water supply is justified.

This issue has been dragging on for months, and we would appreciate a satisfactory resolution to the issue. We urge you to approve this variance, as the resources would clearly achieve the necessary levels of protection with the variance. Your help and consideration is appreciated.

Sincerely,

DESCHUTES COUNTY BOARD OF COMMISSIONERS

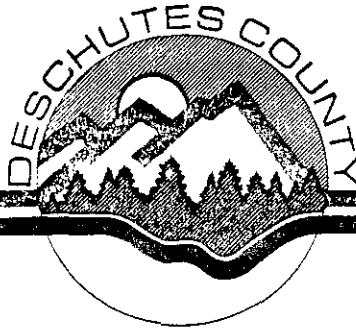
Lois Bristow Prante
Lois Bristow Prante, Commissioner

Tom Throop
Tom Throop, Commissioner

Dick Maudlin
Dick Maudlin, Chairman

BOCC/slc
Enclosure

cc: John Hector
Fred Hansen
Jay Langley



Community Development Department

Administration Bldg. / Bend, Oregon 97701
(503) 388-6575

Planning Division
Building Safety Division
Environmental Health Division

March 15, 1988

Sherm Olson
Department of Environmental Quality
811 SW 6th Avenue
Portland, Oregon 97204

Dear Sherm:

In regard to the Lester Freed variance, I have the following comments:

Mr. Freed has requested a setback variance from existing wells to avoid the expense of hook-up fees, monthly fees, and limited water supply of the Laidlaw water district.

The variance decision should be based on the possible impacts on the water table in Tumalo. In speaking to Bob Paeth, Head Soil Scientist for DEQ, in regard to sewage disposal treatment in the soils of Tumalo, his opinion is that treatment quality is based on vertical distance to the water table, not lateral distance to a well.

We know that the vertical distance to the water table is greater than 20 feet. We also know that DEQ rules require at least a 4 foot separation from the trench bottom to the water table to maintain water quality.

If a drainfield system was placed 3 foot deep in the ground, a vertical separation distance of at least 17 feet would be maintained. This separation distance would be at least 13 feet more than the DEQ rules require. The excess vertical distance separation should allow for a reduction in the lateral distance separation.

Page 2
Sherm Olson
Department of Environment Quality

In conclusion, a variance is requested when strict adherence to the rules would be unreasonable considering there would be no adverse impacts on the regional water table. I hope this will be taken into consideration on your decision.

Sincerely,

ENVIRONMENTAL HEALTH DIVISION


Jay E. Langley, Director

JEL/jlb

cc: Dan Bramhall - DEQ
Deschutes County Commissioners
Lester Freed



Department of Environmental Quality

811 SW SIXTH AVENUE, PORTLAND, OREGON 97204-1390 PHONE (503) 229-5696

CERTIFIED MAIL

April 27, 1988

Mr. and Mrs. Lester Fread
19929 Fir Lane
Bend, Oregon 97701

Re: WQ-SDS; Variance Denial,
Lot 46, Deschutes River Tract;
T.L. 5200; Sec. 31; T. 16S.;
R. 12E.; Deschutes County

Dear Mr. and Mrs. Fread:

In response to your application for variance from the on-site sewage disposal rules, I visited the above described property and conducted an information gathering hearing on January 5, 1988. The hearing remained open to gather additional information concerning your proposal, and was ultimately closed on April 11, 1988, after a letter from the Deschutes County Board of Commissioners was entered into the file record.

Staff with the Deschutes County Environmental Health Division previously evaluated the property to determine the methods of on-site sewage disposal that might be appropriate. They examined two (2) pits and found a loamy sand soil texture to a depth of four (4) feet. They did not observe indications of the presence of a shallow water table at either pit. However, because private water wells were located on adjacent properties to the north, south, east, west, and on the subject property, the County determined it was not possible to locate a sewage disposal system and future repair/replacement system on the property and maintain the required separation distance of one hundred (100) feet from each and every well. Although the County issued a denial, they indicated the decision could be reconsidered if the well on the subject property and the well on your property to the north (Lot 50, Deschutes River Tract) were properly abandoned. This action would provide the area needed by the system to maintain a minimum separation distance of one hundred (100) feet from the three (3) remaining wells.

As an alternative, you requested variance consideration be given to allow the sewage disposal system and its repair/replacement area to be located less than one hundred (100) feet from your well on Lot 50 and the wells owned by your neighbors: Mr. and Mrs. Kevin Cully, Mr. Ervin Steigman, and Ms. Maybelle Curtis. Your proposal would also place the system immediately adjacent to the common lot line between your property and the property to

the east owned by Ms. Curtis. This also requires consideration of variance from the administrative rule requiring a ten (10) foot separation distance between the system and the property line.

The variance record contains a letter from Mr. Steigman stating he has no objection to placing the sewage disposal system within ninety (90) feet of his well. The record also shows that Ms. Curtis would allow the proposed sewage system to be placed on your property and closer than ten (10) feet from the common property line.

The well on the subject property was filled with one-half ($\frac{1}{2}$) yard of concrete to the land surface by Mr. Fread on December 16, 1987, thus rendering the well unusable. I discussed this procedure of abandonment with Mr. Robert F. Main, District 11 Watermaster, Oregon Water Resources Department. Mr. Main indicated he was not present when the concrete was placed into the well, and therefore could not state that the well had been abandoned in accordance with the adopted requirements of the Water Resources Department.

I also asked Mr. Main to review the water well reports pertaining to the wells involved in this action and comment on whether their construction would support locating a sewage disposal system less than one hundred (100) feet away. He stated that the reports indicate mixed geological formations in the area. Based on this and his knowledge of the area, if the situation concerned the construction of a new well, additional well construction standards above those normally followed would be needed to approve its location less than 100 feet from a drainfield. The wells surrounding the subject property were not constructed to provide additional protection to the underlying aquifer. He stated the he does not support granting a variance from the minimum separation distance to the wells.

The variance record also indicates a community water system serves the area. The Laidlaw Water District was contacted to determine if water service could be provided to Lots 46 and 50 in case you decide to properly abandon the wells there. The District states that water service is available to both properties, subject to a nominal connection fee. According to both the District and the Oregon State Health Division, concerns that the water supply is unreliable (in terms of quantity and quality) are not founded. A new well was recently connected to and made a part of the District's system.

Variance from particular requirements of the rules pertaining to on-site sewage disposal systems may be granted if a finding can be made that strict compliance with the rule is inappropriate for cause, or that special physical conditions render strict compliance unreasonable, burdensome, or impractical. The maintenance of a separation distance between a disposal system and a water well is important because it reduces the possibility that partially treated septic tank effluent may follow a pathway along the well casing and contaminate the underlying groundwater. In some situations,

reduction of the separation distance may warrant consideration provided the well is constructed with additional protective construction standards to the satisfaction of the watermaster. The wells surrounding the subject property do not appear to have been constructed with special or unique features that support a reduction in the separation distance between them and a disposal system. Mr. Main expressed doubt that special well construction standards in this instance would satisfy his concerns, given the area's geology. In consideration of the relatively shallow depth to the aquifer and the numerous wells closely surrounding the property, the possibility of partially treated effluent contacting the water table and being drawn into a nearby well can not be ruled out. If the wells on Lots 46 and 50 are properly abandoned, it would be possible to construct a sewage disposal system that fully complies with the rules of the Environmental Quality Commission. The Laidlaw Water District is willing and able to provide water service to both lots. It has not been shown that connection to the community water system is unduly burdensome. Therefore, based upon my review and evaluation of the variance record, I am unable to make a favorable finding. Your variance request is regretfully denied.

Pursuant to OAR 340-71-440, my decision to deny your variance request may be appealed to the Environmental Quality Commission. Requests for appeal must be made by letter, stating the grounds for appeal, and addressed to the Environmental Quality Commission, in care of Mr. Fred Hansen, Director, Department of Environmental Quality, 811 S.W. Sixth Avenue, Portland, Oregon 97204, within twenty (20) days of the date of the certified mailing of this letter.

The hardship consideration box was marked on your variance application. In cases of extreme and unusual hardship, the Environmental Quality Commission may consider the following factors in reviewing an application for variance based on hardship:

1. Advanced age or bad health of applicant;
2. Need of applicant to care for aged, incapacitated or disabled relatives;
3. Relative insignificance of the environmental impact of granting a variance.

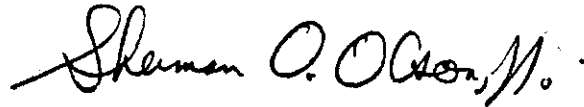
Documentation of hardship must be provided before your application is referred to the Commission for their consideration. The information originally submitted with your application is not sufficient to establish the hardship. Please be aware the Commission may impose conditions affecting the use of the system if a hardship variance is granted, such as limiting the number of residents using the system and requiring abandonment of the system upon cessation of the hardship. As an alternative, you may wish to consider the hardship placement of a mobile home in accordance with OAR 340-71-205(8) (copy enclosed). With this alternative, the mobile home would be connected to the sewage disposal system serving your home, and

Mr. and Mrs. Lester Fread
Page 4

could remain as long as the hardship existed and provided the sewage disposal system continued to function properly.

Please feel free to contact me at 229-6443 if you have questions regarding this decision.

Sincerely,



Sherman O. Olson, Jr.
Senior Environmental Analyst
Sewage Disposal Section
Water Quality Division

S00:kjc

WJ456

Enclosure

cc: Mr. and Mrs. Kevin Cully
Ms. Maybelle Curtis
Mr. Ervin Steigman
Ms. Linda Brooks, Laidlaw Water District
Deschutes County Board of Commissioners
Mr. Jay Langley, Deschutes County
Mr. Robert Main, District 11 Watermaster
DEQ, Central Region Office

Well Cover

690-215-050 All wells shall be securely covered to prevent any foreign substance from entering the well including any material which might contaminate the water-bearing zone.

Access Port or Airline

690-215-060 The access port or airline on all wells required by 690-210-280 shall be maintained in a condition that will prevent contamination of the water body. Access ports and airlines shall be maintained so that the position of the water table can be determined at any time.

Pressure Gauge

690-215-070 The pressure gauge and petcock valve required by rule 690-210-120 shall be maintained so that the artesian pressure can be accurately determined at any time. (See Figure 10.)

Flowmeters

690-215-080 The Director may require the landowner to install totalizing flowmeters on any well, either as a condition of a water right permit or at a later date as circumstances may warrant. The landowner may be required to install flowmeters on existing permitted wells and on wells which are exempted by ORS 537.545.

Conversion to an Artesian Well

690-215-090 If a well becomes artesian upon deepening, the well shall be cased, sealed and completed in accordance with rule 690-210-120.

Drilling in a Dug Well

~~690-215-100 In no case shall a dug well be deepened by drilling methods.~~

DIVISION 220**ABANDONMENT OF WELLS****Temporary Abandonment**

690-220-005 Any well to be temporarily removed from service, temporarily abandoned due to a recess in construction, or temporarily abandoned before commencing service, shall be capped with a watertight seal, watertight welded steel cap, or threaded cap. In the event that temporary abandonment is to be of 90 days or less, the temporary steel cap may be welded to the well casing with a minimum of four (4) separate welds, evenly spaced, each at least one-half (1/2) of an inch in length. Steel or cast iron caps shall be at least three-sixteenths (3/16) of an inch in thickness.

Permanent Abandonment

690-220-030 Any well that is to be permanently abandoned shall be completely filled in such a manner that vertical movement of water within the well bore, including vertical movement of water within the annular space surrounding the well casing, is effectively and permanently stopped.

Abandonment of Uncased Wells in Unconsolidated Formations

690-220-040 Uncased wells to be abandoned that extend only into unconsolidated materials shall be completely filled with cement grout or concrete. (See Figure 13, 1986.)

Abandonment of Uncased Wells in Consolidated Formations

690-220-050 Uncased wells to be abandoned that penetrate a water-bearing rock formation shall be filled with concrete or cement grout, or alternating layers of cement grout or concrete and clean gravel throughout the water-producing horizon. A concrete or cement grout plug shall be constructed from the top of the rock formation to a depth of at least twenty (20) feet below the top of the rock formation. The remainder of the well above the rock formation shall be filled to land surface with cement grout or concrete. Plugs of cement grout or concrete, at least three (3) feet in length, shall be placed in non-producing zones between all water-bearing zones. In all cases, a cement grout or concrete plug, at least three (3) feet in length, shall be constructed in a non-producing stratum immediately above the uppermost water-bearing zone. (See Figure 14, 1986.)

Abandonment of Cased Wells

690-220-060 If the well casing or the liner pipe is not removed during the abandonment of a well, the casing or liner shall be thoroughly ripped or perforated. The annular space between the casing or liner and the drillhole wall shall be effectively and completely filled with cement grout applied under pressure. The remainder of the well shall be filled with cement grout or concrete. Uncased horizons in a cased well to be abandoned shall be filled in accordance with rules 690-220-030 through 690-220-050. The casing of wells to be abandoned may be severed below land surface and removed. (See Figure 15, 1986.)

Abandonment of Artesian Wells

690-220-070 The flow of artesian wells to be abandoned shall be confined or restricted by cement grout applied under pressure, or by the use of a suitable well packer, or a wooden plug placed at the bottom of the confining formation immediately above the artesian water-bearing zone. Cement grout or concrete shall be used to effectively fill the well to land surface. (See Figure 16, 1986.)

Abandonment of Drilled and Jetted Wells

690-220-080 A cement grout or concrete plug shall be placed opposite all perforations or openings in the well casing. The remainder of the well shall be filled with cement grout, or concrete.

Abandonment of Filter or Gravel Pack Wells

690-220-090 Filter or gravel pack wells may be abandoned only with prior written approval of the Director of the method proposed for abandonment of the particular well. Any method of abandonment proposed must ensure that all perforated sections of the casing will be pressure grouted throughout, and that the remainder of the well is filled with cement grout, or concrete.

Obstructions and Possible Contaminants

690-220-100 All obstructions or debris which may interfere with effective sealing operations shall be removed from the well to be abandoned. Any foreign matter capable of causing ground water contamination shall be removed prior to placing any sealing material.

Removal of Well Casing During Abandonment

690-220-110 If the casing of a well is removed during abandonment, the well shall be plugged and sealed in accordance with rules 690-220-030 through 690-220-050 and shall be filled with sealing materials as the casing is

removed.

Cement Grout

690-220-120 Cement grout for use in abandonment operations shall conform to the requirements of rule 690-210-310.

Concrete

690-220-130 Concrete for use in abandonment operations shall conform to the requirements of rule 690-210-430.

Method of Placement of Concrete or Cement Grout

690-220-140 Concrete or cement grout used as a sealing material in abandonment operations shall be introduced at the bottom of the well or required sealing interval and placed progressively upward to the top of the well. All such sealing materials shall be placed by the use of a grout pipe, tremie, or by pump bailer in order to avoid segregation or dilution of the sealing materials.

DIVISION 225 ENFORCEMENT (See Figure 18, 1986)

Investigation of Alleged Violations

690-225-020 The Water Resources Director, upon the Director's own initiative, or upon complaint alleging violation of statutes, standards or rules governing construction, alteration, or abandonment of wells may cause an investigation to determine whether a violation has occurred. If the investigation indicates that a violation has occurred, the Director shall notify the persons believed responsible for the violation including but not limited to:

- (1) Any well constructor involved; or
- (2) The landowner, if the violation involves construction, alteration, operation, or abandonment of a well.

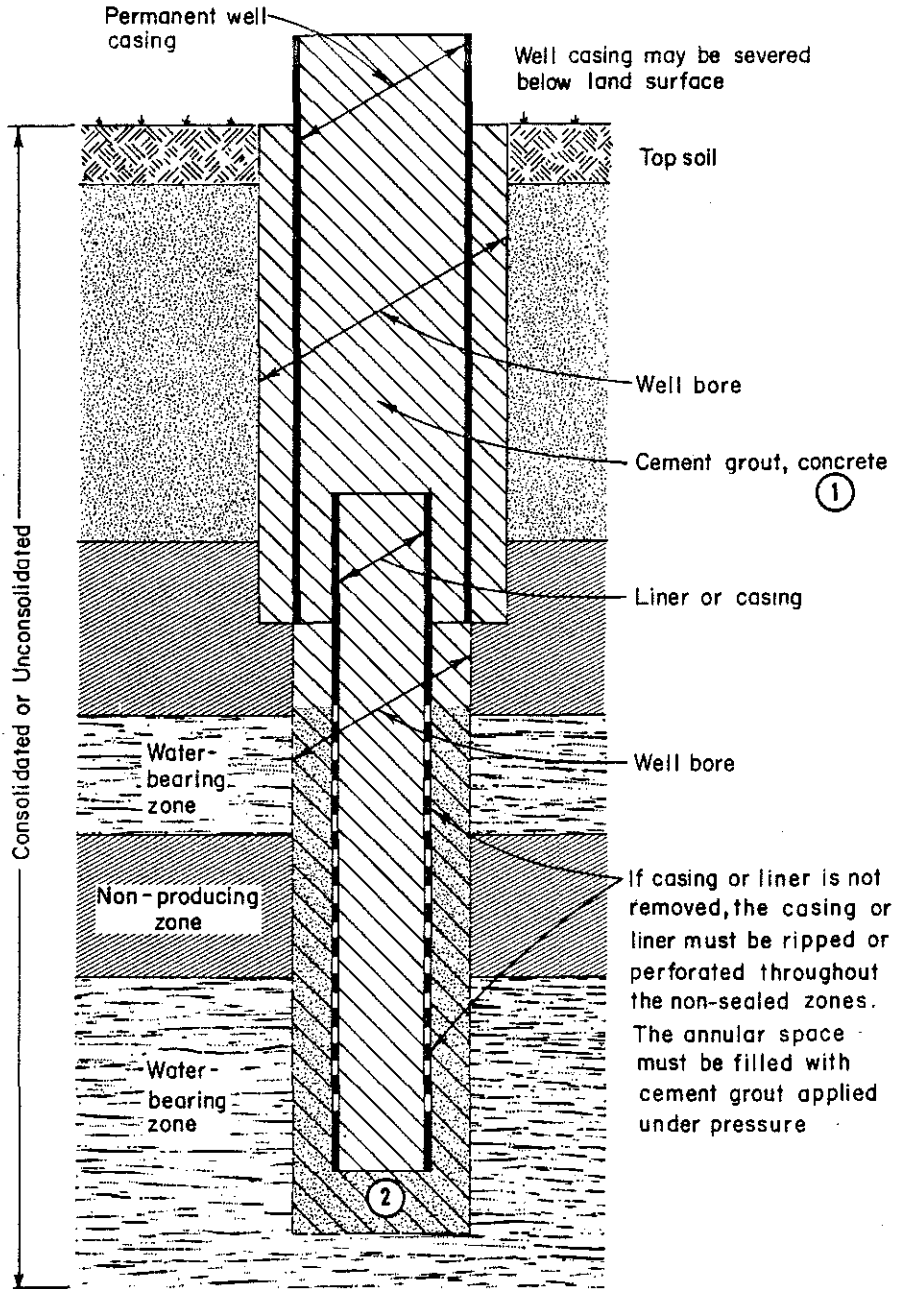
Enforcement Actions

690-225-030(1) If, after notice and opportunity for hearing under ORS 183.310 to 183.550 the Director determines that one or more violations have occurred, the Director may impose one or more of the following:

- (a) Provide a specified time for remedy;
- (b) Assess a civil penalty in accordance with the schedule of civil penalties in OAR 690-225-110;
- (c) Suspend, revoke, or refuse to renew the licenses when one or more persons responsible for the violation hold a well constructor's license;
- (d) Require that a person whose license has been refused renewal pass the constructor test before a new license is issued;
- (e) Impose any reasonable conditions on the well constructor's license to insure correction of the violation and future compliance with the law. These conditions may include but are not limited to (1) fulfilling any outstanding obligations which are the result of administrative action before the constructor can offer any services or construct, alter or abandon any well; (2) requiring additional advance notice be given to the watermaster of construction, alteration or abandonment of any well; (3) requiring a seal placement notice be given to the watermaster 24 hours in advance of placing the seal; or (4) any other conditions the Director feels are appropriate.

ABANDONMENT OF CASED WELL

(890-220-060)



① In all wells to be abandoned, cement grout and concrete must be placed by grout pipe, tremie or dump bailer.

② In all wells to be abandoned, sealing material must be introduced at the bottom of the well and placed progressively upward.

FIGURE 15

OWRD '86

340-71-205 AUTHORIZATION TO USE EXISTING SYSTEMS.

- (1) For the purpose of these rules, "Authorization Notice" means a written document issued by the Agent which establishes that an existing on-site sewage disposal system appears adequate to serve the purpose for which a particular application is made. Applications for Authorization Notices shall conform to requirements of OAR 340-71-160(2) and (4).
- (2) Authorization Notice Required. No Person shall place into service, change the use of, or increase the projected daily sewage flow into an existing on-site sewage disposal system without obtaining an Authorization Notice, Construction-Installation Permit or Alteration Permit as appropriate.

EXCEPTIONS:

- a- An Authorization Notice is not required when there is a change in use (replacement of mobile homes or recreational vehicles with similar units) in mobile home parks or recreational vehicle facilities.
 - b- An Authorization Notice is not required for placing into service a previously unused system for which a Certificate of Satisfactory Completion has been issued within one (1) year of the date such system is placed into service, providing the projected daily sewage flow does not exceed the design flow.
- (3) For placing into service or for changes in the use of an existing on-site sewage disposal system where no increase in sewage flow is projected, or where the design flow is not exceeded; an Authorization Notice valid for a period not to exceed one (1) year shall be issued if:
 - (a) The existing system is not failing; and
 - (b) All set-backs between the existing system and the structure can be maintained; and
 - (c) In the opinion of the Agent the proposed use would not create a public health hazard on the ground surface or in surface public waters.
 - (4) If the conditions of section (3) of this rule cannot be met, an Authorization Notice shall be withheld until such time as the necessary alterations and/or repairs to the system are made.
 - (5) For changes in the use of a system where projected daily sewage flow would be increased by not more than three hundred (300)

gallons beyond the design capacity or by not more than fifty (50) percent of the design capacity for the system, whichever is less; an Authorization Notice valid for a period not to exceed one (1) year shall be issued if:

- (a) The existing system is shown not to be failing; and
 - (b) All set-backs between the existing system and the structure can be maintained; and
 - (c) Sufficient area exists so that a complete replacement area meeting all requirements of these rules (except those portions relating to soil conditions and groundwater) is available; and
 - (d) In the opinion of the Agent the proposed increase would not create a public health hazard or water pollution.
- (6) Only one (1) Authorization Notice for an increase up to three hundred (300) gallons beyond the design capacity, or increased by not more than fifty (50) percent of the design capacity, whichever is less, will be allowed per system.
- (7) For changes in the use of a system where projected daily sewage flows would be increased by more than three hundred (300) gallons beyond the design capacity, or increased by more than fifty (50) percent of the design capacity of the system, whichever is less, a Construction-Installation Permit shall be obtained. Refer to rule 340-71-210.
- (8) **Personal Hardship:**
- (a) The Agent may allow a mobile home to use an existing system serving another dwelling, in order to provide housing for a family member suffering hardship, by issuing an Authorization Notice, if:
 - (A) The Agent receives satisfactory evidence which indicates that the family member is suffering physical or mental impairment, infirmity, or is otherwise disabled (a hardship approval issued under local planning ordinances shall be accepted as satisfactory evidence); and
 - (B) The system is not failing; and
 - (C) The application is for a mobile home; and
 - (D) Evidence is provided that a hardship mobile home placement is allowed on the subject property by the

governmental agency that regulates zoning, land use planning, and/or building.

- (b) The Authorization Notice shall remain in effect for a specified period, not to exceed cessation of the hardship. The Authorization Notice is renewable on an annual or biennial basis. The Agent shall impose conditions in the Authorization Notice which are necessary to assure protection of public health.

(9) Temporary Placement:

- (a) The Agent may allow a mobile home to use an existing system serving another dwelling in order to provide temporary housing for a family member in need, and may issue an Authorization Notice provided:

- (A) The Agent receives evidence that the family member is in need of temporary housing; and

- (B) The system is not failing; and

- (C) A full system replacement area is available; and

- (D) Evidence is provided that a temporary mobile home placement is allowed on the subject property by the governmental agency that regulates zoning, land use planning, and/or building.

- (b) The Authorization Notice shall authorize use for no more than two (2) years and is not renewable. The Agent shall impose conditions in the Authorization Notice necessary to assure protection of public health. If the system fails during the temporary placement and additional replacement area is no longer available, the mobile home shall be removed from the property.

- (10) An Authorization Notice denied by the Agent shall be reviewed at the request of the applicant. The application for review shall be submitted to the Department in writing within thirty (30) days of the authorization notice denial, and be accompanied by the denial review fee. The denial review shall be conducted and a report prepared by the Department.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

D E Q E H W E D

MAY 13 1988

OFFICE OF THE DIRECTOR

May 9, 1988

Mr. Fred Hansen, Director
Environmental Quality Commission
811 S.W. Sixth Avenue
Portland, Oregon 97204

RE: WQ-SDS; Variance Denial; L. Fread.
Lot 46, Deschutes River Tract

I hereby respectfully appeal the denial of my request, as per your letter dated April 27, 1988. I feel that not enough true geological facts were considered. Also, I feel that certain statements given, and on which the denial was based, were generalities, and can be shown to be erroneous. Please consider the following three paragraphs. Copies of reports, letters, and statements are available for immediate review.

(1) Reference was made to the 90 foot well setback variance. Originally this lot was legally plotted and well within the 50 foot requirement of that time. Development surrounding this lot now seems to be a negative consideration. Accordingly, each lot should stand on it's on merit. Thus, the requirement that I abandon and seal the well on my adjoining lot should not be a consideration, no more than asking the same of the other three adjoining property owners.

(2) A statement by Bob Paeth, Head Soil Scientist for the DEQ, that the concern was not the 90 foot horizontal distance to a well, but the VERTICAL distance to water tables. This was voiced in Jay Langley's letter dated March 15, 1988. It was noted that the minimum distance from the trench bottom to the water table should be four feet, thus no less than seven feet down. I have on hand copies of all the surrounding well permits which show the well logs with the soil formations. The water table is shown as at least 20 feet down, and as such there is 16 additional feet to the water table. This, thus, is four times the minimum requirement.

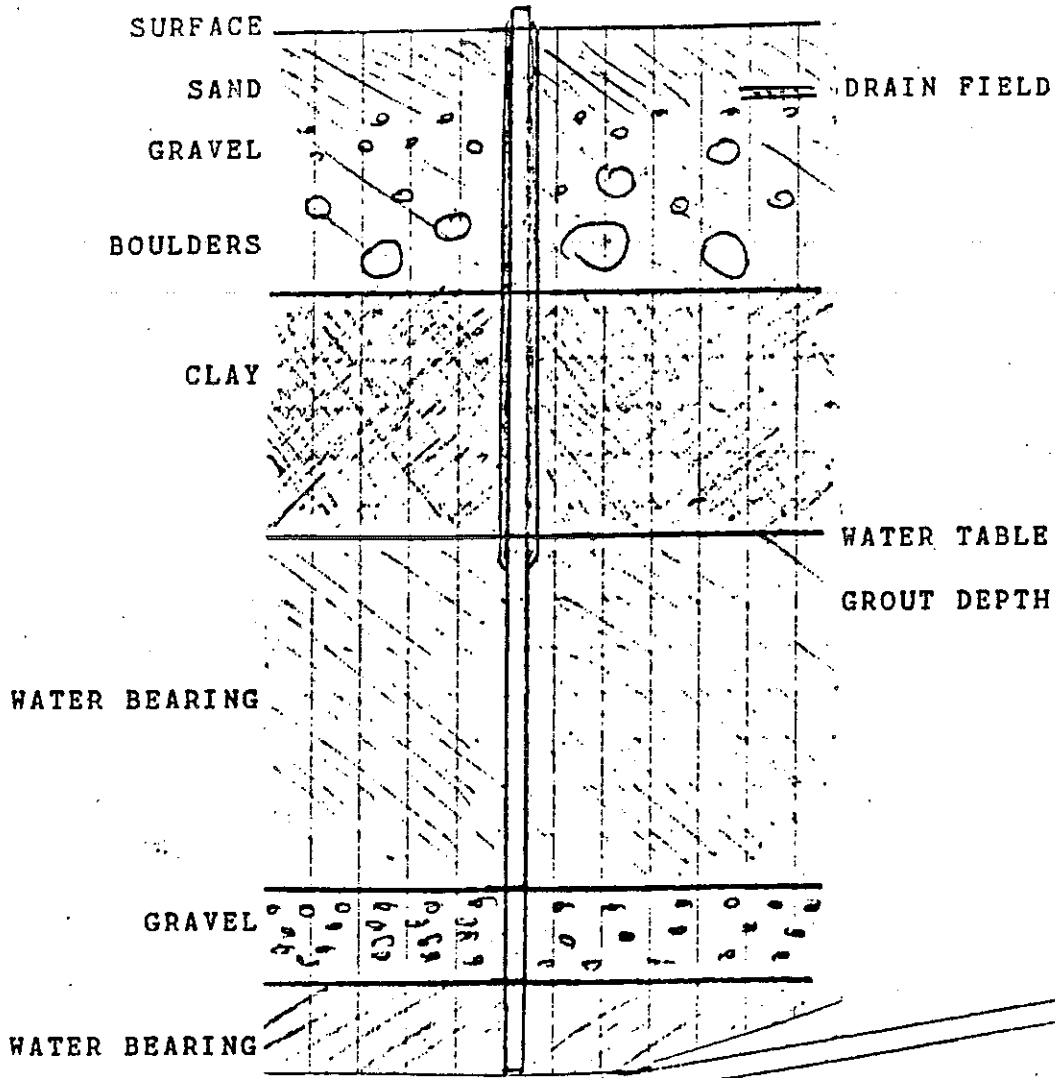
(3) Reference to Bob Main, Deschutes County Watermaster, as to the general formation in the area. It is acknowledged that Deschutes County has varied formations and ground composition as he stated. This residential division containing my lot, though, has one of the best layered stratas for both septic fields and wells. Mr. Main personally stated that he was not familiar with septic systems, but only that of water, in his specific field. I have statements from Mr. Archie Fox and from Mr. Curt Clauson, both licenced well drillers, that this immediate area is ideal because of the natural clay layer between the surface soils and the water bearing soils and aquifers. Mr. Abe Jones, of Jones Septic Tank Service also states that this local soil has excellent drainage, with very few problems of the drain fields of the tanks that he has pumped out nearby. Contrary to Mr. Main's statement, my copies of the neighbor's well reports, filed with the State engineer in Salem, DO show that the surrounding wells are sealed properly, being grouted down to 25 feet.

In conclusion, I feel that a variance should be granted. Then this buildable lot could be connected to the community water system. I have sealed and abandoned the well that was on the property. I have obtained all the required permits and paid all the necessary fees to place a septic system. The setback variance to 90 feet would only reflect on my other, residential lot. Attached is a pictorial diagram based on the immediate, logged land formations. Surely this formation exceeds requirements, with a septic system providing no adverse effect present or future. Neighbors are in favor, and other county staff members along with all the County Commissioners favor the variance.

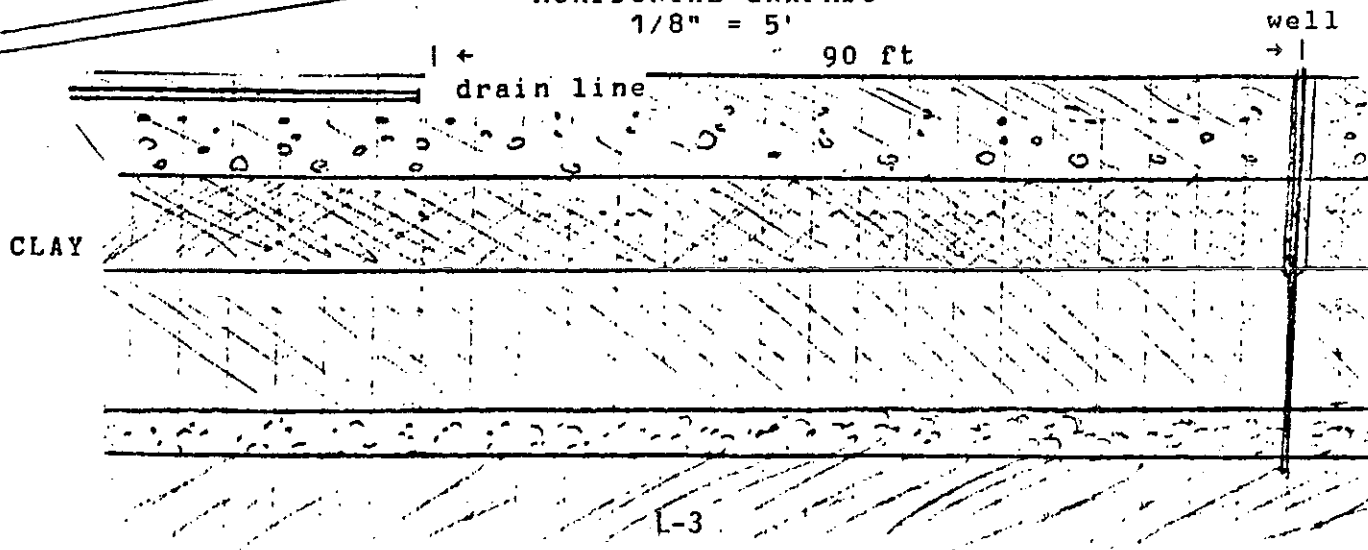
Sincerely,

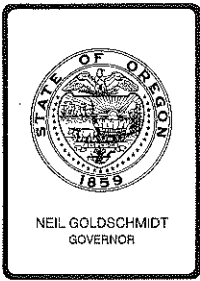
Lester Fread
19929 Fir Lane
Bend, Or 97701

DEPTH GRAPHIC
1/8" = 1'



HORIZONTAL GRAPHIC
1/8" = 5'





Environmental Quality Commission

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

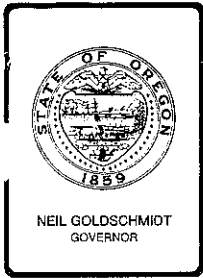
Agenda Item No. H:

Request for Approval of the FY89 Construction Grants Priority List and Management System

This agenda item requests approval of the FY89 construction grants priority list. The FY89 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 would involve limiting grant funding to Letter Class A, B, and C projects that correct documented water quality problems. The remaining federal funds would be used to capitalize a state revolving fund. A proposed rule modification for use of the Discretionary Authority is also included. The rule modification would broaden project eligibility for grant funding of sewer replacement and rehabilitation, while continuing to exclude funding for elimination of combined sewer overflows.

Tom Lucas and Rick Kepler of the Water Quality Division are present to answer any questions you might have.

WJ938



Environmental Quality Commission

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

EXECUTIVE SUMMARY

To: Environmental Quality Commission
From: Director *Ryella Taylor*
Subject: Agenda Item H, September 9, 1988, EQC Meeting

Request for Commission Approval of the FY89 Construction Grants Management System and Priority List for Fiscal Year 1989.

Background

The federal construction grant program has been a major source of funds for capitol investment in sewerage facilities since the mid-1960s. After passage of the Clean Water Act in 1972, grants to communities were substantially increased; to date over \$550 million in construction grant funds have been made to Oregon communities.

In 1987, when the Clean Water Act was reauthorized, the United States Congress substantially changed the construction grant program. The Act phases out the grants program and establishes a State Revolving Fund (SRF). This fund is intended to replace the grants program by instituting a revolving loan program run by the state. Under the program, a 20 percent state match is required to receive federal grant funds to capitalize the SRF. In the first two years of the program (FY87 and FY88) capitalization of the SRF was optional. In FY 89 and FY 90, 50 percent of the grant funds are required to be used to capitalize the SRF and after FY90 all grant funds are to be used for the SRF.

The 1987 Oregon Legislature passed enabling legislation which authorized the Department to establish the SRF, but did not establish funds for the 20 percent match. The Department will request the necessary matching funds from the 1989 Legislature. The Department is now working with a citizens advisory task force to develop rules to govern the SRF. A request to hold public hearings on proposed rules for the SRF should be presented to the Commission some time this fall.

FY89 Priority List and Management System

The Department is requesting approval of the proposed priority list and rule modifications. To actually receive federal grant monies, Section 106 of the Clean Water Act requires preparation of an annual project priority list and subsequent approval by the Environmental Protection Agency. Oregon Administrative Rules, Division 53, govern Department preparation of the list and further require Commission approval.

The Department staff prepares a draft project priority list each spring and potential projects are evaluated on an environmental basis. In-stream water quality standard violations, beneficial use impairment, groundwater quality degradation, permit compliance problems, system performance problems, and regulatory requirements, such as Commission Orders, are all reviewed and assessed. A rank-order project priority list is then prepared. A request is then made to the Commission to hold a public hearing on the draft priority list. After the hearing the Department responds to all public testimony and submits its findings along with the final project priority list to the Commission for approval.

Highest ranked projects generally have associated severe water quality problems. Lower ranked projects have less severe water quality problems. Lowest ranked projects have either undocumented problems, or potential problems. An example of a highly ranked project would be an overloaded sewage treatment plant which discharges partially treated sewage to sensitive estuarine waters, impairs commercial or recreational shellfishing and is under Commission order to upgrade the sewage treatment plant and achieve treatment requirements by a set date.

Approval of the project priority list is the most important Commission interaction with the Construction Grant program. Once the list is approved a chain of events is initiated which ultimately results in a grant award for projects within the fundable range on the priority list. The FY89 Priority List should receive additional attention because the staff recommends that this be the final priority list and further recommends that only projects with Letter Class A, B, or C be eligible for construction grant funding. Although projects could be added to the list after Commission approval or projects on the list could be re-ranked (both events subject to a public hearings process), this generally is an infrequent occurrence.

In addition to approval of the project priority list, the Department is proposing a rule modification to broaden eligibility necessary to allow major sewer rehabilitation and replacement to be grant eligible. The Administrative rules in the past have severely restricted funding for this type of project as a means to ration limited grant funds to other project types. However, it is clear that for some projects, notably projects in Toledo and Vernonia, major sewer rehabilitation and line replacement will be essential to reduce extraneous flows and improve treatment performance.

Executive Summary
EQC Agenda Item H
September 9, 1988
Page 3

There are several issues which the Commission may wish to consider, including: 1) funding options for construction grants and the capitalization of the SRF; 2) the staff proposal to make the FY89 project priority list the final list and to allow funding for projects with Letter Class A, B, or C only; 3) the proposed rule change broadening project eligibility to include major sewer rehabilitation and replacement and 4) staff analysis of the public hearing testimony which concludes certain projects should receive no higher than a Letter Class D rating.

Recommendation

The Department believes that the proposed project priority list is consistent with OAR 340-53 and recommends approval by the Commission. Additionally, the Department recommends limiting offers of grant assistance to those projects on the FY89 list which will correct documented water quality problems and make the FY89 priority list the final grant list. The Department further recommends Commission approval of the proposed rule modification to broaden project eligibility.

RJK:crw
WC3667
229-5415
August 17, 1988



Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director *Ryden Taylor*

Subject: Agenda Item H, September 9, 1988, EQC Meeting

Request for Commission Approval of the FY89 Construction Grants Management System and Priority List for Fiscal Year 1989.

BACKGROUND

Section 106 of the Federal Clean Water Act requires each state to establish criteria for development and management of a sewerage works construction grants project priority list. By administrative rule, the Environmental Quality Commission has established the required priority criteria and management system (OAR Chapter 340, Division 53). An annual priority list must be approved to establish the ranking of potential projects for available funding before the start of the Federal Fiscal Year FY89 beginning on October 1, 1988 (the Federal Fiscal Year runs from October 1, 1988 to September 30, 1989).

On April 29, 1988, the Commission granted a request to hold a public hearing on the Draft Construction Grants Priority List and proposed Rule Amendments to OAR 340-53-027. A public notice of the hearing was mailed to all interested parties on May 16, 1988. The hearing was held on June 29, 1988, and the record was closed on July 1, 1988.

At the close of the hearing record on July 1, 1988, sixteen (16) statements were received. Fourteen (14) of these statements addressed individual project rankings or concerns on the draft priority list. Two statements were submitted favoring the rule change to OAR 340-53-027.

This agenda item has been presented to obtain Commission approval of the FY89 Final Construction Grants Priority List and Commission adoption of changes and additions to OAR 340-53-027. Approval by the Commission at this time will enable the EPA to fully approve the list by the start of the FY89 grant period (October 1, 1988). Such action is required by federal regulation in order for EPA to disburse money to the state.

Discussion of Priority List/Management System

A. Construction Grants Program Termination

The reauthorization of the Clean Water Act in 1987 phases out the construction grant program and establishes a State Revolving Fund (SRF). Grants will no longer be available to municipalities for construction of sewage works after FY90 and the state could choose to use all of its federal funds after FY88 to capitalize the SRF.

In FY88 the state has the option of using up to 75 percent of allotted funds for capitalizing a SRF. Thereafter, federal funds must be used for capitalizing the SRF as follows: In FY89 and FY90 the state must use 50 percent of the allotted funds for capitalizing a SRF but could use 100 percent of the funds for capitalization. During FY91-94 all funds must be used for capitalizing a SRF. EPA grant funds not designated for the SRF by the state or required to be used to capitalize the SRF, may instead be used to fund sewerage facility construction grants.

During the 1987 legislative session, the Department received authorization through ORS 468.423 to establish a State Revolving Fund. The Department intends to return to the 1989 Legislature to request the 20 percent state matching funds needed to receive federal funds. The Department has established a Citizens Advisory Task Force to help guide the Department in developing rules for the program. Rules for project eligibility, interest rates on loans, and the procedure for developing the SRF project priority list will be determined in conjunction with the advisory group. Once the rules have been developed the Department will request authorization from the Commission to hold public hearings. This request will come sometime in the fall of 1988.

B. Construction Grants Termination and Funding Options

As federal funds for construction grants decrease the Department must phase out the grant program. To accomplish this three options are available: 1) funding to the SRF can be maximized; 2) funding to construction grants can be maximized; or 3) partial construction grant funding and capitalizing the SRF.

1) Maximum Funding of the SRF:

Maximizing funds for the SRF will increase the amount of loan funds available to municipalities for sewerage projects in the future. The Department can choose to use 75 percent of the grant funds for capitalizing the SRF in FY88, up to 100 percent but at least 50 percent in FY89 and FY90, and must use 100 percent of grant funds for the SRF in FY91-FY94. Thereafter no further federal funds will be available.

This option will require a larger commitment in state matching funds and will also remove grant assistance to many communities which now plan on receiving a grant for a construction project.

Many communities on the current FY88 list with Letter Class C projects are now completing planning requirements for a construction grant. Although funds are available for these projects in FY88, many communities are unable to satisfy the grant requirements before the end of FY88 (September 30, 1988). These communities expect to receive a construction grant. Furthermore, local financial planning is predicated on receiving a grant. If this option is chosen most of these communities would not receive grants, but instead would need to apply for a SRF loan.

Table 1 shows the funding distribution for this option.

Table 1 Maximize SRF Funding

Year	*Total Federal Funding Available	Available for Grants	Available for SRF	State 20% Match
1987 carry over	\$5 million	\$5 million	none	none
1988	\$25.9 million	\$6.5 million	\$19.5 million	\$3.9 million
1989	\$27.4 million	None	\$27.4 million	\$5.5 million
1990	\$27.4 million	None	\$27.4 million	\$5.5 million
1991	\$27.4 million	None	\$27.4 million	\$5.5 million
1992	\$20.6 million	None	\$20.6 million	\$4.1 million
1993	\$13.7 million	None	\$13.7 million	\$2.7 million
1994	\$6.9 <u>million</u>	None	\$6.9 <u>million</u>	\$1.4 <u>million</u>
Total	\$154.3 million	\$11.5 million	\$142.9 million	\$33.6 million

*Authorized amounts after FY88. Congress must appropriate these funds each year. The appropriation may be less than the authorization.

2) Maximum Funding for Grants:

The option to maximize the distribution of grants would allow more communities to receive grant assistance. This in turn would reduce the amount of loan funds available in the future, but would also reduce the funds required for the state match.

This option would allow projects to be funded down into Letter Class D on the proposed FY89 priority list. The Letter Class D projects do not have adequate documentation of water quality problems and would require an extensive planning period to justify them. Many of these communities would find it difficult to document their water quality problems before grant funding ends in FY90.

Table 2 shows the funding distribution for this option.

Table 2 Maximize Grant Funding

Year	*Total Federal Funds Available	Available for Grants	Available for SRF	State 20% Match
1987 carry over	\$5 million	\$5 million	None	None
1988	\$25.9 million	\$25.9 million	None	None
1989	\$27.4 million	\$13.7 million	\$13.7 million	\$2.7 million
1990	\$27.4 million	\$13.7 million	\$13.7 million	\$2.7 million
1991	\$27.4 million	None	\$27.4 million	\$5.5 million
1992	\$20.6 million	None	\$20.6 million	\$4.1 million
1993	\$13.7 million	None	\$13.7 million	\$2.7 million
1994	\$6.9 million	None	\$6.9 million	\$1.4 million
Total	\$154.3 million	\$58.3 million	\$96.0 million	\$19.1 million

*Authorized amounts after FY88. Congress must appropriate these funds each year. The appropriation may be less than the authorization.

3) Partial Grant and SRF Funding:

This option will allow the Department to award grants to correct all of the documented water quality problems and still ensure an adequate SRF loan base to provide funds for the state's future sewerage works needs.

The Department proposes to make grant funds available to those projects which have demonstrated water quality problems. These projects are on the priority list as Letter Class A, B, and C projects. Approximately \$30.0 million in grant funds will be needed to complete these projects. The federal funds remaining after awarding the above construction grants will be used to capitalize the SRF.

To make a smooth transition from the construction grants program to the SRF, the Department proposes to make the FY89 priority list the final grants list. After the Commission has approved the FY89 priority list, the Department will offer needed construction grant funds to communities in priority list order through Letter Class C projects.

Projects not in the funding range do have an option to receive grant consideration. After approval of the FY89 list, OAR 340-53-035 provides for adjustment to the approved list. Communities which either obtain the necessary documentation to demonstrate a water quality problem or develop a water quality problem later in the year can be evaluated and either be placed on the list or reranked. Notice of any proposed changes to the approved list are given to all projects whose priority rank would be changed. A 20 day period is then provided for those projects to request a hearing before the Commission.

Those Letter Class D and E projects and any projects not able to complete grant qualification requirements before the end of grant funding in FY90 would be placed on a separate priority list for the SRF.

Table 3 shows the funding distribution for this option.

Table 3 Partial Grant and SRF Funding

<u>Year</u>	<u>*Total Federal Funding Available</u>	<u>Available for Grants</u>	<u>Available for SRF</u>	<u>State 20% Match</u>
1987 carry over	\$5 million	\$5 million	None	None
1988	\$25.9 million	\$25.9 million	None	None
1989	\$27.4 million	None	\$27.4 million	\$5.5 million
1990	\$27.4 million	None	\$27.4 million	\$5.5 million
1991	\$27.4 million	None	\$27.4 million	\$5.5 million
1992	\$20.6 million	None	\$20.6 million	\$4.1 million
1993	\$13.7 million	None	\$13.7 million	\$2.7 million
1994	\$6.9 million	None	\$6.9 million	\$1.4 million
Total	\$154.3 million	\$30.9 million	\$123.4 million	\$24.7 million

*Authorized amounts after FY88. Congress must appropriate these funds each year. The appropriation may be less than the authorization.

Communities received notice of the proposed changes to the construction grants program by letter on March 10, 1988, again when the notice for the public hearing was mailed to them on May 16, 1988 and finally at the public hearing on June 29, 1988. There have been no comments received pertaining to establishing the FY89 priority list as the final list to award construction grants.

C. Final Priority List

The priority list, Attachment G, is revised from the draft list distributed for public comment on May 16, 1988. The changes in the list are the result of public testimony, administrative corrections and other additional information made available to the Department. These changes are listed in Attachment E. A summary of the testimony and the Department's response to the testimony are enclosed as Attachment A. Several new projects or project segments were added to the existing FY88 list. Several other projects were rerated as a result of new information and their priority letter class and points were adjusted accordingly. These adjustments have resulted in a change in the rankings of some projects on the final FY89 priority list.

1. Review of Priority List Ranking System

The priority list ranking system was established in OAR 340-53-015 (Attachment D) to establish a rank-order for disbursing limited federal construction grant funds. These funds are to be distributed to those public municipalities where sewerage facilities are needed to meet water quality standards. The focus of the system is to prioritize sewerage projects to correct water quality problems and/or permit violations and compliance problems.

The priority system has two separate classifications:

Letter Class

The Letter Class denotes the severity of a water quality problem. The problem must be documented either through an approved facilities plan, evaluation reports submitted for approval by the appropriate public entities, and/or written documentation by either the Health Division or the Department.

The Letter Class projects in the A, and B classes represent those projects which will eliminate documented water quality problems in the state. Letter Class A represents the most severe water quality problems.

The Letter Class C includes projects needed to correct substantial permit violation and/or compliance problems at existing facilities or where a discharge should have a permit.

Letter Class D projects are those projects where a water quality problem has not been identified, but is a possibility. Documentation is needed to define the water quality problem and how a project will relate to the correction of the problem.

Letter Class E projects are those projects that will prevent a potential water quality problem from occurring or do not have well defined water quality objectives. Documentation is insufficient to indicate present water quality problems but, there is the possibility a problem could develop in the future.

Regulatory Emphasis Points

Regulatory Emphasis Points are used to establish the rank-order within each letter class. Points take into account health hazard declarations, EQC Orders, Notices of Violations (NOV) issued by the Department, stream sensitivity, population served and project types.

2. Significant Changes as a Result of Public Testimony

Based on the evaluation of the testimony received from the public hearing several significant changes were made in the FY89 priority list. A summary of all public testimony and the Departments response is enclosed as Attachment A. Those changes related to priority rank-order are outlined below:

a. Brooks sewage system:

A sanitary survey submitted to the Department showed widespread septic system failures occurring which are contaminating the waters of the state. Letter Class was changed from D to B.

b. Metropolitan Wastewater Management Commission East Springfield (MVMC) relief sewer and rehabilitation project:

A request was made by MVMC to include this project on the FY89 priority list. The project is in need of further documentation to define the water quality concerns and has been given the Letter Class of D.

c. Gold Beach interceptor:

Documentation has been presented by the city demonstrating that direct discharges are occurring to Riley Creek due to lack of adequate sewage disposal in the Myrtle Acres area. The project Letter Class was moved from a D to a C.

d. City of Oregon City interceptor:

The City and Clackamas County submitted documentation demonstrating that failing septic systems in the HOPP area are contaminating the waters of the state. The project was placed on the FY89 priority list with a Letter Class B.

e. City of Siletz system improvements:

The city submitted a Wastewater System Evaluation which showed major problems. Additionally the City has violated its permit by discharging sewage during summer holding periods and not treating the sewage to a proper level. The Letter Class of the project was changed from a D to C.

f. City of Milwaukie interceptor:

The city has requested the Johnson creek area be placed on the priority list because of septic system failures. The project will be placed on the list with a Letter Class E. Further documentation of water quality problems are needed.

D. Proposed Rule Amendments to the Discretionary Authority

1. Sewer Replacement and Rehabilitation

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

The Department is requesting broadened eligibility for major sewer replacement and rehabilitation. Rule amendments are proposed in Attachment F and as follows:

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

- (1) The project is on the fundable portion of the state's current year priority list; and
- (2) The project meets the enforceable requirements of the Clean Water Act; and
- (3) [planning for the proposed project was completed or substantially completed on December 29, 1981; or the project is necessary for a community that is under Commission Order as December 31, 1986 to achieve compliance with the requirements of the national Municipal Policy.]

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

The above rule modification would allow several projects on the FY88 and FY89 priority list to qualify for grant funds. These communities have severe water quality problems resulting from deteriorating sewers. For these communities to correct their water quality problems major sewer replacement or rehabilitation is essential.

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

The Department received two comments favoring the rule change; no unfavorable comments were received. The proposed rule amendments are the same as those proposed at the public hearing on June 29, 1988.

The Department recommends that the above proposed rule amendments would apply to projects on the present FY88 priority list and the proposed FY89 list.

ALTERNATIVES AND EVALUATION

- A. The Commission can approve the proposed FY89 priority list or could choose not to approve a construction grants priority list for FY89. However, federal rules require that a priority list be developed and approved before grant monies can be awarded to the state. For this reason the Department recommends Commission approval of a FY89 priority list.
- B. The Department is recommending that the FY89 priority list become the final list for grant awards. This option has been suggested to enable the Department to make a smooth transition to the SRF. The proposed FY89 priority list does include all known projects with documented water quality problems. Construction grant rules also allow for changes to be made to the approved list.

The Commission does have several other options available, as follows:

The Commission could instruct the Department to develop a FY90 construction grants list. The FY90 list would be the last list that could be developed for the grant program. Developing the FY90 list could potentially allow additional projects not now on the list a chance for grant funding in FY90. This option would require additional federal funds to be used for grant awards, reducing the amount of loan funds available from the SRF in the future.

Alternatively, the Commission could instruct the Department to limit federal funds available for construction grants and instead use the additional federal funds to capitalize the SRF. Selecting this option will require many communities now expecting grant funding for their projects, to seek loan funds under the SRF. This option would ultimately provide the largest SRF and allow for additional loan funds for future sewage projects.

- D. The Department recommends broadening the eligibility for sewer replacement and rehabilitation under the discretionary authority (OAR 340-53-027). Doing so would allow several communities to correct water quality problems connected with deteriorating sewers. The Commission could choose not to broaden eligibility under the discretionary authority. This would cause several communities to increase the local share of funding to improve their sewerage systems. These communities are small and it would be extremely difficult for them to accumulate all of the funds needed to do the work. Not repairing these sewerage systems would probably result in extending the time it takes to correct the problems and allowing continued degradation of water quality in receiving streams.

SUMMATION

1. If Oregon is to receive federal construction grant funds in FY89, the Commission needs to adopt the state priority list for allocating these funds.
2. The final recommended FY89 Construction grants priority list was developed in accordance with OAR 340-53-005, et seq.
3. A public hearing on the construction grants FY89 priority list and management system was held on June 29, 1988. No oral testimony was received at the hearing, however, sixteen (16) pieces of written testimony were received by the close the hearing record on July 1, 1988.
4. The Department is requesting approval to offer construction grants to only those projects which will correct demonstrated water quality problems. These projects are in the Letter Class A, B, and C categories on the FY89 priority list.
5. The Department is recommending the FY89 Construction Grants Priority List be the final list to award Construction Grants from.
6. Approximately \$30.0 million will be made available to those remaining projects qualifying for grant funds on the final FY89 priority list.

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

DIRECTOR'S RECOMMENDATION

Based on the summation, the Director recommends that the Commission adopt the FY89 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.

Fred Hansen

Attachments

- A. Hearings Officer Report -- Record and Response to Oral and Written Testimony
- B. Attendance List
- C. List of Planning and Design Schedule Submittals
- D. Priority System and Criteria Rules
- E. Technical Corrections to the FY88 Priority List (update from the Draft FY89 List)
- F. Proposed Amendments to OAR 340-53-027
- G. FY89 Proposed Priority List, as Revised
- H. FY89 Points Calculation List, as Revised
- I. Staff Report for Agenda Item H, April 29, 1988, EQC Meeting

Richard Kepler:crw
WG3666
229-6218
July 17, 1988

Attachment A

Hearings Officer Report -- Record and Response to
Oral and Written Testimony

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY

INTEROFFICE MEMORANDUM

TO: Environmental Quality Commission DATE: August 10, 1988

FROM: Thomas J. Lucas, Hearings Officer

SUBJECT: Public Hearing on the Draft FY89 Construction Grants Priority System and List -- Summary and Response to Testimony

A public hearing on the referenced subject was held at the Department of Environmental Quality offices in Portland beginning at 10:00 a.m. June 29, 1988. The hearing was preceded by public notice and the draft priority list distributed to all interested parties on May 16, 1988. Publication was made in the Secretary of State's Bulletin on May 15, 1988.

Four members of the public were in attendance at the hearing, three of these people were representatives of the press. There was no oral testimony given at the hearing, however, the Department did receive sixteen (16) pieces of written testimony.

**RESPONSES TO WRITTEN TESTIMONY
FY88 CONSTRUCTION GRANTS PRIORITY LIST**

1. John Joyce, Public Works Director, City of Albany
(June 22, 1988)

The City of Albany submitted Written Testimony requesting the reevaluation of the North Albany areas with letter class D rankings. Although Albany does not have jurisdiction over the North Albany area at this time, the city does anticipate annexing part of the area through a health hazard annexation process. The City requests that interceptors for North Albany Road, Hickory Road, Quarry Road, and Christmas Tree Drive also be evaluated as part of the health hazard area and have their letter class increased to the equivalent of the IIa Area in North Albany. As documentation the city submitted the sanitary survey results for the North Albany area.

Response: There are four separate areas in North Albany on the priority list. Three of these areas are ranked as Letter Class D projects. This ranking was given to denote the possibility of on-site system failures but, no evidence exists that wide spread system failures are occurring in these areas.

The North Albany IIa area has a B letter class and is ranked number 1 on the priority list. This ranking is the result of a Environmental Quality Commission Order issued May 29, 1987. The order requires the resolution of deficiencies and violations occurring at the Riverview Heights sewage treatment plant and

septic system failures in the area. Areas other than IIa are not affected by this order.

The boundaries identified in the recent health hazard annexation correspond closely to the IIa area. The survey only identifies wide spread on-site system failures in this area of North Albany. Therefore, the only project which can be ranked as a letter class B on the priority list is the IIa area which already has a B letter class ranking. This project is intended to be a conveyance interceptor from the IIa area to a treatment system and is not intended to serve other North Albany areas.

2. Garry Kanz, Chairman, Marion County Board of Commissioners
(June 21, 1988)

Mr. Kanz in written testimony for Marion County, has requested that the Brooks area be considered for reranking. A recent sanitary survey of the area conducted on January 12 and February 22-24 shows wide spread on-site system failures and direct discharges to ditches and creeks in the area. A sanitary survey report prepared June, 1988 was submitted as documentation of a water problem.

Response: The Department has reviewed the documentation submitted for the Brooks area by Marion County. The sanitary survey does show wide spread on-site system failures which are affecting the water quality of area streams. In light of this new information the Department will change the letter class rank of the project from D to B. The letter class B ranking is to denote the impairment of the beneficial uses of the area streams through the discharge of inadequately treated sewage from on-site systems.

3. Michael J. Sykes, Chairman, Columbia County Board of Commissioners
(June 8, 1988)

Mr. Sykes in written testimony for Columbia County, supports the Department's ranking of the Vernonia sewer system project on the FY89 priority list. He notes that Vernonia lags behind the rest of the county in the "Oregon Comeback" and this is partly due to poor sewer infrastructure.

Response: The Department acknowledges the support of Columbia County for the Vernonia sewer system project and its ranking on the FY89 priority list. The County should note however, that construction grant funds are available to communities for the improvement or correction of water quality problems and are not intended for economic development purposes. In regards to the Vernonia sewer project the Department will provide funds to repair and upgrade the system for the present

population but, cannot provide funding for industrial development or future growth.

4. Donald A. Davis, City Manager, City of Newport (May 31, 1988)

Mr. Davis in written testimony for the City of Newport expressed his appreciation for the opportunity to review the FY89 priority list. He notes that the Newport project is an outfall pipe upgrade and is number 50 on the list. Mr. Davis then indicates the city will be applying for a construction grant and requests assistance in determining what is needed in a Facilities Plan Update to secure the EPA grant.

Response: The Department appreciates the review of the FY89 priority list by the City of Newport. The Department will work with the city to ensure that the most appropriate cost effective solution to the city's outfall problem is pursued. A project officer from the Construction Grants Section of Water Quality has been assigned to the city to provide assistance.

5. C. William Olson, Health Department Co-Administrator/Environmental Health Services Manager, Josephine County (April 26, 1988)

Mr. Olson requested by telephone, that the information he submitted to the Department for the needs survey, on the Crestview Loop area in Grants Pass, also be considered as testimony for the FY89 priority list. His letter of April 26, 1988 indicates that the Crestview Loop area has recently come under the jurisdiction of Grants Pass. A 1985 preliminary sanitary survey was submitted as documentation of water quality problems in the area. The Merlin/Acorn Drive may also have a potential problem; however, a sanitary survey has not been undertaken in the area.

Response: The Department appreciates Mr. Olson bringing to our attention the problems in the Crestview Loop area. The preliminary survey is sufficient to demonstrate a potential problem but, does not conclusively demonstrate water quality problems associated with failing on-site systems.

The survey relies heavily on observations and replies from area residents to survey questions. Many of the problems identified as failures in the survey are either lush vegetation over drain field areas, standing water or sluggish house plumbing. Although these are symptoms of failing systems and may pose health risks at some point, a demonstrated connection between the failures and contamination of the waters of the state has not been shown.

The bacterial samples that were taken of the creek flowing through the area showed only two samples exceeding the 200 fecal coliform/100ml standard. These samples were taken above the area of concern and appear to be related to irrigation runoff and not the on-site system failures occurring in the Crestview area. The project will be placed on the FY89 priority list as a Letter Class D project with 50 regulatory points. This designation is given to recognize the potential for a water quality problem.

6. Katherine Schacht, Associate General Manager, Metropolitan Wastewater Management Commission (June 23, 1988)

Ms. Schacht requested a new project be placed on the FY89 priority list for the Metropolitan Wastewater Management Commission (MWMC). The project is to relieve current overloading conditions in the East Springfield interceptors. The proposed project would enlarge several lines in the system and divert flows through a new interceptor sized to pick up new development in South Springfield. The project is outlined in a Sanitary Sewer Master Plan prepared for the City in 1980. The anticipated cost of the project is \$15,610,000.

Undersized lines are the main cause of the surcharging in the lines. In a 5-year storm event the sewer lines were observed to be running full with some manholes on branch lines overflowing into the streets. While other observances of overflows have not been recorded since the 1981 storm, many instances of extreme and/or prolonged surcharging of the system have been observed each winter.

Because of the known capacity problems the Springfield City Council has considered placing restrictions on development until the capacity problem is solved. There is great potential for growth in the area with 57% of the developable land vacant. The City Council has not placed a building moratorium in the area but are aware of the capacity problem and the prospects of the problem becoming worse with any amount of growth triggered by economic development in the area.

The City has also pursued a program of elimination of infiltration/inflow (I/I) from the system as recommended in the Sanitary Sewer Master Plan. Out of 82 defects outlined in the plan 72 were corrected through the Springfield Minor Rehabilitation project funded through the Construction Grant Program. In addition about 95 percent of the defects on private sewer lines have been corrected. The city has also corrected more than 100 non-cost effective defects identified in the plan. Unfortunately, the removal rates from the work so far completed has not seemed to measure up to the rates originally estimated.

In summary, the interceptors that serve East Springfield are currently under capacity for existing sanitary flows, despite extensive efforts to remove excess I/I from the system. The capacity problem has manifested itself in sewer manhole overflows, extensive sewer surcharging, sewer lateral drainage problems, and in the threat of building moratorium for the Main Street Basin. Alternatives to correct capacity problems for both existing and future needs have been reviewed and analyzed in the Master Planning done for the Springfield in 1980. The proposed project is the most cost effective alternative of those reviewed to solve both existing and growth needs.

Response: The Metropolitan Wastewater Management Commission has received \$89 million to improve the Eugene-Springfield sewage system. Several of these grants were to improve pump stations and rehabilitate sewage lines in Springfield. In 1981 the Department requested that MWMC submit a list of all projects from their Regional Sanitary Sewer Master Plan which they viewed as necessary and require grant assistance. The East Springfield relief sewer and enlargement project now requested by MWMC was not included as one of those projects.

The Department is somewhat surprised by MWMC's request for additional grant funds. It was believed that all water quality issues had been addressed for the 20 year planning period as required by the facilities planning process. Since this project appeared to be over look in the previous requests for grant related projects it will be added to the FY89 priority list. However, a reevaluation of the project and an update of the facilities plan will be needed.

The update should include the relationship between the East Springfield project and the previous major and minor sewer replacement and rehabilitation projects and the East Bank Interceptor projects funded by construction grants. The document should also included an analysis of the efforts of MWMC in removing excessive infiltration and inflow from the system and what the results of their efforts have been. In addition a demonstration of the water quality impacts of the surcharged lines needs to be documented. Surcharged lines in and of themselves are not a water quality problem. They do pose a potential water pollution problem if flows increase to the point where bypassing of sewage occurs.

This project will be placed on the FY89 Priority List with a Letter Class D in recognition that a problem may be present but, there is insufficient data to conclusively demonstrate a water quality problem. The project will receive 0 regulatory points.

There have been no reported violations of MWMC's permit which include a requirement to report all bypasses to the Department.

7. Robert A. Gray, City Administrator, Gold Beach
(June 24, 1988)

Mr. Gray is requesting, by written testimony, that the City of Gold Beach's interceptor project on the FY88 priority list be reevaluated. The project is currently a Letter Class D But should be ranked higher on the priority list. He submitted the sanitary survey conducted in 1976, the Findings of Fact issued by the Health Division on May 16, 1977, and a report showing septic tank and gray water effluent being directly discharged into Riley Creek. The city has been unable to duplicate the original findings of the 1976 survey of failing septic systems contaminating the stream. This is due to the drought conditions of the past few years.

Response: The Department has been working with the City of Gold Beach over the past year to ascertain what impacts the unsewered area known as "Myrtle Acres" was having on Riley Creek. The original sanitary survey done in 1976 documented some health hazard problems in the area. The survey did not attempt to determine if there was a connection between the failing systems and the water quality in Riley Creek. Subsequent sampling of the creek by the sewage plant operator in 1986 and 1988 did not show the failing systems in the Myrtle Acres area were contaminating the creek. These results may have been because of the abnormally dry winters over the last few years.

A visit by Department staff in the spring of 1988 was made to determine whether a problem still existed in the area. Staff did not observe any failing systems, but did note several direct discharge pipes draining into the creek and a bank failure where the drain field had washed into the creek. Many drain fields were located within 10 feet of the creek and several showed signs of past failures to the creek. A report was requested from the city documenting the direct discharges to the creek.

Although the city has not been able to demonstrate the area is affecting the water quality of the creek, the demonstration of direct discharges does enable the Department to change the letter class of the project to a C. The C letter class denotes the existence of discharges to the creek that should have treatment standards in a permit to comply with state and federal regulations.

8. Roger C. Rivenes, General Manager, South Suburban Sanitary District
(June 24, 1988)

Mr. Rivenes in written testimony, requests an increase in the federal funds necessary to fund their project on the priority list. He sights the possibility of a large pulp mill locating in the area and the proposed Total Maximum Daily Load limits to be imposed on the Klamath river as reasons for the project cost increase. The most likely alternative would cost about 10.8 million dollars.

Response: The federal construction grant program has several restrictions on what parts of a project can be funded with grant funds. Funds are provided to address water quality problems and current sewage treatment needs. The regulations specifically precludes the use of grant funds for reserve capacity built into the system to accommodate growth. The portion of the capacity built into the system to serve industrial users is also not eligible for grant funds. In addition Oregon Administrative Rules prohibits the use of Federal construction grant funds for use in building advanced treatment systems.

The above noted regulations limit the amount of federal funds available to assisted the sanitary district. Only those expenditures needed to remedy the current water quality problem will be eligible for construction grant funds. Therefore, the present projection of \$ 470,000 for grant funding will be retained until a more accurate analysis of grant eligible costs has been determined through the facilities planning process.

9. William I. Peterson, Contract City Engineer, City of Keizer
(June 23, 1988 and June 29, 1988)

Mr. Peterson in written testimony, requests that the Clear Lake and Middle Labish interceptors be reinstated on the priority list. Since the Clearlake area was the target of a major investigation regarding failing septic systems, the City of Keizer has committed considerable time and resources to help alleviate the problem. An Oregon Community Block Grant was used to connect as many residents as possible along Wheatland Rd. to a system which would ultimately fit into the overall Master Sewer Plan. The grant was not sufficient to entirely solve the problem. The system which is now in place is relying on two "interim" pump stations. In addition, none of the eastern 75% of the Clear Lake area has public sewers available. Failing septic systems have also been identified in the unsewered areas of this part of North Keizer.

The City has continually requested grant assistance from DEQ to help correct the North Keizer sewer problems. The need for assistance has

not been reduced by the installation of the Wheatland Rd. system. As documentation a map of the area served by the Block Grant funds was inclosed and where the failing systems were identified in 1982.

Response: The Clear Lake interceptor line was ranked as a letter class C project on the FY88 priority list. This ranking was to denote the affect that the failing systems in the northwest part of the area, along Wheatland Road, were having on water quality. The Middle Labish project was ranked as a letter class E project. This ranking indicates recognition that a problem affecting water quality could develop in the future but, there is a lack of information to suggest a present water quality problem exists.

DEQ commends the City of Keizer for pursuing solutions to correct the septic system problems in the Clear Lake area. When the city applied for an Oregon Community Block Grant from Intergovernmental Relations Division (IRD) to provide sewers for the area the Department supported the application and recommended approval of the project to IRD. This project has provided sewers to the area of concern in the Clear Lake area.

Since the immediate water quality problems have been corrected by the sewerage of the problem area, the Department will reinstate the Clear Lake and Middle Labish projects on the priority list as a letter class E. Further analysis and documentation are needed to determine whether water quality problems are present in the remaining unsewered area.

10. Dean Hergesheimer of WJA for the City of Rainier
(June 28, 1988)

Mr. Hergesheimer in written testimony, requests that the letter class ranking of the City of Rainier's sewer rehabilitation project not be down graded from a C to a D. Although the city has removed 4.5 mgd from its system by removal of catch basins, there still is about 1.7 mgd of infiltration and inflow in the system. The treatment plant has a design capacity of 0.5 mgd therefore, bypassing still occurs at a pump station when the flows exceed the pumping capacity of the station. The system surcharges and bypasses through a manhole near the plant. This bypass is not recorded nor is it easily observed. Recently the plant operator reviewed records for similar storm events and concluded that bypassing has been reduced from 11 times before the separation of the combined sewers to possibly one time after separation of the sewers.

Response: The City of Rainier has removed the majority of the infiltration and inflow sources in its system and this has reduced the bypassing of sewage significantly. The city is to be

commended on its efforts to improve the system and prevent bypasses from occurring. The project appears to have changed from one of sewer rehabilitation to a infiltration and inflow correction project. At this time there does not appear to be quantifiable information that the system is indeed bypassing or that the main problem is a pump station near the plant. The Department believes more information and documentation must be collected to better define the water quality problems.

The rehabilitation project will be converted to a infiltration and inflow correction project and will be given a letter class D for sufficient information to suggest a problem, but insufficient data to conclusively demonstrate the problem. No violation have been noted or bypasses reported, the project will receive 0 regulatory points.

11. John G. Block, Development Services Director, City of Oregon City
(June 28, 1988)

Mr. Block in written testimony, requests the inclusion of a project to provide interceptors to an area of failing septic systems known as the HOPP Health Hazard Area. Clackamas County has already declared a health hazard to exist and has recommended a health hazard area boundary to the State Health Division. The public hearing was held on July 14 and an annexation order is expected to be issued within 90 to 120 days. As documentation the city enclosed a letter from the State Health Division which outlined the water quality problems occurring as a result of the failing systems, the sanitary survey results and testimony to be given at the annexation hearing.

Response: The documentation does show that both direct discharges of septic tank effluent and seepage from failing systems are contaminating area streams. Bacterial contamination of area streams is extremely high. The problem is areawide since close to 40 percent of the systems have indirect or active failures.

The Department will place the project on the FY89 priority list with a letter class B to denote the water quality impairment and give the project 90 regulatory points for potential regulatory action (health hazard annexation).

12. Rhonda Pradis of the North Suburban area of Klamath Falls
(June 28, 1988)

Ms. Pradis in written testimony, is concerned about the high cost of providing sewer service to the area of Klamath Fall known as North Suburban or Pelican City. She requests that the project be placed on

the construction grant priority list to off set some of the cost of the system. The assessments for sewer to the low income residents are very high and may result in loss of their lands to the city. She believes the area is unable to acquire Oregon Community Block Grant funds.

Response: The Department thanks Ms. Pradis for her comments on the cost of providing sewers in the North Suburban area. The area was on the FY87 and FY88 priority list for funding of an interceptor line to the Klamath Falls sewage treatment plant. This project was funded. Fifty five (55) percent of the eligible cost of the interceptor project will be covered with about \$ 282,289 in grant funds.

Federal construction grants require a local match of 45 percent of the project and Oregon administrative rules do not allow construction grant funds to be used for collector sewers. Therefore, the North Suburban area can not acquire further funds for this project with federal construction grant funds. However, Klamath Falls did receive a Oregon Community Block Grant of \$ 500,000 to help in sewerage this area. The first priority for spending this money was to pay for service laterals and assessments for low and moderate income households.

13. Rudy Kellison, Mayor, City of Siletz (May 16, 1988)

In written testimony Mayor Kellison has acknowledge the deficiencies in the city's sewer system outlined in the Wastewater System Evaluation, dated March, 1988. The city does not have the financing capacity to construct the improvement without federal construction grant assistance and request that their project letter class be increased to a B.

Response: The Department has reviewed the wastewater system evaluation report and also notes that violations of the city's permit have continued to occur. Although there has not been a demonstration of impairment to beneficial uses of the river the plant is violating its permit and has the potential to affect the quality of the river. For this reason the letter class of the project will be moved from a D to a C and the regulatory points will be increased to 90.

14. Floyd Ferguson, Mayor, City of Toledo (June 10, 1988)

Mayor Ferguson in written testimony, supports the rule change to make major sewer rehabilitation and replacement eligible for construction grant funds when it results in an improvement in water quality. The city could not afford to properly fix its sewage bypass problems without the rule change.

Response: The Department thanks the city of Toledo for its support of the rule change to make major sewer rehabilitation and replacement eligible for grant funding when those improvements result in the water quality benefits.

15. Stephen C. Downs, Vice President, Westech Engineering, Inc.
(June 30, 1988)

Mr. Downs in written testimony, supports the rule change to make major sewer replacement and rehabilitation eligible for grant funding. He points out that in many cities older sewers can not be repaired through simple grouting and service lateral repair. These main lines are deteriorating and are not able to be effectively repaired by the standard methods available, therefore, are in need of replacement. Also many systems in the past were designed specifically to promote infiltration and inflow by use of "open joints" to minimize odors and prevent solids build up.

Response: The Department thanks Mr. Downs for his support of the rule change and the history and problems associated with conventional methods of infiltration and inflow correction.

16. Richard D. Bailey, Public Works Director, City of Milwaukie
(August 3, 1988)

Mr. Bailey in written testimony, was surprised to discover that the city had never been notified of the public hearing on the FY89 priority list. The city wished to place a project on the list but, it does not appear possible at this time. The project the city could use the grant funds for is an interceptor to the Johnson Creek area where failing septic systems are contaminating the creek.

Response: The Department regrets that the city was not informed of the public hearing on the FY89 priority list. The City should note that the public hearing date was published in the Secretary of States Bulletin on May 15, 1988. In addition a notice was mailed to the regional treatment facilities (Clackamas County Sewer District No. 1) which receives municipal sewage from Milwaukie.

The Department will place the Johnson Creek interceptor project on the FY89 priority list as a Clackamas/Milwaukie project. The project will be given a Letter Class E in recognition of a potential water quality problem. By placing the project on the priority list now the city will be given time to submit documentation of a water quality problem before the midyear review of the list in February 1989. The purpose of the midyear review is to reevaluate projects already on the list which needed

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additional time to provide documentation of water quality problems to the Department. The project's rank may or may not change depending on whether water quality contamination can be documented.

Attachment B

Attendance List

ATTENDANCE LIST

FY88 CONSTRUCTION GRANTS PRIORITY LIST HEARING

FOURTH FLOOR CONFERENCE ROOM
811 SW 6TH AVENUE, PORTLAND, OREGON
JUNE 29, 1988

Jennifer Smith
Stephanie Nutt
Paul Paulith
Ruby Lane

Oregonian
KOAP-FM Radio
KXL AM Radio
DEQ

WC3617

Attachment C

List of Planning and Design Schedule Submittals

LIST OF PLANNING AND DESIGN SCHEDULE SUBMITTALS

In accordance with OAR 340-53-015(2)(g) and (h), these schedules were used, along with priority ranking, to establish the FY89 list of fundable projects. Not all projects supplying a schedule are expected to qualify for a FY89 grant, due to the limited amount of funds available.

1. Newport/Outfall
2. Corvallis/West Interceptor
3. Happy Valley/Interceptor
4. South Suburban/STP Imp
5. St. Helens/I/I Corr
6. Fossil/STP Imp and I/I Corr
7. Mt. Angel/STP Imp
8. Toledo/Sewer Rehab.
9. Adair Village/STP Imp
10. Monmouth/Relief Sewer
11. Halsey/STP Imp
12. Elgin/STP Imp
13. Heppner/STP Imp
14. Brooks/System
15. Scio/STP Imp and I/I Corr.
16. MWMC/East Springfield Interceptor

WC3618

Attachment D

Priority System and Criteria Rules

**MUNICIPAL WASTE WATER
TREATMENT WORKS
CONSTRUCTION GRANTS
PROGRAM**

DIVISION 53

**DEVELOPMENT AND MANAGEMENT
OF THE STATEWIDE SEWERAGE WORKS
CONSTRUCTION GRANTS PRIORITY LIST**

Purpose

340-53-005 The purpose of these rules is to prescribe procedures and priority criteria to be used by the Department for development and management of a statewide priority list of sewerage works construction projects potentially eligible for financial assistance from U.S. Environmental Protection Agency's Municipal Waste Water Treatment Works Construction Grants Program, Section 201, Public Law 95-217.

Stat. Auth.: ORS Ch. 468

Hist.: DEQ 24-1980, f. 9-29-80, ef. 10-1-80

Definitions

340-53-010 As used in these regulations unless otherwise required by context:

(1) "Department" means Department of Environmental Quality. Department actions shall be taken by the Director as defined herein.

(2) "Commission" means Environmental Quality Commission.

(3) "Director" means Director of the Department of Environmental Quality or his authorized representatives.

(4) "Municipality" means any county, city, special service district, or other governmental entity having authority to dispose of sewage, industrial waste, or other wastes, any Indian tribe or authorized Indian Tribal Organization or any combination of two or more of the foregoing.

(5) "EPA" means U.S. Environmental Protection Agency.

(6) "Treatment Works" means any facility for the purpose of treating, neutralizing or stabilizing sewage or industrial wastes of a liquid nature, including treatment or disposal plants, the necessary intercepting, outfall and outlet sewers, pumping stations integral to such plants or sewers, equipment and furnishings thereof and their appurtenances.

(7) "Grant" means financial assistance from the U.S. Environmental Protection Agency Municipal Waste Water Treatment Works Construction Grants Programs as authorized by Section 201, Public Law 95-217 and subsequent amendments.

(8) "Advance" means an advance of funds for a Step 1 or Step 2 project. The advance is equal to the estimated allowance which is expected to be included in a future Step 3 grant award. An advance is made from funds granted to Oregon by EPA; it is not a direct grant by EPA to a municipality.

(9) "Project" means a potentially fundable entry on the priority list consisting of Step 3 or Step 2 plus 3 treatment

works or components or segments of treatment works as further described in OAR 340-53-015(4).

(10) "Treatment Works Component" means a portion of an operable treatment works described in an approved facility plan including but not limited to:

- (a) Sewage treatment plant;
- (b) Interceptors;
- (c) Sludge disposal or management;
- (d) Rehabilitation;
- (e) Other identified facilities.

(f) A treatment works component may but need not result in an operable treatment works.

(11) "Treatment Works Segment" means a portion of a treatment works component which can be identified in a contract or discrete sub-item of a contract and may but need not result in operable treatment works.

(12) "Priority List" means all projects in the state potentially eligible for grants listed in rank order.

(13) "Fundable Portion of the List" means those projects on the priority list which are planned for a grant during the current funding year. The fundable portion of the list shall not exceed the total funds expected to be available during the current funding year less applicable reserves.

(14) "Facilities Planning" means necessary plans and studies which directly relate to the construction of treatment works. Facilities planning will demonstrate the need for the proposed facilities and that they are cost-effective and environmentally acceptable.

(15) "Step 1 Project" means any project for development of a facilities plan for treatment works.

(16) "Step 2 Project" means any project for engineering design of all or a portion of treatment works.

(17) "Step 3 Project" means any project for construction or rehabilitation of all or a portion of treatment works.

(18) "Eligible Project Costs" means those costs which could be eligible for a grant according to EPA regulations and certified by the Department and awarded by EPA. These costs may include an estimated allowance for a Step 1 and/or Step 2 project.

(19) "Innovative Technology" means treatment works utilizing conventional or alternative technology not fully proven under conditions contemplated but offering cost or energy savings or other advantages as recognized by federal regulations.

(20) "Alternative Technology" means treatment work or components or segments thereof which reclaim or reuse water, recycle waste water constituents, eliminate discharge of pollutants, or recover energy.

(21) "Alternative System for Small Communities" means treatment works for municipalities or portions of municipalities having a population of less than 3,500 and utilizing alternative technology as described above.

(22) "Funding Year" means a federal fiscal year commencing October 1st and ending September 30th.

(23) "Current Funding Year" means the funding year for which the priority list is adopted.

(24) "State Certification" means assurance by the Department that the project is acceptable to the state and that funds are available from the state's allocation to make a grant award.

(25) "Small Community" means, for the purposes of an advance of allowance for Step 1 or Step 2, a municipality having less than 25,000 population.

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Stat. Auth.: ORS Ch. 468
Hist.: DEQ 24-1980, f. 9-29-80, ef. 10-1-80; DEQ 15-1982, f. & ef.
7-27-82

Priority List Development

340-53-015 The Department will develop a statewide priority list of projects potentially eligible for a grant:

(1) The statewide priority list will be developed prior to the beginning of each funding year utilizing the following procedures:

(a) The Department will determine and maintain sufficient information concerning potential projects to develop the statewide priority list.

(b) The Department will develop a proposed priority list utilizing criteria and procedures set forth in this section.

(c)(A) A public hearing will be held concerning the proposed priority list prior to Commission adoption. Public notice and a draft priority list will be provided to all interested parties at least thirty (30) days prior to the hearing. Interested parties include, but are not limited to, the following:

- (i) Municipalities having projects on the priority list;
- (ii) Engineering consultants involved in projects on the priority list;
- (iii) Interested state and federal agencies;
- (iv) Any other persons who have requested to be on the mailing list.

(B) Interested parties will have an opportunity to present oral or written testimony at or prior to the hearing.

(d) The Department will summarize and evaluate the testimony and provide recommendations to the Commission.

(e) The Commission will adopt the priority list at a regularly scheduled meeting.

(2)(a) The priority list will consist of a listing of all projects in the state potentially eligible for grants listed in ranking order based on criteria set forth in Table 1. Table 1 describes five (5) categories used for scoring purposes as follows:

- (A) Project Class,
- (B) Regulatory Emphasis,
- (C) Stream Segment Rank,
- (D) Population Emphasis,
- (E) Type of Treatment Component or Components.

(b) The score used in ranking a project consists of the project class identified by letter code plus the sum of the points from the remaining four categories. Projects are ranked by the letter code of the project class with "A" being highest and within the project class by total points from highest to lowest.

(3) The priority list entry for each project will include the following:

(a) Priority rank consisting of the project's sequential rank on the priority list. The project having the highest priority is ranked number one (1).

- (b) EPA project identification number.
- (c) Name and type of municipality.
- (d) Description of project component.
- (e) Project step.
- (f) Grant application number.

(g) Ready to proceed date consisting of the expected date when the project application will be complete and ready for certification by the Department. For the current funding year

the ready to proceed date will be based upon planning and design schedules submitted by potential applicants. For later funding years, the ready to proceed date may be based upon information available to the Department.

(h) Target certification date consisting of the earliest estimated date on which the project could be certified based on readiness to proceed and on the Department's estimate of federal grant funds expected to be available. The target certification date for the current funding year will be assigned based on a ready to proceed date. In the event actual funds made available differ from the Department's estimate when the list was adopted the Department may modify this date without public hearing to reflect actual funds available and revised future funding estimates.

(i) Estimated grant amount based on that portion of project cost which is potentially eligible for a grant as set forth in OAR 340-53-020.

(j) The priority point score used in ranking the projects.

(4) The Department will determine the scope of work to be included in each project prior to its placement on the priority list. Such scope of work may include the following:

(a) Design (Step 2) and construction of complete treatment works, (Step 2 plus 3); or

(b) Construction of one or more complete waste treatment systems; or

(c) Construction of one or more treatment works components; or

(d) Construction of one or more treatment works segments of a treatment works component.

(5)(a) When determining the treatment works components or segments to be included in a single project, the Department will consider:

(A) The specific treatment works components or segments that will be ready to proceed during a funding year; and

(B) The operational dependency of other components or segments on the components or segment being considered; and

(C) The cost of the components or segments relative to allowable project grant. In no case will the project included on the priority list, as defined by OAR 340-53-010(9) exceed ten (10) million dollars in any given funding year. Where a proposed project would exceed this amount the scope of work will be reduced by limiting the number of components or dividing the components into segments. The total grant for treatment works to a single applicant is not however limited by this subsection.

(b) The Department shall have final discretion relative to scope of work or treatment works components or segments which constitute a project.

(6) Components or segment not included in a project for a particular funding year will be assigned a target certification date in a subsequent funding year. Within constraints of available and anticipated funds, projects will be scheduled so as to establish a rate of progress for construction while assuming a timely and equitable obligation of funds statewide.

(7) A project may consist of an amendment to a previously funded project which would change the scope of work significantly and thus constitute a new project.

(8) The Director may delete any project from the priority list if:

- (a) It has received full funding;

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(b) It is no longer entitled to funding under the approved system;

(c) EPA has determined that the project is not needed to comply with the enforceable requirements of the Clean Water Act or the project is otherwise ineligible.

(9) If the priority assessment of a project within a regional 208 areawide waste treatment management planning area conflicts with the priority list, the priority list has precedence. The Director will, upon request from a 208 planning agency, meet to discuss the project providing the request for such a meeting is submitted to the Director prior to Commission approval of the priority list.

Stat. Auth.: ORS Ch. 468

Hist.: DEQ 24-1980, f. 9-29-80, ef. 10-1-80; DEQ 28-1981(Temp), f. & ef. 10-19-81; DEQ 15-1982, f. & ef. 7-27-82; DEQ 14-1983, f. & ef. 8-26-83

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Eligible Costs and Limitations

340-53-020 For each project included on the priority list the Department will estimate the costs potentially eligible for a grant and the estimated federal share:

(1) Where state certification requirements differ from EPA eligibility requirement the more restrictive shall apply.

(2) Except as provided for in section (3) of this rule, eligible costs shall generally include Step 1, Step 2, and Step 3 costs related to an eligible treatment works, treatment works components or treatment works segments as defined in federal regulations.

(3) The following will not be eligible for state certification:

(a) The cost of collection systems except for those which serve an area where a mandatory health hazard annexation is required pursuant to ORS 222.850 to 222.915 or where elimination of waste disposal wells is required by OAR 340-44-019 to 340-44-044. In either case, a Step 1 grant for the project must have been certified prior to September 30, 1979.

(b) Step 2 or Step 3 costs associated with advanced treatment components.

(c) The cost of treatment components not considered by the Department to be cost effective and environmentally sound.

(4) The estimated grant amount shall be based on a percentage of the estimated eligible cost. The percentage is seventy-five (75) percent of the estimated eligible cost until FY 1985, when it is reduced to fifty-five (55) percent of the estimated eligible cost for new projects. The Commission may reduce the percentage to fifty (50) percent as allowed by federal law or regulation. The Department shall also examine other alternatives for reducing the extent of grant participation in individual projects for possible implementation beginning in FY 1982. The intent is to spread available funds to address more of the high priority needs in the state.

Stat. Auth.: ORS Ch. 468

Hist.: DEQ 24-1980, f. 9-29-80, ef. 10-1-80; DEQ 15-1982, f. & ef. 7-27-82

Establishment of Special Reserves

340-53-025 From the total funds allocated to the state

the following reserves will be established for each funding year:

(1) Reserve for grant increases of five (5) percent.

(2) Reserve for Step 1 and Step 2 grant advances of up to ten (10) percent. This reserve shall not exceed the amount estimated to provide advances for eligible small communities projected to apply for a Step 3 or Step 2 plus 3 grant in the current funding year and one funding year thereafter.

(3) Reserve for alternative components of projects for small communities utilizing alternative systems of four (4) percent.

(4) Reserve for additional funding of projects involving innovative or alternative technology of four (4) percent.

(5) Reserve for water quality management planning of not more than one percent of the state's allotment nor less than \$100,000.

(6) Reserve for state management assistance of up to four percent of the total funds authorized for the state's allotment.

(7) Reserve for capitalization of state revolving fund in accordance with the following:

(a) FY87 - up to fifty (50) percent.

(b) FY88 - up to seventy-five (75) percent.

(c) FY89-90 - not less than fifty (50) percent and up to one hundred (100) percent.

(d) FY91-94 - one-hundred (100) percent.

(8) Reserve for nonpoint source management planning of not more than 1 percent of the state's allotment nor less than \$100,000.

(9) The balance of the state's allocation will be the general allotment.

(10) The Director may at his discretion utilize funds recovered from prior year allotments for the purpose of:

(a) Grant increases; or

(b) Conventional components of small community projects utilizing alternative systems; or

(c) The general allotment.

Stat. Auth.: ORS Ch. 468

Hist.: DEQ 24-1980, f. 9-29-80, ef. 10-1-80; DEQ 15-1982, f. & ef. 7-27-82; DEQ 14-1983, f. & ef. 8-26-83; DEQ 3-1987, f. & ef. 2-20-87; DEQ 16-1987, f. & ef. 8-12-87

Use of Discretionary Authority

340-53-027 The Director may at the Director's discretion utilize up to twenty (20) percent of the annual allotment for replacement or major rehabilitation of existing sewer systems or elimination of combined sewer overflows provided:

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

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

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

Stat. Auth.: ORS Ch. 468

Hist.: DEQ 20-1984, f. & ef. 11-8-84; DEQ 16-1987, f. & ef. 8-12-87

Priority List Management

340-53-030 The Department will select projects to be funded from the priority list as follows:

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(1) After Commission adoption and EPA acceptance of the priority list, allocation of funds to the state and determination of the funds available in each of the reserves, final determination of the fundable portion of the priority list will be made. The fundable portion of the list will include the following:

(a) Sufficient projects selected according to priority rank to utilize funds identified as the state's general allotment; and

(b) Additional projects involving alternative systems for small communities as necessary to utilize funds available in that reserve.

(2) Projects to be funded from the Step 1 and 2 grant advance reserve will be selected based on their priority point scores and whether they are projected to apply for Step 3 or Step 2 plus 3 grant in the current funding year or one funding year thereafter.

(3) Projects included on the priority list but not included within the fundable portion of the list will constitute the planning portion of the list.

Stat. Auth.: ORS Ch. 468

Hist.: DEQ 24-1980, f. 9-29-80, ef. 10-1-80; DEQ 15-1982, f. & ef. 7-27-82.

Priority List Modification and Bypass Procedure

340-53-035 The Department may modify the priority list or bypass projects as follows:

(1) The Department may add to or rerank projects on the priority list after the adoption of the priority list but prior to the approval of the priority list for the next year providing:

(a) Notice of the proposed action is provided to all affected lower priority projects.

(b) Any affected project may within 20 days of receiving adequate notice request a hearing before the Commission provided that such hearing can be arranged before the end of the current funding year.

(2) The Department will initiate bypass procedures when any project on the fundable portion of the list is not ready to proceed during the funding year:

(a) The determination will be based on quarterly progress reports.

(b) Written notice will be provided to the applicant of intent to bypass the project.

(c) An applicant may request a hearing on the proposed bypass within 20 days of adequate notice. If requested the Director will schedule a hearing before the Commission within 60 days of the request, provided that such hearing can be arranged before the end of the current funding year.

(d) If a project is bypassed it will maintain its priority point rating for consideration in future years. If a project is bypassed for two consecutive years the Commission may remove it from the priority list.

(e) Department failure to certify a project not on the fundable portion of the list or for which funds are otherwise unavailable will not constitute a "bypass".

Stat. Auth.: ORS Ch. 468

Hist.: DEQ 24-1980, f. 9-29-80, ef. 10-1-80; DEQ 15-1982, f. & ef. 7-27-82; DEQ 14-1983, f. & ef. 8-26-83

TABLE 1
(340-53-015)

CONSTRUCTION GRANTS PRIORITY CRITERIA
PROJECT CLASS

Letter Code	Description
A.	Project will minimize or eliminate surface or underground water pollution where: <ol style="list-style-type: none"> 1. Water quality standards are violated repeatedly or 2. Beneficial uses are impaired or may be damaged irreparably. <p>In addition:</p> <ol style="list-style-type: none"> 1. The EQC by rule OAR 340-44-005 to 440-040, had mandated elimination of discharge or inadequately treated waste to disposal wells or 2. The Administrator of the Health Division or the EQC has certified findings of fact which conclude that <ol style="list-style-type: none"> (a) Water pollution or beneficial use impairment exists and (b) Hazard to public health exists. <p>Documentation required includes:</p> <ol style="list-style-type: none"> 1. Field investigations, and 2. Public Notice and hearing and 3. Written findings of fact.
B.	Project will minimize or eliminate surface or underground water pollution where: <ol style="list-style-type: none"> 1. Water quality standards are violated repeatedly or 2. Beneficial uses are impaired or may be damaged irreparably. <p>Documentation required includes:</p> <ol style="list-style-type: none"> 1. Actual written documentation of existing water use impairment or 2. Actual written documentation of repeated violation of standards.
C.	Project is required to insure treatment capability to comply with water quality standards including: <ol style="list-style-type: none"> 1. Minimum federal effluent guidelines established by rule pursuant to PL 95-217 or 2. Effluent standards established in an issued WPCV or NPDES permit or 3. Treatment levels or effluent standards that would be placed in a permit to comply with state or federal regulation (for a source not presently under permit).

Letter Code	Description
	Documentation required includes: <p>Actual written documentation of the applicable guideline, standard, permit condition, or other regulatory requirement.</p>
D.	Project is necessary to minimize or eliminate pollution of surface or underground waters from: <ol style="list-style-type: none"> 1. Nonpoint sources where malfunctioning subsurface sewage disposal systems in developed areas are a contributing factor or 2. Point sources where infrequent discharges above permitted levels are a contributing factor. <p>Documentation required includes:</p> <ol style="list-style-type: none"> 1. Sufficient information to suggest a problem, but 2. Insufficient data to conclusively demonstrate the problem. Facility planning is expected to provide additional documentation.
E.	Project is desirable for prevention of potential water pollution problem. <p>Documentation required includes:</p> <ol style="list-style-type: none"> 1. Recognition that a problem could develop in the future, but 2. Lack of information to suggest a present water quality problem.

Regulatory Emphasis Points	Description
150	Project received a limited time extension to meet the 1977 secondary treatment goals of the Clean Water Act. <p>Documentation required includes:</p> <ol style="list-style-type: none"> 1. Addendum to the NPDES permit extending the compliance date, or 2. Stipulated consent agreement indicating noncompliance. Finding must have been made prior to January 1, 1978.
130	Project is necessary for immediate correction of a public health hazard through extraordinary measures such as: <ol style="list-style-type: none"> 1. Annexation, or 2. Service district formation. <p>Documentation required includes:</p> <ol style="list-style-type: none"> 1. EQC order, or 2. Certification of public health hazard by the Administrator of the Health Division pursuant to ORS 431.705 et.seq. or 222.850 et.seq.

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Table

- 120** Project is necessary to eliminate a voluntary or involuntary moratorium, including:
1. Involuntary connection limitation to a centralized facility, or
 2. EQC rule that restricts issuance of subsurface disposal permits for a specific geographic area or
 3. Voluntary limitations on connection to a centralized facility or construction of subsurface disposal systems. Voluntary moratorium must meet the following conditions:
 - a. The moratorium was formally enacted prior to August 1, 1979, and
 - b. It attempts to limit flow to a central facility which is at or beyond 90 percent capacity, and
 - c. The jurisdiction has a medium to high growth rate and therefore requires preventive pollution control action.
- Documentation required includes:
1. Rule or order establishing involuntary moratorium, or
 2. Order, ordinance, or other documentation of voluntary moratorium.
- 90** Project is necessary because of the potential for regulatory action identified by:
1. NPDES permit limitations or conditions which would be included in a permit when issued or amended, or
 2. DEQ approval of a facility plan including a determination of such potential, or
 3. A sanitary survey conducted by the Health Division or the DEQ.
- Documentation required includes:
- DEQ written concurrence based on the above.
- 50** Project is needed because of probable water quality problems identified through preliminary screening of problem and water quality concerns.
- Documentation required includes:
- Written suggestion by DEQ.
- 0** No immediate need for the project has been identified. Background information is either insufficient or unavailable to document the existence of present water quality problems.

STREAM SEGMENT RANK

Stream Segment ranking points shall be assigned based on the formula:

$$\text{where: } \text{Segment Points} = 100 - 2(\text{BR}) \frac{1}{n} (\text{SR})(50)$$

BR = Basin Rank (1 to 19) based on the total population within the Oregon portion of the river basin. The basin having the greatest population is ranked number 1.

n = Number of stream segments in the particular basin.

SR = Segment rank within basin as indicated in the statewide water quality management plan.

Following is a listing of basin ranks, stream segment ranks, and computed stream segment ranking points:

Basin Rank

Basin	1978 Population	No. of Stream Segments	Basin Rank
Willamette	1,672,000	23	1
Rogue	180,100	4	2
Umpqua	84,700	3	3
Deschutes	76,600	4	4
South Coast	76,300	5	5
North Coast/Lower Columbia	66,440	18	6
Klamath	58,200	5	7
Umatilla	50,000	3	8
Mid Coast	44,630	10	9
Hood River	34,200	4	10
Grande Ronde	30,100	3	11
Malheur River	22,480	1	12
Sandy	18,530	3	13
Powder	17,200	4	14
John Day	12,250	2	15
Walla Walla	10,300	2	16
Malheur	7,650	3	17
Goose and Summer Lakes	6,900	2	18
Owyhee	3,420	2	19

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Stream Segment Bankline	Segment	Segment Bank	Points
No. 5, South Coast Basin			
	Coos Bay	1	80.00
	Coos River	2	70.00
	Coquille River (River Mile 0-35)	3	60.00
	Coquille River (River Mile 35-Source)	4	50.00
	Remaining South Coast Basin Streams	5	40.00
No. 6, North Coast/Lower Columbia Basin			
	Lewis and Clark River	1	85.22
	Klaskanine River	2	82.14
	Wilson River (River Mile 0-7)	3	79.88
	Trask River (River Mile 0-6)	4	76.88
	Skippanon River	5	74.10
	Wastucca River (River Mile 0-15)	6	71.32
	Mohalem River	7	68.58
	Wilson River (River Mile 7 +)	8	65.76
	Trask River (River Mile 6 +)	9	62.98
	Wastucca River (River Mile 15 +)	10	60.20
	Mohalem Bay	11	57.42
	Tillamook Bay	12	56.64
	Tillamook River (River Mile 0-15)	13	51.86
	Wastucca Bay	14	49.08
	Mechanic River	15	46.30
	Tillamook River (River Mile 15+)	16	43.54
	Metarts Bay	17	40.74
	Remaining North Coast/ Lower Columbia Basin Streams	18	38.00
No. 7, Klamath Basin			
	Lost River	1	76.00
	Klamath River (River Mile 210-250)	2	66.00
	Williamson	3	56.00
	Sprague	4	46.00
	Remaining Klamath Basin Streams	5	36.00
No. 8, Umatilla Basin			
	Umatilla River	1	67.33
	Columbia River (Umatilla Basin)	2	50.67
	Remaining Umatilla Basin Streams	3	34.00
No. 9, Mid Coast Basin			
	Stauqua Bay	1	77.00
	Yaquina Bay	2	72.00
	Siletz River	3	67.00
	Yaquina River	4	62.00
	Alsea River	5	57.00
No. 1, Willamette Basin			
	Tualatin	1	95.73
	Willamette (River Mile	2	93.45
	Willamette (River Mile 84-166)	3	91.18
	South Yamhill River	4	88.91
	North Yamhill River	5	86.64
	Yamhill River	6	84.36
	Fudding River	7	82.09
	Molalla River	8	79.82
	S. Santiam River	9	77.55
	Santiam River & N. Santiam	10	75.27
	Coast Fork Willamette River	11	73.00
	Middle Fork Willamette River	12	70.73
	Clackamas River	13	68.45
	McKenzie River	14	66.18
	Rickreall Creek	15	63.91
	Luckiamute River	16	61.64
	Marys River	17	59.36
	Calapoofa River	18	57.09
	Long Tom River	19	54.82
	Columbia Slough	20	52.55
	Thomas Creek	21	50.27
	Remaining Willamette Basin Streams	22	48.00
No. 2, Rogue Basin			
	Bear Creek and Tributaries	1	83.50
	Applegate River	2	71.00
	Middle Rogue	3	58.50
	Remaining Rogue Basin Streams	4	46.00
No. 3, Umpqua Basin			
	South Umpqua River	1	77.33
	Cow Creek	2	60.67
	Remaining Umpqua Basin Streams	3	44.00
No. 4, Deschutes Basin			
	Crooked River	1	79.50
	Deschutes River (River Mile 120-166)	2	67.00
	Deschutes River (River Mile 0-120)	3	54.50
	Remaining Deschutes Basin Streams	4	42.00

OREGON ADMINISTRATIVE RULES
CHAPTER 340, DIVISION 53 — DEPARTMENT OF ENVIRONMENTAL QUALITY

Segment	Rank	Points	Segment	Rank	Points
Siwlaw River	6	52.00	No. 18, Goose and Summer Lakes Basin		
Aisen Bay	7	47.00	Chauouan River	1	39.00
Salmon River	8	42.00	Remaining Goose and Summer Lakes Basin Streams	2	14.00
Siletz Bay	9	37.00			
Remaining Mid Coast Basin Streams	10	32.00			
			No. 19, Oybae Basin		
No. 10, Hood Basin			Oybae River	1	17.00
Hood River Main Stem	1	67.50	Remaining Oybae Basin Streams	2	12.00
Columbia River (Hood Basin)	2	55.00			
Hood River East, (Hiddle and West Forks)	3	42.50			
Remaining Hood Basin Streams	4	30.00			
No. 11, Grande Ronde Basin					
Grande Ronde River	1	61.33			
Willoua River	2	44.67			
Remaining Grande Ronde Basin Streams	3	28.00			
No. 12, Malheur Basin					
Malheur River	1	26.00			
No. 13, Foudre Basin					
Snake River (Foudre Basin)	1	61.50			
Foudre River	2	49.00			
Burnt River	3	36.50			
Remaining Foudre Basin Streams	4	24.00			
No. 14, Sandy Basin					
Columbia River (Sandy Basin)	1	55.33			
Sandy River	2	38.67			
Remaining Sandy Basin Streams	3	22.00			
No. 15, John Day Basin					
John Day River	1	45.00			
Remaining John Day Basin Streams	2	20.00			
No. 16, Walla Walla Basin					
Walla Walla River	1	43.00			
Remaining Walla Walla Basin Streams	2	18.00			
No. 17, Malheur Lake Basin					
Silvies River	1	49.33			
Donner & Blitzen River	2	32.67			
Remaining Malheur Lake Basin Streams	3	16.00			

Population emphasis points shall be assigned on the basis of the formula:
 Points = Population Served 2 log 10
 where:
 Population Served represents the existing Oregon population that would be initially served by the project if it were in operation.

PROJECT TYPE

Description	Points
Secondary Treatment and BPT	10
Major Sewer System Rehabilitation	9
Interception of Existing Discharge	6
Infiltration/Inflow Correction	7
Interceptor to Serve Existing Development	6
Treatment More Stringent than Secondary	5
Correction of Combined Sewer Overflows	3
Interceptor to Serve New Development	2
New Collectors	1

Attachment E

Technical Corrections to the FY88 Priority List
(update from the Draft FY89 List)

**TECHNICAL CORRECTIONS TO THE FY88 PRIORITY LIST
(Updated from Draft FY89 List)**

The following is a summary of project changes, additions, and deletions which have occurred since the adoption of the FY88 priority list.

Community Project <u>Grant No.</u>	<u>Action Taken</u>	<u>Comment</u>
Adair Village STP Imp, I/I Corr C-410676-01	Combined Grant No.s 067602 into 067601 Decrease in general funds needed from \$196,000 to \$163,500	Fund Management
Amity Outfall C-410508-04	Removed from FY89 list	Project received funding from OCD.
Athena STP Imp, I/I Corr C-410635-01	Combine Grant No. 063502 into 063501 Increase General Grant Fund need from \$246,000 to \$257,785 Add Small Community need of \$93,115 Add Alternative Fund need of \$33,860	Facilities Plan
Bandon I/I Corr C-410553-02	Added to FY89 list as Letter Class D with 90 Reg. Points.	Request by Southwest Region. Bypassing of raw sewage to bay and washout of plant. Violations of permit. Excessive I/I appears to be problem. Documentation needed.

Community Project Grant No. -----	Action Taken -----	Comment -----
Bay City STP Imp & I/I C-410735-01	Added to FY89 list as a Letter Class D with 90 Reg. Points	Request by Northwest Region violations of permit (TSS & lbs). Problem documentation needed.
Brookings I/I Corr C-410672-02	Remove from list for FY89	
	Reduce General Fund need for FY88 from \$200,000 to \$0	Facilities Plan
Brookings STP Imp C-410672-01	Change Target Cert. Date from 08/88 to 09/88	Fund Management
	Increase General Fund need from \$880,000 to \$1,744,000	
Brooks System C-410637-01	Change Letter Class from D to B	Sanitary Survey
Brownsville STP Imp C-410730-01	Added to FY89 list as Letter Class D with 50 Reg. Points	Willamette Valley Region requested project be added to list.
Clackamas/ Milwaukie Interceptor C-410737-01	Add project as a Letter Class E with 0 Reg. Points	City Request
Condon STP Imp C-410704-01	Removed from FY89 list Major problems at the plant are related to O&M.	

Community Project Grant No.	Action Taken	Comment
----- Coos Bay No. 2 STP Imp, I/I Corr C-410628-03	----- Combine Grant No.s 062803 and 062804 into 062803 Add general fund needs of \$110,000 for I/I work Add Ready to Proceed Date of FY89 Change Target Cert. Date from 07/88 to 01/89	----- Fund Management
Coos Bay No. 1 PS/FM/SWI C-410628-05	Project Grant No. 062802 combined into 062805 Change target Cert. Date from 07/88 to 09/88 Add Ready to Proceed Date of FY88 Decrease in General Grant Fund need from \$1,925,000 to \$1,831,000	Grant Application
Coos Bay No. 1 Sewer Rehab C-410628-05	Add Ready to Proceed Date of FY88 Change Target Cert. Date from 07/88 to 9/88 Add Ready to Proceed Date of FY88 Decrease General Fund requirements from \$750,000 to \$312,212	Grant Application

Community Project Grant No. -----	Action Taken -----	Comment -----
Cove Orchard 100% M/R C-410703-02	Addition to FY88 and FY89 lists as Letter Class B with 90 Reg. Points	Concept of 100% M/R grant approved by EPA letter of June 30, 1988
	Add Target Cert. Date of 09/88	
	Add Ready to Proceed Date of FY88	
	Add \$ 181,500 to General fund needs	
	Add \$ 148,500 to Alternative fund needs	
Dufur STP Imp C-410473-02	Removed from FY89 list.	Project no longer needed. Change in permit limits.
Eagle Point STP Imp C-410429-02	Reinstated on Final FY89 list as a Letter Class D	Project was removed inadvertently from draft FY89 list. Need documentation of current problems.
	Change Component from Interceptor to STP Imp	
	Add Target Cert. Date of 09/89	
	Add Ready to Proceed Date of FY89	
Enterprise STP Imp C-410554-02	Remove from FY89 list	Completed project with other funds.
Florence I/I Corr C-410533-03	Removed from FY89 list	City corrected problems with local funds.

Community Project Grant No.	Action Taken	Comment
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STP Imp C-10533-02	Removed from FY89 list	City corrected problems with local funds.
Gervais STP Imp PS C-410733-01	Added to FY89 list as a Letter Class D with 50 Reg. Points	Willamette Valley Region requested project be added to list.
Gold Beach Interceptor C-410698-01	Reranked from a Letter Class D to a C for FY89 list	Public Testimony City requested change. Sanitary survey was completed in 1976. There are several direct discharges to stream from septic systems and gray water.
Grants Pass (Crestview Loop) Interceptor C-410661-12	Add to FY89 list as Letter Class D and 0 Reg Points	Requested by County Health Dept. Sanitary survey indicates septic system failures but, there appear to be no water quality problems.
Halsey STP Imp, I/I Corr C-410595-01	Combine Grant No. 059502 into 059501 Increase General Fund need from \$178,000 to \$212,810	Facilities Plan

Community Project Grant No.	Action Taken	Comment
Happy Valley Interceptor C-410567-02	Move Ready to Proceed Year from FY88 to FY89 Change Target Cert. Date from 07/88 to 11/88	Fund Management
Harrisburg STP Imp, I/I Corr C-410727-01	Combine Grant No. 072702 into 072701 Decrease General Fund need from \$1,375,000 to \$66,000 Add Small Community fund need of \$1,279,85 Add Alternative Fund need of \$465,400 Add Innovative Fund need of \$7,800	Facilities Plan
Hood River Int/PS C-410577-02	Removed from FY89 list	Project was funded with OCD and local funds.
Ione System C-410583-02	Removed from FY89 list	Direct discharges removed from creek no other water quality problems exist.
Joseph STP Imp C-410519-02	Removed from FY89 list	Project received federal and state economic development funds.

Community Project Grant No. -----	Action Taken -----	Comment -----
Junction City I/I Corr C-410496-02	Move Ready to Proceed Date from FY88 to FY89 Change Target Cert. Date from 09/88 to 05/89	Fund Management
Keizer Int(Clear Lake) C-410701-01	Added to Final FY89 list as a Letter Class E project Add Target Cert. Date of 09/89 Add Ready to Proceed Date of FY89	Removed from draft FY89 list. Added back at city's request. Will need further documentation of water quality problems.
Int (Middle Labish) C-410701-01	Added to Final FY89 list as a Letter Class E project. Add Target Cert. Date of 09/89 Add Ready to Proceed Date of FY89	Removed from draft FY89 list. See above.
Lane Co. (Mapleton) System C-410442-01	Removed from FY89 list	Project funded by OCD and local funds.
Lincoln Co. (SW Area) System C-410537-01	Removed from FY89 list	Project was eliminated.
Lincoln City Interceptor P2 C-410559-04	Removed from FY89 list	Project no longer needed.

Community Project Grant No.	Action Taken	Comment
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Lowell STP Imp, I/I Corr C-410573-02	Combine Grant No.s 057302, 057303 and 057304 under 057302. Decrease General Fund need from \$826,000 to \$580,250 Add Innovative Fund need of \$17,000	Facilities Plan
Marion Co. (Brooks) System C-410637-01	Reranked as a B for FY89 list.	Sanitary survey shows water quality impacts on local streams from failing septic systems.
Mill City System C-410447-01	Reinstated on Final FY89 list Add General Fund need of \$554,400 Add Alternative Fund need of \$110,400 Add Small Community Fund need of \$303,600	Removed from Draft FY89 list. Project was to be funded by the Farm Home program. Farm Home was unable to fund total project. EPA funds are still needed. Facilities Plan
Milton-Freewater Solids C-410589-02	Removed from FY89 list	City received funding from EDA to build project.
STP Imp C-410589-03	Removed from FY89 list	City received funding from EDA to build its lagoon system.

Community Project Grant No. -----	Action Taken -----	Comment -----
Monmouth Relief Sewer C-410625-03	Move Ready to Proceed Year from FY88 to FY89 Change Target Cert. Date from 09/88 to 11/88	Fund Management
Monroe STP Imp C-410569-04	Move Ready to Proceed Year from FY88 to FY89 Change Target Cert. Date from 09/88 to 09/89	Fund Management
Mount Angel STP Imp C-410588-02	Move Ready to Proceed Year from FY88 to FY89 Change Target Cert. Date from 07/88 to 09/89	Fund Management
MWMC (East Springfield) Interceptor C-410624-20	Add to FY89 list as Letter Class D and O Reg Points	Public Testimony City requested to be added to list. Documentation of problems needed.
Newport Sludge C-410618-03	Removed from FY89 list	City has addressed its sludge handling problems.

Community Project Grant No. -----	Action Taken -----	Comment -----
North Bend STP Imp, I/I Corr C-410520-04	Combine Grant No.s 052004 and 052005 into 052004 Change target Cert. Date from 07/88 to 09/88 Increase in General Fund Requirements from \$812,000 to \$1,393,485 Add Alternative Fund needs of \$80,650 Change Grant Step from 3 to 4	Facilities Plan
Nyssa PS C-410724-02	Removed from FY89 list	Project completed with OCD grants and local funding.
STP Imp C-410724-01	Removed from FY89 list	Project completed with OCD grants and local funding.
Oakland STP Imp C-410617-02	Removed from FY89 list	Project improvements no longer necessary.
Oakridge I/I Corr C-410514-03	Reinstated on Final FY89 list Add Ready to proceed Date of FY89 Change Target Cert Date from 09/88 to 05/89	Project was removed inadvertently from draft FY89 list Fund Management

Community Project Grant No.	Action Taken	Comment
STP Imp C-410514-02	Reinstated on Final FY89 list	Project was removed inadvertently from draft FY89 list.
Oregon City Interceptor C-410734-01	Add to FY89 list as a Letter Class B with 90 Reg. Points Add General Fund need of \$165,000	Public Testimony
Port Orford STP Imp C-410712-02	Change Target Cert Date from 08/88 to 09/88 Decrease General Fund need from \$1,100,000 to \$1,078,000 Add \$81,000 need to Small Community Fund Add Alternative Fund need of \$16,200	Facilities Plan
Port Orford Int/PS/FM C-410712-01	Decrease General Fund need from \$135,00 to \$83,000	Facilities Plan
Portland (Royal Highland) Interceptor C-410721-01	Move Ready to Proceed Year from FY87 to FY89 Change Target Cert. Date from 09/88 to 11/89	Fund Management
Powers I/I Corr C-410702-01	Removed from FY89 list	Project completed with local funds
Pump Station C-410702-03	Removed from FY89 list	Project completed with local funds

Community Project Grant No.	Action Taken	Comment
STP Imp C-410702-02	Removed from FY89 list	Project completed with local funds
Rainier I/I Corr C-410586-02	Changed Component from Sewer Rehabilitation to I/I Corr Changed Letter Class from C to D.	New information, sewer rehabilitation improvements has reduced flows need further documentation of problem.
Riddle I/I Corr C-410732-01	Added to FY89 list as Letter Class D with 0 Reg. Points	City requested project be added to list. Sever I/I problems documentation needed.
Rogue River Interceptor C-410713-01	Removed from FY89 list	Project completed with local funds.
Roseburg I/I Corr C-410693-03	Added to FY89 list as Letter Class D with 0 Reg. Points	Project added to list as part of a phased project. Documentation needed to demonstrate extent of problem.
Siletz STP Imp & I/I C-410707-01	Reranked from Letter Class D to C for FY89 list	Requested by Willamette Valley Region. Sewer study shows major problems. Continuous violations of permit.
Sodaville System C-410662-01	Removed from FY89 list	Sanitary survey showed no problems existed.

Community Project Grant No.	Action Taken	Comment
South Subur STP Imp C-410667-01	Add Ready to Proceed Date of FY89 Change Target Cert. Date from 09/88 to 05/89	Fund Management
St Helens I/I Corr C-410539-02 C-410539-03	Change ready to Proceed Year from FY88 to FY89 Add Target Cert. Date of 09/89	Fund Management
Sumpter System C-410714-01	Removed from FY89 list	Project no longer needed.
Tillamook I/I Corr C-410505-02	Added to FY89 list as a Letter Class C with 50 Reg. Points Add General Fund need of \$129,250	Plant washes out from I/I in winter time. Discharges into bay.
Toledo PS, I/I Corr C-410408-01	Combine Grant No. 040802 into 040801 Change Target Cert. Date from 06/88 to 09/88 General Fund need increased from \$551,000 to \$930,619	Facilities Plan
Union Gap Int C-410617-03	Removed from FY89 list	Project received funding from Farmers Home.

Community Project Grant No.	Action Taken	Comment

Vernonia I/I Corr, STP Imp C-410631-01	Combine Grant No. 063102 into 063101 Move Ready to Proceed Date from FY88 to FY89 Change Target Cert. Date from 08/88 to 05/89 Increase General Fund need from \$1,225,000 to \$1,229,000	Fund Management
Waldport STP Imp C-410731-01	Added to FY89 list as Letter Class D with 50 Reg. Points	Project added by request of Willamette Valley Region. Potential problem.
Wallowa Co. (Wallowa Lake) Ints C-410601-01	Removed from FY89 list	Project received federal and state economic development funds.
Westfir STP Imp C-410697-02	Removed from FY89 list	Project was funded with OCD funds.

Attachment F

Proposed Amendments to OAR 340-53-027

USE OF DISCRETIONARY AUTHORITY

OAR 340-53-027

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

- (1) The project is on the fundable portion of the state's current year priority list; and
- (2) The project meets the enforceable requirements of the Clean Water Act; and
- (3) [Planning for the proposed project was complete or substantially complete on December 29, 1981; or the project is necessary for a community that is under Commission Order as December 31, 1986 to achieve compliance with the requirements of the national municipal policy.]

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

Attachment G

FY89 Proposed Priority List, as Revised

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

RANK	COMMUNITY	AREA	COMPONENT	PROJECT NUMBER	STEP	READY TO PROCEED	TARGET CERT.	GENERAL FUND	SMALL COMM. FUND	ALT. TECH. FUND	INNOV TECH. FUND	PRIORITY POINTS
1	N. ALBANY C.S.D	AREA 2A	INTERCEPTOR	069401	3		06/88	313				B 233.14
2	ADAIR VILLAGE	CITY	STP IMP II CORRECTION	067601 067601	4 4	FY 88 FY 88	09/88 09/88	164				B 196.72 B 153.72
3	OREGON CITY	HOPP	INTERCEPTOR	073401	3	FY 89	09/89	165				B 189.45
4	COOS BAY NO.2	CITY	STP IMP I/I CORRECTION	062803 062803	3 3	FY 89 FY 89	01/89 01/89	727 110				B 187.82 B 184.82
5	COOS BAY NO. 1 COOS BAY NO.1	CITY CITY	SEWER REHAB PS/FM/SWI	062805 062805	3 3	FY 88 FY 88	09/88 07/88	312 1,831				B 187.32 B 184.90
6	NORTH BEND	CITY	II/CORRECTION STP IMP	052004 052004	4 4	FY 88 FY 88	07/88 09/88	1,393		81		B 184.98 C 187.98
7	TOLEDO	CITY	PUMP STATION I/I CORR	040801 040801	4 4	FY 88 FY 88	09/88 09/88	931				B 179.02 B 176.02
8	VERNONIA	CITY	I/I CORR STP IMP	063101 063101	4 4	FY 89 FY 89	05/89 05/89	1,229				B 172.02 C 175.02
9	ELGIN	CITY	STP IMP II CORRECTION	047202 047202	3 4	FY 89 FY 89	12/88 12/88	259 43				B 167.81 C 164.81
10	BRKS HOPMERE SD	DISTRICT	SYSTEM	063701	3	FY 88	/	746				B 156.94
11	COVE ORCHARD SD	DISTRICT	100% M/R	070302	4	FY 88	09/88	182		149		B 151.56
12	HAPPY VALLEY	CITY	INTERCEPTOR	056702	3	FY 89	11/88	635				B 150.32
13	BROOKINGS	CITY	STP IMP	067201	4	FY 88	09/88	1,744				B 147.08
14	PORT ORFORD	GARISON LAKE	STP IMP	071202	4	FY 88	09/88	1,078	223	81		B 146.04

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

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

RANK	COMMUNITY	AREA	COMPONENT	PROJECT NUMBER	STEP	READY TO PROCEED	TARGET CERT.	GENERAL FUND	SMALL COMM. FUND	ALT. TECH. FUND	INNOV TECH. FUND	PRIORITY POINTS
15	NESKOWIN S.A.	DISTRICT	SYSTEM	060201	3	FY 88	08/88	482	694	252		B 142.80
16	ATHENA	CITY	STP IMP	063501	4	FY 88	09/88	258	93	34		B 139.98
17	CARMEL-FOUL. SD	DISTRICT	SYSTEM	054202	3		/	440				B 102.60
18	CARLTON	CITY	STP IMP	061502	3	FY 88	07/88	466				C 222.86
19	USA	GASTON	INTERCEPTOR	057502	3	FY 88	05/88	667				C 199.21
20	HARRISBURG	CITY	STP IMP I/I CORR	072701 072701	4 4	FY 88 FY 88	09/88 09/88	66	1,280	465	8	C 197.70 C 194.70
21	MONMOUTH	CITY	RELIEF SEWER	062503	3	FY 89	11/89	70				C 196.64
22	JUNCTION CITY	CITY	II CORRECTION	049602	3	FY 89	05/89	52				C 195.14
23	SHERIDAN	SOUTH SIDE	SEWER REHAB	050603	3	FY 88	07/88	35				C 193.91
24	SHERIDAN	SOUTH SIDE	II CORRECTION	050604	3	FY 88	07/88	84				C 191.91
25	CARLTON	CITY	II CORRECTION	061503	3	FY 88	07/88	46				C 189.86
26	MT ANGEL	CITY	STP IMP	058802	3	FY 89	09/89	133				C 189.01
27	PRINEVILLE	CITY	STP IMP	064501	3		09/88	413				C 186.94
28	MT ANGEL	CITY	II CORRECTION	058803	3	FY 89	07/89	107				C 186.01
29	SWEET HOME	CITY	II CORRECTION	043203	3		09/88	55				C 182.23
30	MILL CITY	CITY	SYSTEM	044701	3	FY 88	09/88	554	304	110		C 181.65

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

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

RANK	COMMUNITY	AREA	COMPONENT	PROJECT NUMBER	STEP	READY TO PROCEED	TARGET CERT.	GENERAL FUND	SMALL COMM. FUND	ALT. TECH. FUND	INNOV TECH. FUND	PRIORITY POINTS
31	GOLD BEACH	MYRTLE ACRES	INTERCEPTOR	069801	3	FY 87	/	125				C 179.56
32	LOWELL	CITY	STP IMP	057302	3	FY 88	08/88	580		17		C 176.35
33	OAKRIDGE	CITY	II CORRECTION	051403	3	FY 89	09/89	272				C 174.81
34	SOUTH SUB. S.D.	DISTRICT	STP IMP	066701	3	FY 89	05/89	470				C 174.52
35	LOWELL	CITY	RELIEF SEWER II CORRECTION	057304 057303	3 3	FY 88 FY 88	08/88 08/88	6 105				C 174.35 C 173.35
36	MADRAS	FRINGE AREA	INTERCEPTORS	057902	3		09/88	297				C 169.06
37	DALLAS	CITY	II CORRECTION	059202	3	FY 89	09/88	89				C 168.79
38	ELGIN	CITY	PS	047203	4	FY 89	12/88	5				C 165.81
39	MONROE	CITY	STP IMP	056904	3	FY 89	09/89	66				C 161.38
40	HALSEY	CITY	STP IMP II CORRECTION	059501 059501	4 4	FY 88 FY 88	09/88 09/88	213				C 153.66 C 110.66
41	YONCALLA	CITY	STP IMP	059701	3		09/88	421				C 149.86
42	PORTLAND	ROYAL HIGHLANDS	INTERCEPTOR	072101	3	FY 89	11/89	501				C 148.60
43	YONCALLA	CITY	II CORRECTION	059703	3		09/88	17				C 146.86
44	ST HELENS	CITY	II CORRECTION	053902	3	FY 89	09/89	282				C 142.72
45	PORT ORFORD	GARISON LAKE	INT/PS/FM	071201	3	FY 88	09/88	83				C 142.56

NOTE: 1) AN ASTERISK AFTER THE FUND AMOUNT INDICATES 75% FUNDING

2) ALL DOLLAR AMOUNTS ARE IN THOUSANDS OF DOLLARS

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

RANK	COMMUNITY	AREA	COMPONENT	PROJECT NUMBER	STEP	READY TO PROCEED	TARGET CERT.	GENERAL FUND	SMALL COMM. FUND	ALT. TECH. FUND	INNOV TECH. FUND	PRIORITY POINTS
46	ST HELENS	CITY	PS NO. 1	053903	3	FY 89	09/89	84				C 142.00
47	HEPPNER	CITY	STP IMP	064801	4	FY 89	12/88	737				C 140.28
48	NEWPORT	CITY	OUTFALL	061802	3		09/88	722				C 139.82
49	MODOC POINT	SAN DIST	SYSTEM	046901	3		09/88	314		114		C 139.20
50	SILETZ	CITY	STP IMP	070701	3	FY 88	/	28				C 133.00
51	FOSSIL	CITY	STP IMP	065101	3		09/88	693				C 125.40
52	TILLAMOOK	CITY	I/I CORR	073601	3	FY 89	09/89	129				C 116.04
53	SCIO	CITY	II CORRECTION	051503	3		09/88	28				C 112.79
54	ATHENA	CITY	II CORRECTION	063501	4		09/88					C 96.98
55	CORVALLIS	WEST	INTERCEPTOR	066801	3	FY 87	/	165				D 232.14
56	N. ALBANY C.S.D	AREA 1,2,3 &4	HICKORY PS/FM	069402	3		/	237				D 224.42
57	N. ALBANY C.S.D	AREA 1,2 &4	SP. HILL DR INT	069403	3		/	842				D 224.22
58	NEWBERG	CITY	RIVER RD INT	049405	3	FY 87	/	55				D 199.19
59	NEWBERG	CITY	6TH ST REL SEW	049406	3	FY 87	/	55				D 198.41
60	NEWBERG	CITY	HANCOCK REL SEW	049407	3	FY 87	/	55				D 196.93
61	N. ALBANY C.S.D	AREA 3	N. ALB. RD INT	069404	3		/	215				D 193.00

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

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

RANK	COMMUNITY	AREA	COMPONENT	PROJECT NUMBER	STEP	READY TO PROCEED	TARGET CERT.	GENERAL FUND	SMALL COMM. FUND	ALT. TECH. FUND	INNOV. TECH. FUND	PRIORITY POINTS
62	TRI CITY S.D.	MYRTLE CREEK	SLUDGE DISP	067001	3	FY 87	/	490				D 184.89
63	TRI CITY S.D.	MYRTLE CREEK	II CORRECTION	067002	3	FY 87	/	73				D 181.89
64	CANYONVILLE	NORTH AREA	INTERCEPTOR	071701	3		/	55				D 177.93
65	KLAMATH FALLS	REGIONAL	II CORRECTION	051605	3		/	264				D 171.52
66	GRANTS PASS	CITY	SOLIDS HANDLING	066101	3	FY 87	/	2,126				D 167.14
67	USA	DURHAM	SLUDGE	037102	3	FY 88	/	4,620				D 165.89
68	BANDON	CITY	I/I CORR	055302	3		/					D 163.72
69	BAY CITY	CITY	STP IMP	073501	3		/					D 162.72
70	INDEPENDENCE	WEST	9TH ST. INTER	072901	3		/	25				D 154.42
71	REDMOND	HIGHSCHOOL	INTERCEPTOR	072201	3	FY 92	/	28				D 153.90
72	USA	ALOHA #3	PS I/I CORR	069902 069902	3 3	FY 87 FY 87	/	951				D 151.73 D 151.73
73	USA	BEAVERTON	PS I/I CORR	069903 069903	3 3	FY 87 FY 87	/	364				D 151.73 D 151.73
74	USA	HILLSBORO EAST	INTERCEPTOR I/I CORR	069904 069904	3 3	FY 87 FY 87	/	606				D 151.73 D 151.73
75	USA	LOWER TUALATIN	INTERCEPTOR I/I CORR	069905 069905	3 3	FY 87 FY 87	/	551				D 151.73 D 151.73
76	USA	SW FOREST GROVE	INTERCEPTOR I/I CORR	069906 069906	3 3	FY 87 FY 87	/	128				D 151.73 D 151.73

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

RANK	COMMUNITY	AREA	COMPONENT	PROJECT NUMBER	STEP	READY TO PROCEED	TARGET CERT.	GENERAL FUND	SMALL COMM. FUND	ALT. TECH. FUND	INNOV TECH. FUND	PRIORITY POINTS
77	USA	INTERCEP SOUTH	INTERCEPTOR I/I CORR	069907 069907	3 3	FY 87 FY 87	/	342				D 151.73 D 151.73
78	USA	TEKTRONIX	INTERCEPTOR I/I CORR	069908 069908	3 3	FY 87 FY 87	/	216				D 151.73 D 151.73
79	USA	REEDVILLE/BUTTE	INTERCEPTOR I/I CORR	069909 069909	3 3	FY 87 FY 87	/	388				D 151.73 D 151.73
80	USA	COOPER MTN	INTERCEPTOR I/I CORR	069910 069910	3 3	FY 87 FY 87	/	430				D 151.73 D 151.73
81	CRESWELL	NIBLOCK RD	INTERCEPTOR	051302	3	FY 88	/	176				D 151.64
82	USA	BANKS	INTERCEPTOR	057602	3		/	986				D 151.38
83	EAGLE POINT	CITY	STP IMP	042902	3	FY 89	09/89	413				D 150.90
84	WALLOWA	CITY	STP IMP	067501	3		/	330				D 150.49
85	ELKTON	CITY	SYSTEM	071901	3		/		240	87		D 148.40
86	DOUGLAS CO	CAMAS VALLEY	SYSTEM	066601	3		/	440				D 148.36
87	FLORENCE	HECETA BEACH	ALT. COLLECTION INTERCEPTOR	053306 053305	3 3	FY 87	/	182	382	139		D 148.30 D 113.30
88	GERVAIS	CITY	STP IMP PS	073301	3		/					D 147.89
89	SEASIDE	CITY	P.S. IMP	068105	3		/	113				D 145.70
90	RAINIER	CITY	I/I CORR	058602	3		09/88	439				D 143.44

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

RANK	COMMUNITY	AREA	COMPONENT	PROJECT NUMBER	STEP	READY TO PROCEED	TARGET CERT.	GENERAL FUND	SMALL COMM. FUND	ALT. TECH. FUND	INNOV TECH. FUND	PRIORITY POINTS
91	WARRENTON	CITY	II CORRECTION	069201	3		/	127				D 141.96
92	ASTORIA	ALDERBROOK	PS/FM	061903	3	FY 87	/	17				D 138.00
93	OAKRIDGE	CITY	STP IMP	051402	3		/	560				D 137.81
94	KLAMATH FALLS	REGIONAL	STP EXPANSION	051606	3		/	411				D 134.52
95	GRANTS PASS	CITY	STP EXP	066102	3	FY 87	/	1,017				D 127.14
96	IMBLER	CITY	SYSTEM	056202	3		/	825				D 126.25
97	GRANTS PASS	S. SEVENTH	INTERCEPTOR	066103	3	FY 87	/	62				D 123.86
98	GRANTS PASS	SECOND ST.	INTERCEPTOR	066104	3	FY 87	/	32				D 123.72
99	GRANTS PASS	F AND BOOTH ST.	INTERCEPTOR	066105	3	FY 87	/	20				D 123.72
100	GRANTS PASS	PINE AND ROGUE	INTERCEPTOR	066106	3	FY 87	/	127				D 123.72
101	GRANTS PASS	ROGUE AND LEE	INTERCEPTOR	066107	3	FY 87	/	24				D 123.72
102	GRANTS PASS	A STREET	INTERCEPTOR	066108	3	FY 87	/	54				D 123.58
103	GRANTS PASS	N. SEVENTH ST.	INTERCEPTOR	066109	3	FY 87	/	149				D 123.58
104	BROWNSVILLE	CITY	STP IMP	073001	3		/					D 123.29
105	GRANTS PASS	BRIDGE ST.	INTERCEPTOR	066110	3	FY 87	/	121				D 122.60
106	VENETA	CITY	II CORRECTION	066001	3		/	3				D 118.58

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

RANK	COMMUNITY	AREA	COMPONENT	PROJECT NUMBER	STEP	READY TO PROCEED	TARGET CERT.	GENERAL FUND	SMALL COMM. FUND	ALT. TECH. FUND	INNOV TECH. FUND	PRIORITY POINTS
107	NORTH POWDER	CITY	STP IMP	056402	3		/	105				D 114.28
108	WALDPORT	CITY	STP IMP	073101	3		/					D 113.40
109	BURNS	CITY	II CORRECTION	065001	3		/	220				D 113.23
110	BENTON CO.	ALPINE	SYSTEM	070601	3	FY 89	/	275				D 112.00
111	CORVALLIS	AIRPORT	INTERCEPTOR	045801	3		/	330				D 110.60
112	MWMC	E. SPRINGFIELD	RELIEF SEWER	062420	3		/	8,586				D 109.38
113	SCIO	N. W. AREA	INTERCEPTOR	051504	3		/	28				D 108.00
114	SISTERS	CITY	SYSTEM	054102	3	FY 87	/	160	310	113		D 107.72
115	WALLOWA	CITY	II CORRECTION	067502	3		/	55				D 107.49
116	CRESCENT S.D.	DISTRICT	SYSTEM	054601	3		/	82	152	55		D 107.44
117	USA	GASTON WEST	INTERCEPTOR	057503	3		/	106				D 105.13
118	PILOT ROCK	CITY	STP IMP	067101	3		/	660				D 100.42
119	TWIN ROCKS	SAN DISTRICT	PS	064701	3		/	17				D 100.00
120	WESTON	CITY	II CORRECTION	071601	3		/	55				D 96.72
121	ROSEBURG U.S.A.	ROSEBURG CITY	I/I CORRECTION	069303	3	FY 89	07/89	1,650				D 92.73
122	NEWPORT	SOUTH BEACH	PS/FM	061805	3		/	105				D 92.64

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

RANK	COMMUNITY	AREA	COMPONENT	PROJECT NUMBER	STEP	READY TO PROCEED	TARGET CERT.	GENERAL FUND	SMALL COMM. FUND	ALT. TECH. FUND	INNOV TECH. FUND	PRIORITY POINTS
123	ONTARIO	CITY	II CORR	051801	3		/	110				D 90.94
124	RIDDLE	CITY	I/I CORR	073201	3		/					D 73.77
125	GRANTS PASS	CRESTVIEW LOOP	INTERCEPTOR	066112	3		/					D 70.60
126	USA	CORNELIUS	INTERCEPTOR	069901	3		/	220				D 63.38
127	GRANITE	CITY	SYSTEM	071001	3		/	28	8	3		D 32.60
128	STANFIELD	CITY	LIFT STATION	056502	3		/	28				E 131.75
129	CLACKAMAS/MILWU	JOHNSON CREEK	INTERCEPTOR	073701	3		/					E 107.93
130	USA	FOREST GROVE	INTERCEPTOR	069918	3	FY 87	/	79				E 101.73
131	KEIZER	CLEAR LAKE MIDDLE LABISH	INTERCEPTOR INTERCEPTORS	070101 070101	3 3	FY 89	09/89 /	357 268				E 59.58 E 58.00

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

Attachment H

FY89 Points Calculation List, as Revised

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY
POINTS LIST

PROJECT NUMBER	COMMUNITY	AREA	COMPONENT	STEP	CLASS	REG. EMPH.	POP. EMPH.	STREAM RANK	PROJECT TYPE	TOTAL POINTS
REPORT OPTIONS: FINAL REPORT OF ALL PROJECTS ORDERED BY PROJECT NAME										
E 067601	ADAIR VILLAGE	CITY	II CORRECTION	4	B	50	5.54	91.18	7	B 153.72
E 067601	ADAIR VILLAGE	CITY	STP IMP	4	B	90	5.54	91.18	10	B 196.72
I 066404	ALBANY	CITY	GSO	3	C	90	8.90	91.18	3	C 193.08
I 046001	ALBANY	N. E. KNOXBUTTE	INTERCEPTOR	3	E	0	5.08	91.18	6	E 102.26
I 061903	ASTORIA	ALDERBROOK	COLLECTION	3	D	90	4.00	38.00	1	D 133.00
E 061903	ASTORIA	ALDERBROOK	PS/FM	3	D	90	4.00	38.00	6	D 138.00
E 063501	ATHENA	CITY	II CORRECTION	4	C	50	5.98	34.00	7	C 96.98
E 063501	ATHENA	CITY	STP IMP	4	B	90	5.98	34.00	10	B 139.98
I 043102	BAKER	CITY	STP IMP	3	E	0	7.96	49.00	10	E 66.96
E 055302	BANDON	CITY	I/I CORR	3	D	90	6.72	60.00	7	D 163.72
E 073501	BAY CITY	CITY	STP IMP	3	D	90	6.08	56.64	10	D 162.72
I 071801	BENTON CO	FIRVIEW	COLLECTION	3	D	50	4.60	48.00	1	D 103.60
E 070601	BENTON CO.	ALPINE	SYSTEM	3	D	50	4.00	48.00	10	D 112.00
E 063701	BRKS HOPMERE SD	DISTRICT	SYSTEM	3	B	50	5.76	91.18	10	B 156.94
E 067201	BROOKINGS	CITY	STP IMP	4	B	90	7.08	40.00	10	B 147.08
E 073001	BROWNSVILLE	CITY	STP IMP	3	D	50	6.20	57.09	10	D 123.29
E 065001	BURNS	CITY	II CORRECTION	3	D	50	6.90	49.33	7	D 113.23
I 071701	CANYONVILLE	NORTH AREA	COLLECTION	3	D	50	4.60	77.33	1	D 132.93
E 071701	CANYONVILLE	NORTH AREA	INTERCEPTOR	3	D	90	4.60	77.33	6	D 177.93
E 061503	CARLTON	CITY	II CORRECTION	3	C	90	6.22	86.64	7	C 189.86
E 061502	CARLTON	CITY	STP IMP	3	C	120	6.22	86.64	10	C 222.86
E 054202	CARMEL-FOUL. SD	DISTRICT	SYSTEM	3	B	50	4.60	38.00	10	B 102.60
I 069101	CHARLESTON	SAN DISTRICT	COLLECTION	3	D	90	5.56	80.00	1	D 176.56
E 073701	GLACKAMAS/MILWU	JOHNSON CREEK	INTERCEPTOR	3	E	0	8.48	93.45	6	E 107.93

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY
POINTS LIST

PROJECT NUMBER	COMMUNITY	AREA	COMPONENT	STEP	CLASS	REG. EMPH.	POP. EMPH.	STREAM RANK	PROJECT TYPE	TOTAL POINTS
I 072401	COLUMBIA CITY	EAST SIDE	COLLECTION	3	E	50	4.60	38.00	1	E 93.60
I 072401	COLUMBIA CITY	EAST SIDE	INT/PS/FM	3	E	50	4.60	38.00	1	E 93.60
E 062805	COOS BAY NO. 1	CITY	SEWER REHAB	3	B	90	8.32	80.00	9	B 187.32
E 062805	COOS BAY NO.1	CITY	PS/FM/SWI	3	B	90	7.90	80.00	7	B 184.90
E 062803	COOS BAY NO.2	CITY	I/I CORRECTION	3	B	90	7.82	80.00	7	B 184.82
E 062803	COOS BAY NO.2	CITY	STP IMP	3	B	90	7.82	80.00	10	B 187.82
E 045801	CORVALLIS	AIRPORT	INTERCEPTOR	3	D	50	4.60	48.00	8	D 110.60
I 066802	CORVALLIS	CITY	GSO	3	C	90	9.24	91.18	3	C 193.42
E 066801	CORVALLIS	WEST	INTERCEPTOR	3	D	130	4.96	91.18	6	D 232.14
E 070302	COVE ORCHARD SD	DISTRICT	100% M/R	4	B	90	3.56	48.00	10	B 151.56
I 054601	CRESCENT S.D.	DISTRICT	COLL	3	D	50	5.44	42.00	1	D 98.44
E 054601	CRESCENT S.D.	DISTRICT	SYSTEM	3	D	50	5.44	42.00	10	D 107.44
I 051303	CRESWELL	CITY	STP IMP	3	E	90	6.56	91.18	10	E 197.74
E 051302	CRESWELL	NIBLOCK RD	INTERCEPTOR	3	D	50	4.46	91.18	6	D 151.64
I 070501	CURRY CO.	HARBOR-WINCHUCK	INTERCEPTOR	3	E	0	6.48	40.00	6	E 52.48
E 059202	DALLAS	CITY	II CORRECTION	3	C	90	7.88	63.91	7	C 168.79
I 059204	DALLAS	CITY	STP EXPANSION	3	E	90	7.90	63.91	10	E 171.81
I 059203	DALLAS	NORTHEAST	INTERCEPTOR	3	C	130	3.90	63.91	6	C 203.81
I 059205	DALLAS	NORTHEAST AREA	COLLECTION	3	C	130	3.90	63.91	6	C 203.81
I 047701	DETROIT	CITY	SYSTEM	3	E	0	5.20	75.27	10	E 90.47
E 066601	DOUGLAS CO	CAMAS VALLEY	SYSTEM	3	D	90	4.36	44.00	10	D 148.36
I 062902	DRAIN	PASS CREEK	INTERCEPTOR	3	E	0	3.70	44.00	6	E 53.70
E 042902	EAGLE POINT	CITY	STP IMP	3	D	90	6.90	46.00	8	D 150.90
E 047202	ELGIN	CITY	II CORRECTION	4	C	90	6.48	61.33	7	C 164.81
E 047203	ELGIN	CITY	PS	4	C	90	6.48	61.33	8	C 165.81

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY
POINTS LIST

PROJECT NUMBER	COMMUNITY	AREA	COMPONENT	STEP	CLASS	REG. EMPH.	POP. EMPH.	STREAM RANK	PROJECT TYPE	TOTAL POINTS
I 047202	ELGIN	CITY	SEWER REHAB	3	C	90	6.48	61.33	9	C 166.81
E 047202	ELGIN	CITY	STP IMP	3	B	90	6.48	61.33	10	B 167.81
E 071901	EKTON	CITY	SYSTEM	3	D	90	4.40	44.00	10	D 148.40
I 068903	EUGENE	AIRPORT	STP EXP	3	E	90	4.00	91.18	10	E 195.18
I 068902	EUGENE	RVR R-SANTA CLA	RR COLL.	3	B	120	8.04	91.18	1	B 220.22
I 068901	EUGENE	RVR R-SANTA CLA	SC COLL.	3	B	120	8.30	91.18	1	B 220.48
I 053304	FLORENCE	CITY	SEWER REHAB	3	C	90	7.48	52.00	9	C 158.48
E 053306	FLORENCE	HECETA BEACH	ALT. COLLECTION	3	D	90	5.30	52.00	1	D 148.30
E 053305	FLORENCE	HECETA BEACH	INTERCEPTOR	3	D	50	5.30	52.00	6	D 113.30
E 065101	FOSSIL	CITY	STP IMP	3	C	90	5.40	20.00	10	C 125.40
I 068001	GATES	CITY	SYSTEM	3	E	0	5.36	75.27	10	E 90.63
E 073301	GERVAIS	CITY	STP IMP PS	3	D	50	5.80	82.09	10	D 147.89
E 069801	GOLD BEACH	MYRTLE ACRES	INTERCEPTOR	3	C	130	3.56	40.00	6	C 179.56
I 071001	GRANITE	CITY	COLLECTION	3	D	0	2.60	20.00	1	D 23.60
E 071001	GRANITE	CITY	SYSTEM	3	D	0	2.60	20.00	10	D 32.60
E 066108	GRANTS PASS	A STREET	INTERCEPTOR	3	D	50	7.08	58.50	8	D 123.58
E 066110	GRANTS PASS	BRIDGE ST.	INTERCEPTOR	3	D	50	6.10	58.50	8	D 122.60
E 066101	GRANTS PASS	CITY	SOLIDS HANDLING	3	D	90	8.64	58.50	10	D 167.14
E 066102	GRANTS PASS	CITY	STP EXP	3	D	50	8.64	58.50	10	D 127.14
E 066112	GRANTS PASS	CRESTVIEW LOOP	INTERCEPTOR	3	D	0	6.10	58.50	6	D 70.60
E 066105	GRANTS PASS	F AND BOOTH ST.	INTERCEPTOR	3	D	50	7.22	58.50	8	D 123.72
I 066111	GRANTS PASS	MILL ST.	SEWER REHAB	3	D	50	6.10	58.50	9	D 123.60
E 066109	GRANTS PASS	N. SEVENTH ST.	INTERCEPTOR	3	D	50	7.08	58.50	8	D 123.58
E 066106	GRANTS PASS	PINE AND ROGUE	INTERCEPTOR	3	D	50	7.22	58.50	8	D 123.72
E 066107	GRANTS PASS	ROGUE AND LEE	INTERCEPTOR	3	D	50	7.22	58.50	8	D 123.72

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY
POINTS LIST

PROJECT NUMBER	COMMUNITY	AREA	COMPONENT	STEP	CLASS	REG. EMPH.	POP. EMPH.	STREAM RANK	PROJECT TYPE	TOTAL POINTS
E 066103	GRANTS PASS	S. SEVENTH	INTERCEPTOR	3	D	50	7.36	58.50	8	D 123.86
E 066104	GRANTS PASS	SECOND ST.	INTERCEPTOR	3	D	50	7.22	58.50	8	D 123.72
I 069506	GRESHAM	CITY	GLISAN INT(R)	3	B	90	7.54	48.00	6	B 151.54
I 069505	GRESHAM	CITY	SANDY PS/FM(R)	3	B	90	5.82	48.00	6	B 149.82
I 069501	GRESHAM	CITY	STP IMP(R)	3	C	90	9.24	48.00	10	C 157.24
I 069503	GRESHAM	LINNEMAN	INTERCEPTOR(R)	3	B	90	6.40	48.00	6	B 150.40
I 069503	GRESHAM	MID. CO.	COLLECTION	3	B	90	8.90	48.00	1	B 147.90
E 059501	HALSEY	CITY	II CORRECTION	4	C	50	5.66	48.00	7	C 110.66
E 059501	HALSEY	CITY	STP IMP	4	C	90	5.66	48.00	10	C 153.66
E 056702	HAPPY VALLEY	CITY	INTERCEPTOR	3	B	90	6.32	48.00	6	B 150.32
E 072701	HARRISBURG	CITY	I/I CORR	4	C	90	6.52	91.18	7	C 194.70
E 072701	HARRISBURG	CITY	STP IMP	4	C	90	6.52	91.18	10	C 197.70
E 064801	HEPPNER	CITY	STP IMP	4	C	90	6.28	34.00	10	C 140.28
I 069603	HUNTINGTON	CITY	CSO	3	C	50	5.48	36.50	3	C 94.98
I 069602	HUNTINGTON	OLD TOWN	SEWER REHAB	3	C	50	5.48	36.50	9	C 100.98
I 067901	IDANHA	CITY	SYSTEM	3	E	0	5.08	75.27	10	E 90.35
E 056202	IMBLER	CITY	SYSTEM	3	D	50	4.92	61.33	10	D 126.25
E 072901	INDEPENDENCE	WEST	9TH ST. INTER	3	D	50	7.24	91.18	6	D 154.42
I 045601	JOSEPHINE CO	MERLIN/COL. V.	SYSTEM	3	E	0	4.00	58.50	10	E 72.50
E 049602	JUNCTION CITY	CITY	II CORRECTION	3	C	90	6.96	91.18	7	C 195.14
E 070101	KEIZER	CLEAR LAKE	INTERCEPTOR	3	E	0	5.58	48.00	6	E 59.58
E 070101	KEIZER	MIDDLE LABISH	INTERCEPTORS	3	E	0	4.00	48.00	6	E 58.00
I 070102	KEIZER	NORTH	INTERCEPTORS	3	E	0	4.00	93.45	6	E 103.45
I 070105	KEIZER	WHEATLAND RD	INTERCEPTORS	3	E	0	5.40	93.45	6	E 104.85
I 051604	KLAMATH FALLS	PELICAN CITY	COLLECTION SYS	3	C	130	5.54	66.00	1	C 202.54

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PROJECT NUMBER	COMMUNITY	AREA	COMPONENT	STEP	CLASS	REG. EMPH.	POP. EMPH.	STREAM RANK	PROJECT TYPE	TOTAL POINTS
E 051605	KLAMATH FALLS	REGIONAL	II CORRECTION	3	D	90	8.52	66.00	7	D 171.52
E 051606	KLAMATH FALLS	REGIONAL	STP EXPANSION	3	D	50	8.52	66.00	10	D 134.52
I 070901	LANE COUNTY	COLLIARD LAKE	SYSTEM	3	E	120	4.22	48.00	10	E 182.22
I 053701	LINCOLN CO.	S.W. AREA	COLLECTION	3	D	90	6.86	32.00	1	D 129.86
E 057303	LOWELL	CITY	II CORRECTION	3	C	90	5.62	70.73	7	C 173.35
E 057304	LOWELL	CITY	RELIEF SEWER	3	C	90	5.62	70.73	8	C 174.35
I 057305	LOWELL	CITY	SEWER REHAB	3	C	90	5.62	70.73	9	C 175.35
E 057302	LOWELL	CITY	STP IMP	3	C	90	5.62	70.73	10	C 176.35
I 067801	LYONS-MEHAMA	REGIONAL	SYSTEM	3	E	0	6.20	75.27	10	E 91.47
I 057903	MADRAS	FRINGE AREA	COLLECTION	3	C	90	6.06	67.00	1	C 164.06
E 057902	MADRAS	FRINGE AREA	INTERCEPTORS	3	C	90	6.06	67.00	6	C 169.06
E 044701	MILL CITY	CITY	SYSTEM	3	C	90	6.38	75.27	10	C 181.65
E 046901	MODOC POINT	SAN DIST	SYSTEM	3	C	90	3.20	36.00	10	C 139.20
I 044403	MOLALIA	CITY	II CORRECTION	3	C	90	6.98	82.09	7	C 186.07
E 062503	MONMOUTH	CITY	RELIEF SEWER	3	C	90	7.46	91.18	8	C 196.64
E 056904	MONROE	CITY	STP IMP	3	C	90	6.56	54.82	10	C 161.38
I 056903	MONROE	FRINGE	COLLECTION	3	D	0	2.60	54.82	1	D 58.42
E 058803	MT ANGEL	CITY	II CORRECTION	3	C	90	6.92	82.09	7	C 186.01
E 058802	MT ANGEL	CITY	STP IMP	3	C	90	6.92	82.09	10	C 189.01
E 062420	MWMC	E. SPRINGFIELD	RELIEF SEWER	3	D	0	9.20	91.18	9	D 109.38
E 069403	N. ALBANY C.S.D	AREA 1,2 &4	SP. HILL DR INT	3	D	120	7.04	91.18	6	D 224.22
E 069402	N. ALBANY C.S.D	AREA 1,2,3 &4	HICKORY PS/FM	3	D	120	7.24	91.18	6	D 224.42
E 069401	N. ALBANY C.S.D	AREA 2A	INTERCEPTOR	3	B	130	5.96	91.18	6	B 233.14
E 069404	N. ALBANY C.S.D	AREA 3	N. ALB. RD INT	3	D	90	5.82	91.18	6	D 193.00
E 060201	NEKOWIN S.A.	DISTRICT	SYSTEM	3	B	90	4.80	38.00	10	B 142.80

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E 049406	NEWBERG	CITY	6TH ST REL SEW	3	D	90	6.96	93.45	8	D 198.41
E 049407	NEWBERG	CITY	HANCOCK REL SEW	3	D	90	5.48	93.45	8	D 196.93
E 049405	NEWBERG	CITY	RIVER RD INT	3	D	90	7.74	93.45	8	D 199.19
E 061802	NEWPORT	CITY	OUTFALL	3	C	90	7.82	32.00	10	C 139.82
I 061804	NEWPORT	CITY	STP EXP	3	E	0	7.82	32.00	10	E 49.82
I 061805	NEWPORT	SOUTH BEACH	COLLECTION	3	D	50	4.64	32.00	1	D 87.64
E 061805	NEWPORT	SOUTH BEACH	PS/FM	3	D	50	4.64	32.00	6	D 92.64
E 052004	NORTH BEND	CITY	II/CORRECTION	4	B	90	7.98	80.00	7	B 184.98
E 052004	NORTH BEND	CITY	STP IMP	4	C	90	7.98	80.00	10	C 187.98
E 056402	NORTH POWDER	CITY	STP IMP	3	D	50	5.28	49.00	10	D 114.28
I 061704	OAKLAND	DRIVERS VALLEY	INTERCEPTOR	3	E	0	3.80	44.00	6	E 53.80
E 051403	OAKRIDGE	CITY	II CORRECTION	3	C	90	7.08	70.73	7	C 174.81
I 051404	OAKRIDGE	CITY	REHAB	3	C	90	7.08	70.73	9	C 176.81
E 051402	OAKRIDGE	CITY	STP IMP	3	D	50	7.08	70.73	10	D 137.81
E 051801	ONTARIO	CITY	II CORR	3	D	50	7.94	26.00	7	D 90.94
E 073401	OREGON CITY	HOPP	INTERCEPTOR	3	B	90	.00	93.45	6	B 189.45
E 067101	PILOT ROCK	CITY	STP IMP	3	D	50	6.42	34.00	10	D 100.42
I 071201	PORT ORFORD	GARISON LAKE	COLLECTION	3	D	90	4.56	40.00	1	D 135.56
E 071201	PORT ORFORD	GARISON LAKE	INT/PS/FM	3	C	90	4.56	40.00	8	C 142.56
E 071202	PORT ORFORD	GARISON LAKE	STP IMP	4	B	90	6.04	40.00	10	B 146.04
I 072810	PORTLAND	ADVENTIST	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072815	PORTLAND	BERRYDALE	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072825	PORTLAND	BLOOMINGTON	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072805	PORTLAND	BOYLES	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072841	PORTLAND	BRENIWOODACE	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00

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PROJECT NUMBER	COMMUNITY	AREA	COMPONENT	STEP	CLASS	REG. EMPH.	POP. EMPH.	STREAM RANK	PROJECT TYPE	TOTAL POINTS
I 072834	PORTLAND	BURNSIDE CENTRL	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072819	PORTLAND	BURNSIDE EAST	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072816	PORTLAND	BURNSIDE WEST	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072838	PORTLAND	CLIFFGATE	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072003	PORTLAND	COLUMBIA BASIN	AREA C PS/FM(R)	3	B	90	5.38	48.00	6	B 149.38
I 072002	PORTLAND	COLUMBIA BASIN	BRDWAY PS/FM(R)	3	B	90	7.56	48.00	6	B 151.56
I 072001	PORTLAND	COLUMBIA BASIN	COLLECTION	3	B	90	8.80	48.00	1	B 147.80
I 072004	PORTLAND	COLUMBIA BASIN	COLLECTION SYST	3	B	120	.00	48.00	1	B 169.00
I 072001	PORTLAND	COLUMBIA BASIN	LOMBARD INTS(R)	3	B	90	7.60	48.00	6	B 151.60
I 072842	PORTLAND	DARLINGTON	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072843	PORTLAND	EASTMONT	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072806	PORTLAND	ENGLEWOOD	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072828	PORTLAND	ESSEX	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072829	PORTLAND	FAIRFIELD	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072839	PORTLAND	FLAVEL PARK	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072807	PORTLAND	FLOYD LIGHT	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072832	PORTLAND	GILBERT	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072844	PORTLAND	HYDEN ISLAND	PS/INT	3	C	50	.00	48.00	6	C 104.00
I 042603	PORTLAND	INVERNESS	BURNSIDE INT(R)	3	B	120	7.08	48.00	6	B 181.08
I 042602	PORTLAND	INVERNESS	CHERRY PK COLL	3	B	120	7.26	48.00	6	B 181.26
I 042602	PORTLAND	INVERNESS	CHERRY PK INT(R)	3	B	120	7.26	48.00	6	B 181.26
I 042601	PORTLAND	INVERNESS	COLLECTION	3	B	120	9.02	48.00	1	B 178.02
I 042604	PORTLAND	INVERNESS	CULLY INTS(R)	3	B	120	7.48	48.00	6	B 181.48
I 042601	PORTLAND	INVERNESS	N.E. 122 COLL	3	B	120	8.00	48.00	6	B 182.00
I 042601	PORTLAND	INVERNESS	N.E. 122 INT(R)	3	B	120	8.00	48.00	6	B 182.00

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I 072813	PORTLAND	IRVINGTON	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 034205	PORTLAND	JOHNSON CREEK	AREA D PS/FM(R)	3	B	90	6.22	48.00	6	B 150.22
I 034204	PORTLAND	JOHNSON CREEK	COLLECTION	3	B	90	9.64	48.00	1	B 148.64
I 034204	PORTLAND	JOHNSON CREEK	SE 111TH INT(R)	3	B	90	8.66	48.00	6	B 152.66
I 072802	PORTLAND	KNOTT PARK	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072835	PORTLAND	LINCOLN PARK	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072811	PORTLAND	LINN PARK	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072804	PORTLAND	LUBY	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072837	PORTLAND	LYMANN PARK	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072801	PORTLAND	MADISON	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072817	PORTLAND	MARSHAL	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072833	PORTLAND	MAYWOOD PARK	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072814	PORTLAND	MILL PARK	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072809	PORTLAND	MONTAVILLA	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072818	PORTLAND	PARKLANE	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072836	PORTLAND	PARKROSE	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072822	PORTLAND	POWELL VILLAGE	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072808	PORTLAND	RICHARDSON	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072826	PORTLAND	ROBIN WOOD	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072821	PORTLAND	ROBINBROOK	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072823	PORTLAND	ROSE	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
E 072101	PORTLAND	ROYAL HIGHLANDS	INTERCEPTOR	3	C	90	4.60	48.00	6	C 148.60
I 072830	PORTLAND	SACAJAWEA	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072803	PORTLAND	STRATHMORE	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072827	PORTLAND	SUMNER	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00

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I 072840	PORTLAND	SUMNER PLACE	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072820	PORTLAND	WELLINGTON	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072824	PORTLAND	WINDMERE	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072812	PORTLAND	WOODLAND	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 072831	PORTLAND	WOODMERE	COLL SYSTEM	3	B	120	.00	48.00	1	B 169.00
I 070201	POWERS	CITY	SEWER REHAB	3	C	90	5.78	50.00	9	C 154.78
E 064501	PRINEVILLE	CITY	STP IMP	3	C	90	7.44	79.50	10	C 186.94
E 058602	RAINIER	CITY	I/I CORR	3	D	90	6.44	38.00	9	D 143.44
I 072202	REDMOND	CITY	STP EXP	3	E	0	5.40	54.50	10	E 69.90
E 072201	REDMOND	HIGHSCHOOL	INTERCEPTOR	3	D	90	3.40	54.50	6	D 153.90
E 073201	RIDDLE	CITY	I/I CORR	3	D	0	6.10	60.67	7	D 73.77
E 069303	ROSEBURG U.S.A.	ROSEBURG CITY	I/I CORRECTION	3	D	0	8.40	77.33	7	D 92.73
I 055101	SANDY	CITY	STP EXPANSION	3	E	0	6.90	68.45	10	E 85.35
I 066301	SCAPPOOSE	CITY	STP EXPANSION	3	E	0	7.04	48.00	10	E 65.04
E 051503	SCIO	CITY	II CORRECTION	3	C	50	5.52	50.27	7	C 112.79
E 051504	SCIO	N. W. AREA	INTERCEPTOR	3	D	50	4.00	48.00	6	D 108.00
E 068105	SEASIDE	CITY	P.S. IMP	3	D	90	7.40	46.30	2	D 145.70
I 068104	SEASIDE	N WAHENA RD	FORCE MAIN	3	E	90	5.08	46.30	2	E 143.38
I 068103	SEASIDE	S WAHENA RD	FORCE MAIN	3	E	90	4.90	46.30	2	E 143.20
E 050604	SHERIDAN	SOUTH SIDE	II CORRECTION	3	C	90	6.00	88.91	7	C 191.91
E 050603	SHERIDAN	SOUTH SIDE	SEWER REHAB	3	C	90	6.00	88.91	9	C 193.91
E 070701	SILETZ	CITY	STP IMP	3	C	50	6.00	67.00	10	C 133.00
I 054102	SISTERS	CITY	COLLECTION	3	D	50	5.72	42.00	1	D 98.72
E 054102	SISTERS	CITY	SYSTEM	3	D	50	5.72	42.00	10	D 107.72
E 066701	SOUTH SUB. S.D.	DISTRICT	STP IMP	3	C	90	8.52	66.00	10	C 174.52

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I 053908	ST HELENS	CITY	CSO	3	C	90	7.72	38.00	3	C 138.72
E 053902	ST HELENS	CITY	II CORRECTION	3	C	90	7.72	38.00	7	C 142.72
I 053905	ST HELENS	CITY	INT P1	3	E	90	3.40	38.00	2	E 133.40
I 053906	ST HELENS	CITY	INT P2	3	E	90	3.40	38.00	2	E 133.40
E 053903	ST HELENS	CITY	PS NO. 1	3	C	90	6.00	38.00	8	C 142.00
I 053904	ST HELENS	CITY	STP IMP	3	E	90	7.72	38.00	10	E 145.72
I 053907	ST HELENS	N. VERNONIA RD	COLL SYSTEM	3	C	130	3.80	38.00	1	C 172.80
E 056502	STANFIELD	CITY	LIFT STATION	3	E	50	6.42	67.33	8	E 131.75
I 071401	SUMPTER	CITY	COLLECTION	3	D	50	4.30	49.00	1	D 104.30
E 043203	SWEET HOME	CITY	II CORRECTION	3	C	90	7.68	77.55	7	C 182.23
E 073601	TILLAMOOK	CITY	I/I CORR	3	C	50	7.18	51.86	7	C 116.04
E 040801	TOLEDO	CITY	I/I CORR	4	B	90	7.02	72.00	7	B 176.02
E 040801	TOLEDO	CITY	PUMP STATION	4	B	90	7.02	72.00	10	B 179.02
E 067002	TRI CITY S.D.	MYRTLE CREEK	II CORRECTION	3	D	90	7.56	77.33	7	D 181.89
E 067001	TRI CITY S.D.	MYRTLE CREEK	SLUDGE DISP	3	D	90	7.56	77.33	10	D 184.89
I 044302	TURNER	CITY	INTERCEPTOR	3	E	0	6.12	91.18	6	E 103.30
E 064701	TWIN ROCKS	SAN DISTRICT	PS	3	D	50	4.00	38.00	8	D 100.00
E 069902	USA	ALOHA #3	I/I CORR	3	D	50	.00	95.73	6	D 151.73
E 069902	USA	ALOHA #3	PS	3	D	50	.00	95.73	6	D 151.73
E 057602	USA	BANKS	INTERCEPTOR	3	D	90	5.38	48.00	8	D 151.38
E 069903	USA	BEAVERTON	I/I CORR	3	D	50	.00	95.73	6	D 151.73
E 069903	USA	BEAVERTON	PS	3	D	50	.00	95.73	6	D 151.73
E 069910	USA	COOPER MTN	I/I CORR	3	D	50	.00	95.73	6	D 151.73
E 069910	USA	COOPER MTN	INTERCEPTOR	3	D	50	.00	95.73	6	D 151.73
I 069901	USA	CORNELIUS	INTER	3	E	0	.00	95.73	6	E 101.73

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E 069901	USA	CORNELIUS	INTERCEPTOR	3	D	0	7.38	48.00	8	D 63.38
I 069901	USA	CORNELIUS	PS	3	E	0	.00	95.73	6	E 101.73
I 069917	USA	COUNCIL CREEK	PS	3	E	0	.00	95.73	6	E 101.73
I 037103	USA	DURHAM	ADVANCED TREAT.	3	D	50	5.68	95.73	5	D 156.41
E 037102	USA	DURHAM	SLUDGE	3	D	50	10.16	95.73	10	D 165.89
E 069918	USA	FOREST GROVE	INTERCEPTOR	3	E	0	.00	95.73	6	E 101.73
E 057502	USA	GASTON	INTERCEPTOR	3	C	90	5.48	95.73	8	C 199.21
I 057505	USA	GASTON SOUTH	INTERCEPTOR	3	E	0	3.40	95.73	6	E 105.13
E 057503	USA	GASTON WEST	INTERCEPTOR	3	D	0	3.40	95.73	6	D 105.13
I 069911	USA	HILEON/217	INTERCEPTOR	3	E	0	.00	95.73	6	E 101.73
I 068202	USA	HILLSBORO	CORNELIUS INT.	3	E	0	4.00	95.73	2	E 101.73
I 068201	USA	HILLSBORO	EFF DISPOSAL	3	E	0	8.00	95.73	10	E 113.73
I 068203	USA	HILLSBORO	II CORRECTION	3	B	90	8.00	95.73	7	B 200.73
E 069904	USA	HILLSBORO EAST	I/I CORR	3	D	50	.00	95.73	6	D 151.73
E 069904	USA	HILLSBORO EAST	INTERCEPTOR	3	D	50	.00	95.73	6	D 151.73
I 069916	USA	HILLSBORO WEST	INTERCEPTOR	3	E	0	.00	95.73	6	E 101.73
E 069907	USA	INTERCEP SOUTH	I/I CORR	3	D	50	.00	95.73	6	D 151.73
E 069907	USA	INTERCEP SOUTH	INTERCEPTOR	3	D	50	.00	95.73	6	D 151.73
E 069905	USA	LOWER TUALATIN	I/I CORR	3	D	50	.00	95.73	6	D 151.73
E 069905	USA	LOWER TUALATIN	INTERCEPTOR	3	D	50	.00	95.73	6	D 151.73
I 069912	USA	METZGER/PROGRES	INTERCEPTOR	3	E	0	.00	95.73	6	E 101.73
E 069909	USA	REEDVILLE/BUTTE	I/I CORR	3	D	50	.00	95.73	6	D 151.73
E 069909	USA	REEDVILLE/BUTTE	INTERCEPTOR	3	D	50	.00	95.73	6	D 151.73
I 072301	USA	ROCK CR.	ADVANCED TREAT.	3	D	50	6.60	95.73	5	D 157.33
I 069919	USA	SHERWOOD	PS	3	E	0	.00	95.73	6	E 101.73

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PROJECT NUMBER	COMMUNITY	AREA	COMPONENT	STEP	CLASS	REG. EMPH.	POP. EMPH.	STREAM RANK	PROJECT TYPE	TOTAL POINTS
E 069906	USA	SW FOREST GROVE	I/I CORR	3	D	50	.00	95.73	6	D 151.73
E 069906	USA	SW FOREST GROVE	INTERCEPTOR	3	D	50	.00	95.73	6	D 151.73
E 069908	USA	TEKTRONIX	I/I CORR	3	D	50	.00	95.73	6	D 151.73
E 069908	USA	TEKTRONIX	INTERCEPTOR	3	D	50	.00	95.73	6	D 151.73
I 069913	USA	TIGARD	INTERCEPTOR	3	E	0	.00	95.73	6	E 101.73
I 069914	USA	WEST BEAVERTON	INTERCEPTOR	3	E	0	.00	95.73	6	E 101.73
I 069915	USA	WILLOW CR/SUNSE	INTERCEPTOR	3	E	0	.00	95.73	6	E 101.73
I 071501	VALE	A STREET	SEWER REHAB	3	D	90	6.40	26.00	8	D 130.40
E 066001	VENETA	CITY	II CORRECTION	3	D	50	6.76	54.82	7	D 118.58
I 066002	VENETA	CITY	STP EXPANSION	3	E	90	6.60	54.82	10	E 161.42
E 063101	VERNONIA	CITY	I/I CORR	4	B	90	6.48	68.54	7	B 172.02
E 063101	VERNONIA	CITY	STP IMP	4	C	90	6.48	68.54	10	C 175.02
E 073101	WALDPORT	CITY	STP IMP	3	D	50	6.40	47.00	10	D 113.40
E 067502	WALLOWA	CITY	II CORRECTION	3	D	50	5.82	44.67	7	D 107.49
E 067501	WALLOWA	CITY	STP IMP	3	D	90	5.82	44.67	10	D 150.49
I 060101	WALLOWA COUNTY	WALLOWA LAKE	COLL SYSTEM	3	D	0	6.00	44.67	1	D 51.67
E 069201	WARRENTON	CITY	II CORRECTION	3	D	90	6.96	38.00	7	D 141.96
I 069202	WARRENTON	CITY	STP EXPANSION	3	E	90	6.94	38.00	10	E 144.94
I 069203	WARRENTON	HARBOR & ENSIGN	PS/FM	3	E	90	5.06	38.00	2	E 135.06
I 069204	WARRENTON	MERLIN & SECOND	FORCE MAIN	3	E	90	4.86	38.00	2	E 134.86
I 069703	WESTFIR	NORTH	INTERCEPTOR	3	E	0	3.40	70.73	6	E 80.13
E 071601	WESTON	CITY	II CORRECTION	3	D	50	5.72	34.00	7	D 96.72
E 059703	YONCALLA	CITY	II CORRECTION	3	C	90	5.86	44.00	7	C 146.86
I 059702	YONCALLA	CITY	SEWER REHAB	3	C	90	5.86	44.00	9	C 148.86
E 059701	YONCALLA	CITY	STP IMP	3	C	90	5.86	44.00	10	C 149.86

Attachment I

Staff Report for Agenda Item H, April 29, 1988, EQC Meeting



Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission
From: Director
Subject: Agenda Item H, April 29, 1988, EQC Meeting

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

Background

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

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

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

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

Agenda Item H
April 29, 1988

Proposed Priority List

A. Construction Grants Program Termination

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

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

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

The public will be invited to comment and present testimony on the draft list and rule amendments at the proposed public hearing on June 29, 1988. All testimony from the public hearing will be evaluated and the Draft FY89 priority list may be adjusted and reranked. The proposed final construction grants priority list and rule amendments and associated public testimony will be presented to the commission for adoption at the August 19, 1989 meeting.

B. Funding

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

C. Draft Priority List

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

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

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

Rule Amendments to the Discretionary Authority

A. Sewer Replacement and Rehabilitation

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

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

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

- (1) The project is on the fundable portion of the state's current year priority list; and
- (2) The project meets the enforceable requirements of the Clean Water Act; and
- (3) [Planning for the proposed project was complete or substantially complete on December 29, 1981; or the project is necessary for a community that is under Commission Order as of December 31, 1986 to achieve compliance with the requirements of the national municipal policy.]

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

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April 29, 1988

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

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

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

Public Hearing

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

Alternatives and Evaluation

- A. The Commission could choose not to develop a construction grants priority list for FY89. However, federal rules require that a priority list be developed and approved before grant monies can be awarded to the state. For this reason the Department recommends Commission approval of an FY 89 priority list.
- B. The Commission can choose not to broaden eligibility for funding major sewer replacement and rehabilitation under the discretionary authority (OAR 340-53-027). This would cause several communities to increase the local share of funding to improve their sewerage systems. These communities are small and the strong possibility exists that they would not be able to accumulate the funds needed to do the work. Not repairing these sewerage systems would result in the continued degradation of water quality in receiving streams.

Summation

- 1. The Commission must adopt the state priority list for allocating federal construction grant funds for FY89.
- 2. The reauthorization of the Clean Water Act in 1987 phases out construction grants for sewage facilities and establishes a State Revolving Loan Fund (SRF).

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3. Funding for construction grants will be offered to those letter Class A, B, and C projects with demonstrated water quality problems who complete all grant requirements by July 1, 1989.
4. Approximately \$30.0 million is available in FY88 and \$27.4 million is anticipated for FY89 to fund construction grant projects and capitalize a SRF.
5. Administrative rule modifications are proposed to continue excluding funding for elimination of combined sewer overflows and to broaden the eligibility to fund major sewer replacement and rehabilitation out of the 20 percent discretionary fund.
6. No change in state priority rating criteria is proposed.
7. The draft FY89 priority list is scheduled for public distribution on May 16, 1988.
8. A public hearing on the proposed priority list and the proposed rule modification has been tentatively scheduled for June 29, 1988 at 10:00 a.m.

Director's Recommendation

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

Fred Hansen

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

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

STATEMENT OF NEED FOR RULEMAKING

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

(1) Legal Authority

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

(2) Need for the Rule

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

(3) Principal Documents Relied Upon in this rulemaking

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

(4) Fiscal and Economic Impact of Rulemaking

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

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

(5) Land Use Consistency

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

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

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

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

- WHO IS AFFECTED:** Cities, counties, and special districts seeking U.S. Environmental Protection Agency grants for sewerage projects are directly affected.
- WHAT IS PROPOSED:** The adoption of the FY 89 Priority List for Sewerage Works Construction Grants is proposed by the Environmental Quality Commission. No change in the priority criteria used to establish priority ratings is proposed; one rule modification to broaden eligibility for major sewer replacement and rehabilitation while continuing to exclude from funding elimination of combined sewer overflows is proposed.
- WHAT ARE THE HIGHLIGHTS:** The construction grants priority list is used to distribute Federal funds for construction of public sewage works. Federal grant funds are being phased out and it is proposed that the FY 89 priority list be the final list used to fund projects with grants. Those projects with demonstrated water quality problems within the letter classes A, B, and C will be offered grants if all requirements to apply for a grant are fulfilled by July 1, 1989. A rule modification to the Discretionary Authority broadens eligibility for sewer replacement and rehabilitation and continues exclusion of funding for elimination of combined sewer overflows.
- HOW TO COMMENT:** Public Hearing--Wednesday, June 29, 1988, 10:00 a.m. at the following address:
- Department of Environmental Quality
Fourth Floor Conference Room
811 S.W. Sixth Avenue
Portland, OR 97204
- The proposed Priority List will be mailed to all cities, counties, sanitary or sewer districts, and interested persons on May 16, 1988. Written comments should be sent to DEQ, Construction Grants Section, 811 S.W. Sixth Avenue, Portland, OR 97204. The comment period will close at 5:00 p.m., July 1, 1988.



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

11/1/86

FOR FURTHER INFORMATION:

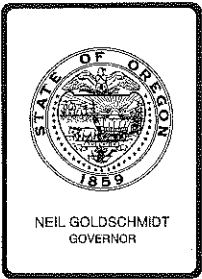
Contact the person or division identified in the public notice by calling 229-5696 in the Portland area. To avoid long distance charges from other parts of the state, call 1-800-452-4011.

ECONOMIC
IMPACT:

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

LAND USE
CONSISTENCY:

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



Environmental Quality Commission

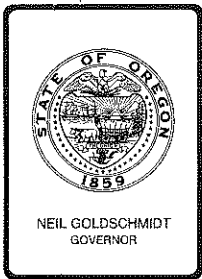
811 SW SIXTH AVENUE, PORTLAND, OR 97204 PHONE (503) 229-5696

Agenda Item No. I: Request for Issuance of an Environmental Quality Commission Compliance Order for the City of Elgin, Oregon.

This agenda item is a request for the Environmental Quality Commission to issue a Stipulated Order to the City of Elgin, Oregon. Elgin is affected by EPA's National Municipal Policy for meeting the secondary treatment criteria of the Clean Water Act.

Ken Vigil and Mary Halliburton of the Water Quality Division are here to answer questions on this agenda item.

WJ934



Environmental Quality Commission

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

EXECUTIVE SUMMARY

To: Environmental Quality Commission

From:

Director

Rexia Taylor

Subject: Agenda Item I, September 9, 1988, EQC Meeting.

Requesting For Issuance of an Environmental Quality Commission Order for the City of Elgin, Oregon

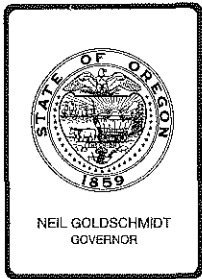
The National Municipal Policy, introduced by the Environmental Protection Agency in 1984, requires all municipal sewage treatment plants to meet the secondary treatment criteria outlined in the Clean Water Act by July 1, 1988. Communities that cannot meet this deadline are to be placed on enforceable schedules.

The City of Elgin does not consistently meet the secondary treatment criteria required by the Clean Water Act and listed in its National Pollution Discharge Elimination System (NPDES) permit. Failure to meet these discharge limitations may be a result of high wastewater flows or operational and design limitations of the wastewater treatment facilities.

The recommended alternative in the attached Staff Report is to issue an Environmental Quality Commission Compliance Order to Elgin. The community would be ordered to study its wastewater facilities and adopt a plan of action for correcting deficiencies. The Order would include an enforceable schedule for completing the study and plan of action, and stipulated penalties for failure to meet schedule deadlines.

City officials have reviewed and are in agreement with conditions of the Order.

WC3611



Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director *Rydia Taylor*

Subject: Agenda Item I, September 9, 1988, EQC Meeting

Request for Issuance of an Environmental Quality Commission
Compliance Order for the City of Elgin, Oregon

Background and Problem Statement

The Department is requesting that the Commission issue a Stipulated Compliance Order to the City of Elgin. The compliance order would be used to resolve National Pollution Discharge Elimination System (NPDES) permit violations and other policy issues related to the Federal Water Pollution Control Act Amendments of 1972 (the Clean Water Act). City officials and their engineer and attorney have all reviewed a draft compliance order prepared by Department Staff. They agree with the conditions and schedule contained in the proposed order.

The City of Elgin is located within Union County, approximately 20 miles northeast of La Grande, Oregon. The population is currently near 1800. Elgin owns and operates municipal sewage collection, treatment, and disposal facilities. The collection system consists mainly of asbestos cement sewer pipe with rubber gasket joints. Effluent flows by gravity through this sewer system until it reaches the treatment facilities. Sewage treatment occurs in two lagoons that together have about 12 acres of surface area. The lagoon system is located about one mile east of Elgin within the flood plain of the Grande Ronde River. Effluent from the treatment system is chlorinated and then discharged to a drainage ditch. Effluent flows in this drainage ditch for about 500 ft before it reaches the Grande Ronde River. Elgin's sewage collection, treatment, and disposal facilities were put into operation in 1966.

In September 1984, the Environmental Protection Agency (EPA) published revised secondary treatment criteria for lagoon systems. City officials were notified by the Department, at that time, that these revised standards may be considered for their lagoon facilities. If requested, the Department would evaluate the appropriateness of increasing the City's discharge limits according to EPA criteria concerning their applicability.

To be eligible for "equivalent to secondary" limitations, a municipal treatment works must meet all of the following criteria:

1. The principal treatment process is a trickling filter or lagoon (e.g., the largest percentage of BOD and TSS removal is provided by the trickling filter or lagoon system).
2. The effluent quality consistently achieved, despite proper operating and maintenance practices, is in excess of 30 mg/l BOD₅ and suspended solids.
3. The treatment works as a whole provide significant biological treatment such that a minimum 65 percent reduction of BOD₅ is consistently attained (30-day average).
4. Water quality must not be adversely affected by the application of equivalent secondary treatment.

However, a treatment works that is operating beyond its design hydraulic or organic loading limit is not considered an eligible facility. If overloading or structural failure are causing poor performance, the solution to the problem is not effluent limitation adjustment.

In June 1986, Department staff performed a limited field evaluation of Elgin's lagoon systems and mixing zone survey of the effluent discharge. Data from the field evaluation was analyzed and a report was completed in February 1987 that concluded:

1. The lagoon treatment system may be at its hydraulic and organic design capacity and this situation contributes to the permit limit violations.
2. During low stream flow periods (August through October) when the Grande Ronde River flows are less than 100 cubic feet per second, Elgin's effluent discharge may not receive sufficient dilution within the designated mixing zone.

Based on the conclusions of the evaluation, the request for an increase in effluent BOD was denied. The Department recommended that the City conduct an engineering study to confirm the conclusions of the evaluation and to determine what course of action to take to achieve compliance with existing permit limits. Shortly after the preliminary evaluation concluding it was inappropriate to apply alternative effluent limits for secondary treatment, the Department identified the Grande Ronde River, the receiving stream of Elgin's effluent, as water quality limited.

The City of Elgin was issued NPDES permit Number 3817-J (Attachment A) on March 14, 1984 and it expires on February 28, 1989. Elgin has not consistently met these permitted sewage treatment plant effluent limits. From January 1984 to July 1988, monthly average effluent biochemical oxygen demand (BOD) concentration limits were exceeded 35 percent of the time. Monthly average BOD mass load limits were exceeded 26 percent of the time during this same time period. Effluent monthly average suspended solids (SS) concentration and load limits were generally within permitted limits during this period. A summary of effluent BOD values is included in graph form as Attachment B.

Elgin does not comply with the Clean Water Act requirement of providing secondary treatment of sewage before discharging it to the nation's waters. Additionally, they do not qualify for equivalent to secondary limitations based on EPA's guidelines and the Department's review of their facilities. In 1984, the EPA developed the National Municipal Policy (NMP) (Attachment C) to help achieve the secondary treatment objectives of the Act. The NMP is designed to bring all noncomplying Publicly Owned Treatment Works (POTWs) into compliance by first developing an inventory of these noncomplying facilities. The affected municipalities are then required to develop plans for correcting deficiencies at their sewage treatment plants by July 1, 1988. In the event that the July 1, 1988 deadline cannot be met, the EPA and the State are to work with the affected municipality to ensure that they are on enforceable schedules for achieving compliance. Interim measures are to be taken to abate water pollution while working towards achieving compliance.

The City of Elgin recently hired an engineering firm to study its sewerage facilities and recommend alternatives for correcting current deficiencies. The City may wish to apply for an EPA sewerage works grant, depending on the outcome of the engineering study. In order to qualify for an EPA sewerage works grant, however, the National Municipal Policy would require that the City be under an enforceable schedule since construction activities would extend beyond July 1, 1988.

The Department is also currently studying the total maximum daily load (TMDL) for total phosphorus in the Grande Ronde River. The City has been informed that this investigation may result in phosphorus limitations being placed on their effluent discharges to the Grande Ronde River. City officials have, therefore, been asked to study a range of corrective measures, including summertime non-discharge alternatives (land application, effluent holding). These alternatives would enable the City to meet both existing and future discharge limitations.

Alternatives and Evaluation

The Department has identified the following alternatives for the Commission's consideration. Each alternative would address the City's noncompliance with provisions of the Clean Water Act.

1. Direct the Department to assess civil penalties for past NPDES permit violations.

The Department could be directed to assess penalties for past violations as provided by and according to the fee schedule in OAR 340-12-055(15) (\$50 - \$10,000). The amount of civil penalty to be assessed would be determined by considering mitigating and aggravating factors.

City officials are aware of past violations and current difficulties in meeting BOD permit limits. They requested an increase in BOD limits for their lagoon system as provided for by federal law (1984 revised secondary

treatment criteria, 40 CFR Part 133). This request was denied by the Department based on an evaluation of their treatment system and effluent mixing zone.

The City also commissioned a study (completed June 1987) with the intent of establishing the sewerage improvements needed to bring current facilities into compliance with permit conditions. They have been unable to implement recommendations from this study due to rapid turnovers within the City government. Since November 1987, Elgin has had three mayors, and four city managers. Current City officials, however, are conscientiously working to solve their existing problems. Department staff, therefore, do not consider it appropriate to issue penalties for past violations.

2. Direct the Department to modify the existing NPDES permit and include interim and final discharge standards and a compliance schedule that identifies dates to complete specific tasks that would bring the City into compliance.

Alternative 2 would not involve an EQC order or further EQC action. The NPDES permit would be used as a compliance mechanism and the City would be expected to meet the compliance schedule and conditions outlined in the permit.

The Department has been advised by EPA, however, that compliance conditions, schedules, and interim limits used to bring minor municipal facilities into compliance with the Clean Water Act should be contained in administrative orders. EPA also maintains that the National Municipal Policy prohibits them from awarding sewerage grants to municipalities where construction of their sewage treatment facilities would take place after July 1, 1988 unless the municipality is covered by an administrative order.

3. Direct the Department to litigate against the City of Elgin pursuant to ORS 468.035 and ORS 454.020 for noncompliance and have a federal or state court issue a court order that would include compliance conditions and a schedule that extends beyond July 1, 1988.

This alternative would not necessarily expedite compliance. City officials have hired an engineering firm to help them find a solution to their sewage treatment and disposal problems. They intend to submit to the Department an engineering report that addresses their sewerage needs and outlines an implementation schedule for coming into compliance with the Clean Water Act.

4. Issue a Stipulated Consent Agreement and Final Order to the City of Elgin. The order would contain interim effluent limitations, a schedule of milestones for bringing the City into compliance, and penalties for failure to meet milestones by the specified dates in the compliance schedule (Attachment D).

The Department staff recommends Alternative 4 for the following reasons:

(1) it recognizes the Commission's authority to enforce water quality objectives of the State under ORS 468.090, et seq.; (2) this mechanism has been used in the past to address similar water quality violations by other municipalities; (3) the Commission Order recognizes that the terms of the existing NPDES permit cannot be met; (4) Commission Orders have satisfied EPA in the past with regard to the National Municipal Policy and compliance with the Clean Water Act; (5) the City of Elgin is agreeable to the Order; and (6) the Order would act to positively reinforce the City's ongoing sewer system planning efforts and act as a commitment by the City to attain a long-term solution to its sewage treatment and disposal needs in a timely manner.

The Order would settle past violations, while specifying a civil penalty for any future violation of the Order. The Department is authorized to assess a civil penalty ranging from \$100 to \$10,000 for a violation of an Order by the Commission (OAR 340-12-055(1)). The proposed Order specifies a civil penalty of \$100 for each day of each violation (Attachment D, page 4, paragraph E). The Department considers this amount to be reasonable and equitable, considering the size of Elgin's treatment facilities.

Summation

1. The City of Elgin violates provisions of the Clean Water Act by failing to meet secondary treatment criteria.
2. City officials requested an increase in effluent BOD limits for their lagoon system as provided for by federal law. This request was denied by the Department because their treatment system may be overloaded and the receiving stream has inadequate dilution during some months to assimilate higher strength effluent.
3. The City has hired an engineering firm to study their sewerage problems and recommend alternatives for correcting these problems.
4. The City has been made aware that phosphorus loadings are being studied in the Grande Ronde River and that limitations on phosphorus discharge from their sewage treatment plant may be placed on them in the future.
5. Alternative 1, outlined in this report for addressing Elgin's compliance problem, would have the Department issue civil penalties for past discharge violations.

6. Alternatives 2 through 4 would each involve setting interim and final effluent limits and establishing a compliance schedule. Alternative 2 would do this through the NPDES permit process; Alternative 3, through litigation and a court order; and Alternative 4 through an EQC order.
7. The Department staff prefers Alternative 4, the issuance of an EQC order, since it would address concerns over noncompliance and the National Municipal Policy and act as a positive commitment by the City to adequately treat and dispose of its municipal sewage.

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.

Fred Hansen

Attachments (4)

- A. NPDES Permit Number 3817-J
- B. Summary of NPDES permit violations January 1984 to July 1988
- C. National Municipal Policy
- D. Environmental Quality Commission Compliance Order

MMH:kjc
WJ860
229-6099
July 26, 1988

Permit Number: 3817-J
 Expiration Date: 2/28/89
 File Number: 26885
 Page 1 of 4 Pages

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

WASTE DISCHARGE PERMIT

Department of Environmental Quality
 522 Southwest Fifth Avenue, Portland, OR
 Mailing Address: Box 1760, Portland, OR 97207
 Telephone: (503) 229-5696

Issued pursuant to ORS 468.740 and The Federal Clean Water Act

ISSUED TO:

City of Elgin
 P. O. Box 128
 Elgin, OR 97827

SOURCES COVERED BY THIS PERMIT:

Type of Waste	Outfall Number	Outfall Location
Domestic Sewage	001	RM 98.0

PLANT TYPE AND LOCATION:

Lagoon
 Two miles east of Elgin
 on Hwy. 82

RECEIVING SYSTEM INFORMATION:

Major Basin: Grande Ronde
 Minor Basin:
 Receiving Stream: Grande Ronde River
 County: Union
 Applicable Standards: OAR 340-41-725

Issued in response to Application No. OR-202243-8 received 10/22/82.

Michael Hansen for
 Fred Hansen, Director

MAR 24 1984
 Date

PERMITTED ACTIVITIES

Until this permit expires or is modified or revoked, the permittee is authorized to construct, install, modify, or operate a waste water collection, treatment, control and disposal system and discharge to public waters adequately treated waste waters only from the authorized discharge point or points established in Schedule A and only in conformance with all the requirements, limitations, and conditions set forth in the attached schedules as follows:

	<u>Page</u>
Schedule A - Waste Disposal Limitations not to be Exceeded...	2
Schedule B - Minimum Monitoring and Reporting Requirements...	3
Schedule C - Compliance Conditions and Schedules.....	4
Schedule D - Special Conditions.....	-
General Conditions.....	Attached

Each other direct and indirect discharge to public waters is prohibited.

This permit does not relieve the permittee from responsibility for compliance with any other applicable federal, state, or local law, rule, standard, ordinance, order, judgment, or decree.

SCHEDULE B

Minimum Monitoring and Reporting Requirements
(unless otherwise approved in writing by the Department)

Outfall Number 001 (sewage treatment plant outfall)

<u>Item or Parameter</u>	<u>Minimum Frequency</u>	<u>Type of Sample</u>
Total Flow (MGD) (influent and effluent)	Daily*	Measurement
Quantity Chlorine Used	Daily*	Weight
Effluent Chlorine Residual	Daily	Grab
BOD-5 (influent)	Monthly	Composite
BOD-5 (effluent)	Monthly	Grab
TSS (influent)	Monthly	Composite
TSS (effluent)	Monthly	Grab
pH (influent and effluent)	3 times per week	Grab
Fecal Coliform (effluent)	Quarterly	Grab

* Daily means 5 days per week.

Monitoring reports shall include a record of the location and method of disposal of all sludge and a record of all applicable equipment breakdowns and bypassing.

Reporting Procedures

Monitoring results shall be reported on approved forms. The reporting period is the calendar month. Reports must be submitted to the Department by the 15th day of the following month.

SCHEDULE C

Compliance Conditions and Schedules

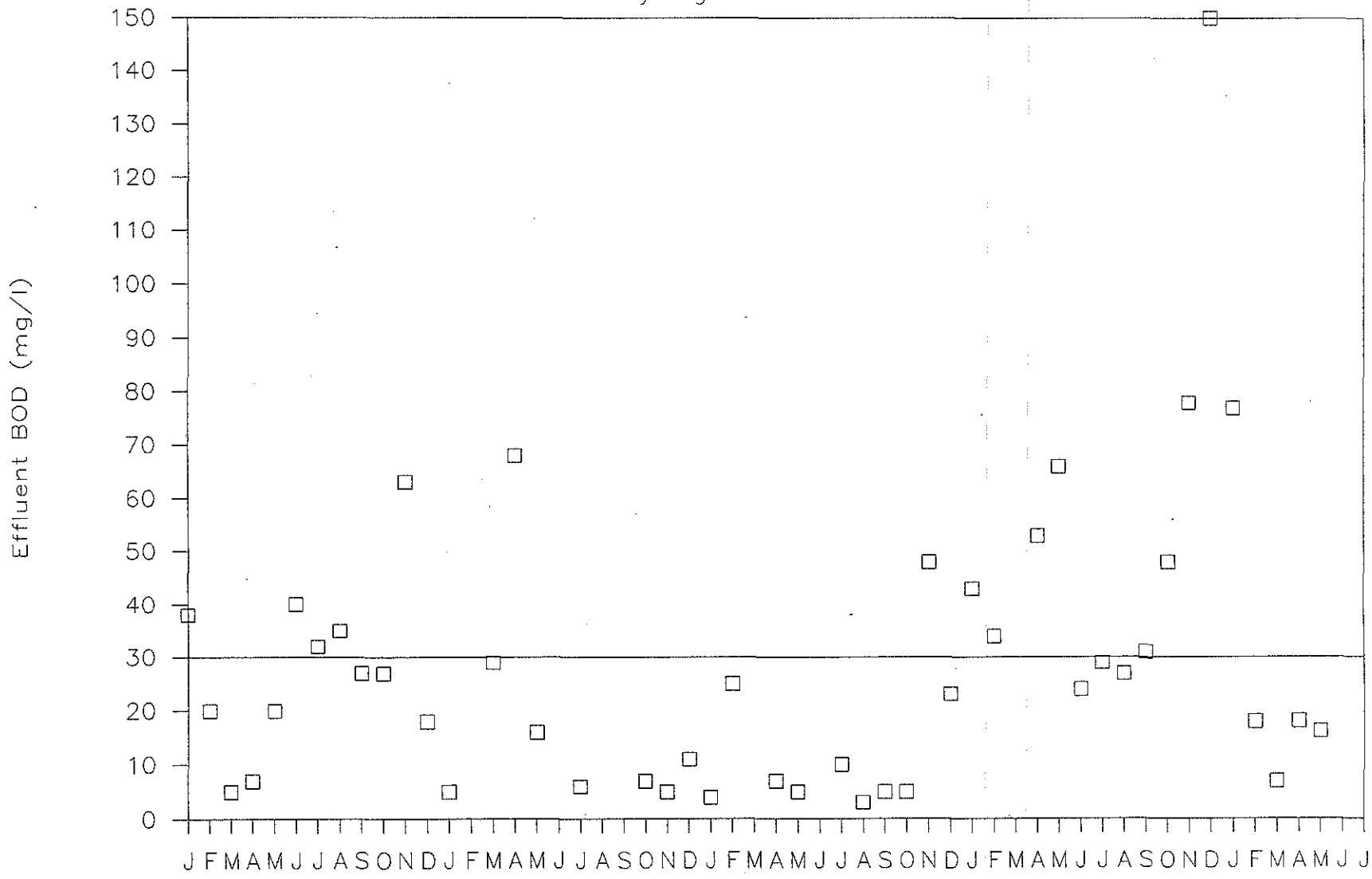
1. As soon as practicable, but not later than January 1, 1988, the permittee shall reduce infiltration and inflow into the sewer collection system to reduce the winter time monthly average daily flow to the treatment plant to 420,000 gallons per day or less.
2. By March 1, 1985, the permittee shall submit a detailed sewer system rehabilitation plan for approval showing how Condition 1 of this compliance schedule will be met to include:
 - a. A map of the sewer system showing which sewer mains, manholes and house connection sewers will be rehabilitated to reduce infiltration and which basement water pumps, roof drains, and street storm drains will be disconnected from the sewer system to reduce inflow.
 - b. The expected quantity of infiltration or inflow that will be eliminated by accomplishing the items in 2.a. (above).
 - c. A time schedule (month and year) when the items in 2.a. (above) will be done.
3. By January 1 of each year the permittee shall submit a progress report on the previous years accomplishments toward meeting Condition 2 of this compliance schedule.

P26885 (g)

ELGIN EFFLUENT DATA

Monthly Avg. Concentration

B-1



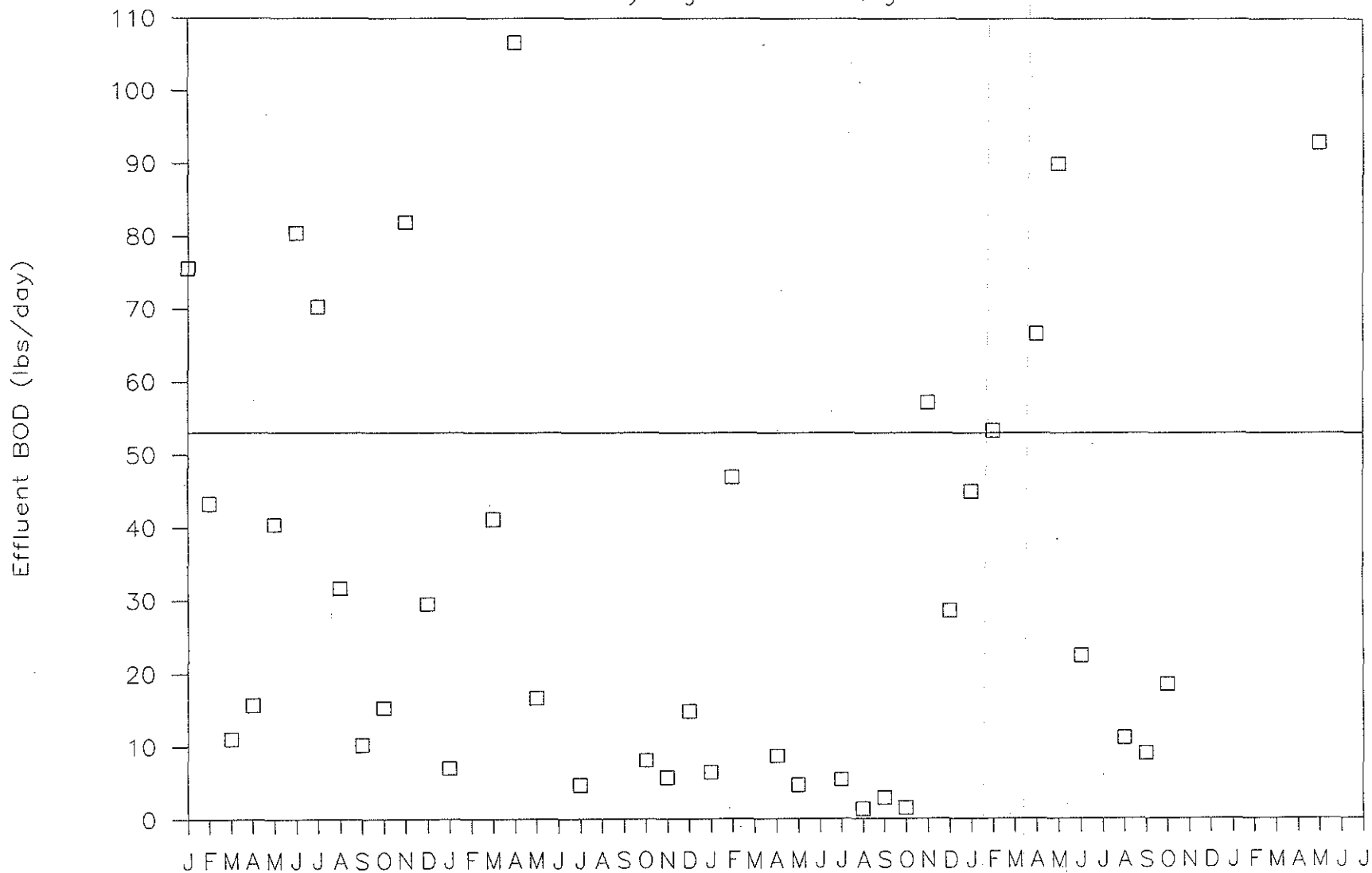
□ Effluent BOD

— Permit Limit

ATTACHMENT B

ELGIN EFFLUENT DATA

Monthly Avg. Mass Discharge



□ Effluent BOD

Jan. 84 to Jul. 88

— Permit Limit

B-2

NATIONAL MUNICIPAL POLICY

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

STATEMENT OF POLICY

When the Clean Water Act (CWA) was passed in 1972, Congress gave municipalities until 1977 to comply with its requirements. Congress authorized Environmental Protection Agency (EPA) to extend the deadline to 1983 and then again to July 1, 1988, for some municipalities. In addition, Congress amended the Act in 1981 to modify the basic treatment requirements. Therefore, Congress has authorized EPA to give some municipalities several additional years to achieve compliance and has also provided more reasonable treatment requirements for certain types of facilities.

The CWA requires all publicly owned treatment works (POTWs) to meet the statutory compliance deadlines and to achieve the water quality objectives of the Act, whether or not they receive Federal funds. The EPA will focus on POTWs that previously received Federal funding assistance and are not currently in compliance with their applicable effluent limits, on all other major POTWs, and on minor POTWs that are contributing significantly to an impairment of water quality. EPA's goal will be to obtain compliance by POTWs as soon as possible, and no later than July 1, 1988. Where there are extraordinary circumstances that preclude compliance of such facilities by July 1, 1988, EPA will work with States and the affected municipal authorities to ensure that these POTWs are on enforceable schedules for achieving compliance as soon as possible thereafter, and are doing all they can in the meantime to abate pollution to the Nation's waters.

IMPLEMENTATION STRATEGY

The Agency is committed to pursuing a clear course of action that fulfills the intent of Congress and results in the maximum improvement in water quality. The Agency is also committed to protecting the public's financial investment in wastewater treatment facilities. To meet these objectives, the Agency expects EPA Regions and States to adhere to the National policy stated above and to use the following mechanisms to carry out the intent of this policy.

EPA Regions will cooperate with their respective States to develop strategies that describe how they plan to bring noncomplying facilities into compliance. These strategies should include a complete inventory of all noncomplying facilities, should identify the affected municipalities consistent with the National policy, and should describe a plan to bring these POTWs into compliance as soon as possible. Regions and States will then use the annual State program grant negotiation process to reach agreement on the specific activities they will undertake to carry out the plan.

Based on the information in the final strategies, the permitting authority (Region or approved NPDES State) will require affected municipal authorities to develop one of the following as necessary:

Composite Correction Plan: An affected municipality that has a constructed POTW that is not in compliance with its NPDES permit effluent limits will be required to develop a Composite Correction Plan (CCP). The CCP should describe the cause(s) of noncompliance, should outline the corrective actions necessary to achieve compliance, and should provide a schedule for completing the required work and for achieving compliance.

Municipal Compliance Plan: An affected municipality that needs to construct a wastewater treatment facility in order to achieve compliance will be required to develop a Municipal Compliance Plan (MCP). The MCP should describe the necessary treatment technology and estimated cost, should outline the proposed sources and methods of financing the proposed facility (both construction and O&M), and should provide a schedule for achieving compliance as soon as possible.

The permitting authority will use the information in these plans and will work with the affected municipality to develop a reasonable schedule for achieving compliance. In any case where the affected municipal authority is unable to achieve compliance promptly, the permitting authority will, in addition to setting a schedule for achieving full compliance ensure that the POTW undertakes appropriate interim steps that lead to full compliance as soon as possible. Where there are extraordinary circumstances that make it impossible for an affected municipal authority to meet a July 1, 1988 compliance date, the permitting authority will work with the affected municipality to establish a fixed-date schedule to achieve compliance in the shortest, reasonable period of time thereafter, including interim abatement measures as appropriate. The general goal is to establish enforceable compliance schedules for all affected municipalities by the end of FY 1985. Once schedules for affected municipalities are in place, the permitting authority will monitor progress towards compliance and will take follow-up action as appropriate. Nothing in this policy is intended to impede or delay any ongoing or future enforcement actions.

OVERVIEW

EPA Headquarters will overview the implementation of this policy to ensure that actions taken by Regions and States are consistent with National policy and that the Agency as a whole is making progress towards meeting the statutory deadlines and achieving the water quality objectives of the Act.

JAN 10 1985
Date


William D. Ruckelshaus

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY, OF THE STATE OF OREGON	)	STIPULATION AND FINAL ORDER
	)	No. WQ-ER-88-62
	)	UNION COUNTY
Department,)	
)	
v.)	
)	
CITY OF ELGIN)	
)	
Respondent.)	

WHEREAS:

1. On March 14, 1984, the Department of Environmental Quality (Department or DEQ) issued National Pollution Discharge Elimination System (NPDES) Waste Discharge Permit Number 3817-J (Permit) to City of Elgin (Respondent), pursuant to Oregon Revised Statutes (ORS) 468.740 and the Federal water Pollution Control Act Amendments of 1972, P.L. 92-500. The Permit authorizes the Respondent to construct, install, modify or operate waste water treatment control and disposal facilities (facilities) and discharge adequately treated waste waters into the Grand Ronde River, waters of the state, in conformance with the requirements, limitations and conditions set forth in the Permit. The Permit expires on February 28, 1989.

2. Condition 1 of Schedule A of the Permit does not allow Respondent to exceed the Following waste Discharge limitations after the Permit issuance date:

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1 action and schedule for completing activities required as
2 part of the corrective procedure.

3 (d) By December 1, 1989, and June 1, 1990, submit progress
4 reports to the Department.

5 (e) By October 1, 1990, complete all activities identified
6 in plan of action and notify the Department in writing.

7 (f) By December 1, 1990, provide proper collection,
8 treatment, disinfection, and disposal of the city's sewage
9 and meet all NPDES permit requirements in effect at that
10 time.

11 B. Requiring Respondent to meet the interim effluent limitations
12 set forth in Paragraph 5 above until December 1, 1990.

13 C. Requiring Respondent to comply with all the terms, schedules
14 and conditions of the Permit, except those modified by Paragraph
15 8.B. above, or of any other NPDES waste discharge permit issued to
16 Respondent while this stipulated final order is in effect.

17 D. Requiring Respondent, should Respondent fail to comply with
18 the above schedule, to cease allowing new connections to
19 Respondent's sewage collection system upon written requirement of
20 the Department.

21 E. Requiring Respondent, upon receipt of a written notice from
22 the Department for any violations of the Stipulation and Final
23 Order, to pay the following civil penalties:

24 (a) \$100 for each day of each violation of the compliance
25 schedule set forth in Paragraph 8.

26 (b) \$100 for each violation of each interim concentration

1 limit set forth in Paragraph 5.

2 9. If any event occurs that is beyond Respondent's reasonable control
3 and that causes or may cause a delay or deviation in performance of the
4 requirements of this Stipulation and Final Order, Respondent shall
5 immediately notify the Department verbally of the cause of delay or
6 deviation and its anticipated duration, the measures that have been or will
7 be taken to prevent or minimize the delay or deviation, and the timetable by
8 which Respondent proposes to carry out such measures. Respondent shall
9 confirm in writing this information within five (5) working days of the
10 onset of the event. It is Respondent's responsibility in the written
11 notification to demonstrate to the Department's satisfaction that the delay
12 or deviation has been or will be caused by circumstances beyond the control
13 and despite due diligence of Respondent. If Respondent so demonstrates, the
14 Department shall extend times of performance of related activities under the
15 Stipulation and Final Order as appropriate. Circumstances or events beyond
16 Respondent's control include, but are not limited to, acts of Nature,
17 unforeseen strikes, work stoppages, fires, explosion, riot, sabotage, or
18 war. Increased cost of performance or consultant's failure to provide
19 timely reports shall not be considered circumstances beyond Respondent's
20 control..

21 10. Regarding the violations set forth in Paragraph 3 and 4 above,
22 which are expressly settled herein without penalty, Respondent and the
23 Department hereby waive any and all of their rights to any and all notices,
24 hearing, judicial review, and to service of a copy of the final order
25 herein. The Department reserves the right to enforce this order through
26 appropriate administrative and judicial proceedings.

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11. Regarding the schedule set forth in Paragraph 8.A. above, Respondent acknowledges that Respondent is responsible for complying with that schedule regardless of the availability of any federal or state grant monies.

12. The terms of this Stipulation and Final Order may be amended by the mutual agreement of the Department and Respondent.

13. Respondent acknowledges that it has actual notice of the contents and requirements of the Stipulation and Final Order and that failure to fulfill any of the requirements hereof would constitute a violation of this stipulated final order. Therefore, should Respondent commit any violation of the Stipulation and Final Order, Respondent hereby waives any rights it might have to an ORS 468.125(1) advance notice prior to the assessment of civil penalties. However, Respondent does not waive its rights to an ORS 468.135(1) notice of assessment of civil penalty.

RESPONDENT

Date

(Name _____)

(Title _____)

DEPARTMENT OF ENVIRONMENTAL QUALITY

Date

Fred Hansen
Director

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FINAL ORDER

IT IS SO ORDERED:

ENVIRONMENTAL QUALITY COMMISSION

Date

William P. Hutchison, Jr., Chairman

Date

Wallace B. Brill, Member

Date

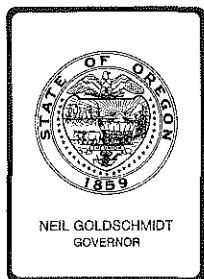
Emery N. Castle, Member

Date

Genevieve Pisarski Sage, Member

Date

William Wessinger, Member



Environmental Quality Commission

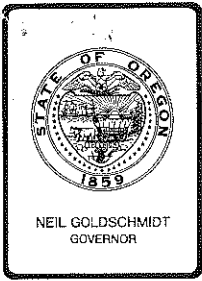
811 SW SIXTH AVENUE, PORTLAND, OR 97204 PHONE (503) 229-5696

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

This agenda item requests that the Commission sign a compliance order covering Sewage Treatment Plant No. 2 in Coos Bay. The order would establish a schedule for compliance, set interim discharge limits, and penalties for failure to comply.

Mary Halliburton and David Mann are here from the Water Quality Division to answer your questions about this item.

WC3574



Environmental Quality Commission

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

EXECUTIVE SUMMARY

To: Environmental Quality Commission

From: Director *Russell Taylor*

Subject: Agenda Item J, September 9, 1988, EQC Meeting.

Request For Issuance of an Environmental Quality Commission Compliance Order for City of Coos Bay, Oregon for Treatment Plant No. 2

Background

The City of Coos Bay operates two major sewage treatment plants which discharge to the bay. Both plants exceed federal secondary effluent criteria, caused mainly by insufficient hydraulic capacity and excessive infiltration and inflow. The City is now expanding both plants and improving their sewer collection systems to provide reliable treatment.

The National Municipal Policy, introduced by the Environmental Protection Agency in 1984, requires all municipal sewage treatment plants to meet the secondary treatment criteria outlined in the Clean Water Act by July 1, 1988. Communities that cannot meet this deadline are to be placed on enforceable schedules.

When it became clear in 1986 that the City's Treatment Plant No. 1 could not treat wastes to secondary standards, the Commission issued a Stipulated Compliance Order covering Plant No. 1. The City completed an engineering evaluation of Plant No. 2 in June, 1988 which determined that this plant also was physically incapable of reliable secondary treatment. For that reason, the Commission is now being asked to issue an order for Plant No. 2.

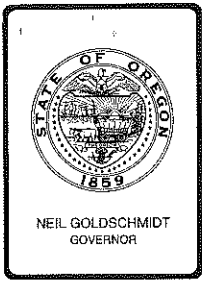
There are two alternatives to issuing the order: 1) Modify the NPDES permit, or 2) litigate. The Department does not favor obtaining a court order because it will not expedite compliance, and because the City has already offered to enter into a binding agreement to attain compliance on the fastest possible schedule. Simply modifying the NPDES permit would not enable the City to qualify for an EPA construction grant to implement the needed improvements. The City would also be subject to direct federal enforcement action by EPA. Neither alternative offers the advantages of a stipulated compliance order.

Executive Summary
EQC Agenda Item J
September 9, 1988
Page 2

In conjunction with these three alternatives, the Commission could either settle past violations or direct the Department to assess a civil penalty. The order covering Plant No. 1 settled past violations without penalty. The Department recommends these violations be settled, in view of the mitigating circumstances and the lack of any aggravating factors. However, the order specifies civil penalties for violations of the order.

Fred Hansen

David Mann:crw
WC3573
229-6890
August 9, 1988



Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director *Rydeca Taylor*

Subject: Agenda Item J, September 9, 1988, EQC Meeting

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

Background and Problem Statement

The Department is requesting that the Commission issue a stipulated compliance order to the City of Coos Bay. The compliance order would be used to resolve National Pollution Discharge Elimination System (NPDES) permit violations and other policy issues related to the Federal Water Pollution Control Act Amendments of 1972 (the Clean Water Act) and the National Municipal Policy. The Commission issued a stipulated compliance order for the City's Treatment Plant No. 1 on July 25, 1986. This order would cover Treatment Plant No. 2.

The City of Coos Bay provides wastewater treatment through two collection systems and treatment plants. The western collection system encompasses the Empire District of Coos Bay and the sewered areas of the Charleston Sanitary District. Wastewater from these areas is piped to Coos Bay Sewage Treatment Plant No. 2, a 1.62 MGD conventional activated sludge plant, where chlorinated effluent has been discharged to Coos Bay at River Mile 4.5 since construction of the original primary plant in 1964.

Treatment Plant No. 1, which treats wastewater from the eastern collection system and discharges to the Bay at River Mile 13.2, is currently being expanded in compliance with the schedule and interim discharge limitations stipulated in the 1986 order. The expanded plant is to be completed and fully operational by December 1, 1989.

The City of Coos Bay was issued NPDES Permit No. 100036 for Plant No. 2 on March 1, 1985. A copy of the permit appears as Attachment A. Plant No. 2 has not consistently complied with the effluent limitations listed in Schedule A of the permit. For violations during the winter of 1986-87, the Department issued a Notice of Violation and Intent to Assess a Civil Penalty on May 6, 1987. A copy of this notice appears as Attachment B.

The Department conducted a compliance inspection of Plant No. 2 on June 4, 1987. The main conclusion of this report was that the plant is "operated and maintained in a marginally satisfactory manner" due to inherent mechanical problems and occasional operator error, which contributed to effluent limit violations during the winter of 1986/87.

During the winter of 1987-88, the City developed and implemented improved operational strategies for handling high flow rates caused by infiltration and inflow in the collection system. However, there was still one day of violation caused by hydraulic overloading of the treatment plant, and two weeks of violation caused by an upset in the activated sludge system, which temporarily poisoned the bacterial culture. The origin of the upset could not be identified or traced. This type of upset has not reoccurred, and the City is implementing an industrial pretreatment program in accordance with Addendum No. 1 of their NPDES permit to minimize the likelihood of a recurrence. A summary of violations during 1986-88 appears as Attachment C.

By exceeding the effluent discharge limitations of its NPDES permit for Plant No. 2, the City also violated provisions of the Clean Water Act which require effluents to receive secondary treatment prior to discharge into waterways. In 1984, the Environmental Protection Agency (EPA) developed the National Municipal Policy (NMP) to help achieve the secondary treatment objectives of the Act. The NMP (Attachment D) was designed to bring all noncomplying Publicly Owned Treatment Works (POTWs) into compliance by first developing an inventory of these noncomplying facilities. The affected municipalities were then required to develop plans for correcting deficiencies at their sewage treatment plants by July 1, 1988. If this deadline is not met, then the EPA and the states are to work with the affected municipalities to ensure that they are on enforceable schedules for achieving compliance. Interim measures are to be taken to abate water pollution while working towards achieving compliance.

The City contracted Century West Engineering to evaluate the future performance reliability of Plant No. 2. Their main conclusion was that the plant is physically incapable of providing reliable secondary treatment or of complying with effluent mass loading limitations during high wet weather flows. By installing improved chemical feed units to enhance settling, violations can be minimized. However, consistent permit compliance as required by the Clean Water Act will require much more extensive rehabilitation and expansion work.

The City is currently proceeding to purchase and install the interim improvements recommended by their engineer: a chemical feed system and influent flow meter. At the same time, it has secured some of the local funding necessary to expand Plant No. 2, has hired an engineer to update its facilities plan for Plant 2, and is pursuing an EPA grant for design and construction of the required expansion project. The City helped to develop and has agreed to meet a schedule leading to compliance with secondary treatment standards by May 15, 1991.

The City has presented an analysis by its engineers of the level of treatment which Plant No. 2 can currently attain with diligent operation, and with installation of the interim improvements now being specified and purchased. The effluent quality that is achievable with this level of treatment varies with seasonal flow rates, and contains somewhat stronger than normal discharges of BOD and suspended solids during hydraulic upsets. The City has proposed a set of treatment criteria that are consistent with this level of treatment as realistic interim effluent limitations until completion of their plant expansion project.

Staff support these interim limits provided that all effluent continues to receive adequate disinfection. Disinfection is of particular concern to protect shellfish gathering in Coos Bay. However, the plant has consistently complied with disinfection requirements in the past, and the City's engineers have concluded that reliable disinfection is still attainable with the existing facilities. For that reason, the City's proposed disinfection criteria are unchanged from those established in the current NPDES permit.

Alternatives and Evaluation

The Department has identified four alternatives for the Commission's consideration. Each alternative would address the City's noncompliance with provisions of the Clean Water Act.

1. Direct the Department to assess a civil penalty for past violations.

The Commission could direct the Department to assess penalties for past violations. The Director is authorized by OAR 340-12-055 to assess penalties for any water pollution violation by serving a notice of assessment. For a violation of an NPDES permit, the amount of penalty is to be determined within a range of \$50.00 to \$10,000.00.

In determining the amount of civil penalty to be assessed, the Director is authorized to consider the mitigating and aggravating factors defined in OAR 340-12-045. There are several factors to be considered in connection with past NPDES permit violations at Plant No. 2:

- a. One mitigating factor which the Department would consider in establishing the amount of civil penalty to be assessed is "the opportunity and degree of difficulty to correct the violation." The engineering evaluation of the plant showed that all but one of the violations were unavoidable results of storm-related hydraulic overloads (Attachment C). These were short-term violations which will require substantial treatment plant expansion and collection system renovation to prevent. The lead time necessary to identify, finance, design, and construct these improvements is approximately three years. However, the cause of the violations was identified only last winter, confirmed in June by an

engineering evaluation, and the City is now working to expand plant hydraulic capacity on the shortest possible schedule.

One violation resulted from a two-week upset in the activated sludge system. The cause was suspected to be a toxic dump because the activated sludge bacteria appeared to have been poisoned. Small activated sludge systems such as Plant No. 2's are particularly vulnerable to upset from toxic compounds that may be spilled or dumped into the collection system.

The likelihood of such upsets can be reduced but not necessarily eliminated through an industrial pretreatment program. The Department directed the City to start implementing a pretreatment program last fall by issuing an addendum to its NPDES permit (Attachment A, Addendum No. 1, Schedule E). The City has complied with the addendum.

- b. Another factor which the Department is authorized to consider in determining the amount of civil penalty is the City's history "in taking all feasible steps or procedures necessary or appropriate, to correct any violation." The City has hired a knowledgeable and competent engineering firm to evaluate the sewerage problems, to develop technical alternatives for correcting these problems, and to update and complete all facility planning necessary to secure EPA grant assistance to construct required improvements. The City is implementing the interim improvements recommended by their engineer. It has increased City staff assigned to wastewater treatment operations, management, and support. It has greatly minimized the frequency and severity of violations through chemical addition and other improved operational procedures which the City has developed for treating high wet-weather flows at the plant.
- c. Another factor to be considered is the City's "cooperativeness and efforts to correct the violation for which the penalty is to be assessed." The City has been fully responsive to Departmental concerns and requests for information regarding plant operational procedures. It has acted promptly to report and explain each violation that has occurred. It has experimented, improvised, and developed operational techniques that have prevented some violations and minimized others to the extent possible.
- d. The Department would also consider "whether the cause of the violation was an unavoidable accident, or negligence, or an intentional act." The engineering evaluation showed that the violations were unavoidable. They were caused mainly by poor design and inadequate hydraulic capacity in a critical component, the secondary clarifier. There was no negligence by the plant

operators. On the contrary, the operators exercised ingenuity and skill in handling the hydraulic overloads and upsets.

- e. Another factor which the Department is authorized to consider is "the gravity and magnitude of the violation." The Department would evaluate this factor in relation to the severity of impairment or jeopardy to beneficial uses of the receiving waters of Coos Bay, including fish habitat, aquatic life, boating, aesthetics, and fishing. The violations resulted in no known or suspected impairment of any beneficial uses because of prompt correction and the small size of the discharge compared to the magnitude of the receiving water.

The most sensitive beneficial uses which could be affected by effluents discharged from Plant No. 2 are commercial and recreational shellfish harvesting. However, the violations posed no known threat to shellfish harvesting or public health because disinfection efficiency was maintained within the criteria of the NPDES permit.

- f. The Department would also consider "whether the violation was repeated or continuous." The record of violations indicates some repetition during the past two winters. This could be interpreted as an aggravating factor, or it simply may demonstrate that the violations could not be prevented under the limitations of the existing treatment facilities. The Department issued a Notice of Violation and Intent to Assess Civil Penalty (Attachment B) because of the series of violations during the winter of 1986/87.
- g. Another factor to be considered is "the cost to the Department of investigation and correction of the cited violation prior to the time the Department received respondent's answer to the written notice of assessment of civil penalty." The past violation at Plant No. 2 have not noticeably added to staff time or expense incurred by the Department in monitoring or investigating the operation of the plant because of the cooperation of City staff and good operating records.
- h. The Department is also authorized to consider "any other relevant factor." The City has agreed to a stipulated compliance order providing specific penalties for any violation. The order constitutes a consent and commitment by the City to abate all future violations. To the extent that civil penalties are assessed with the objective to deter violations from occurring, the City's agreement to the order represents achievement of this objective, and would be regarded by the Department as a mitigating factor.

In view of the preponderance of mitigating factors, staff do not recommend any assessment of civil penalty for the past NPDES permit violations at Plant No. 2.

2. Direct the Department to modify the existing NPDES permit and include interim and final discharge standards and a compliance schedule that identifies dates to complete specific tasks that would bring the City into compliance.

Alternative 2 would not involve an EQC order or further EQC action. The NPDES permit would be used as a compliance mechanism and the City would be expected to meet the compliance schedule and conditions outlined in the permit.

However, the Department has been advised by EPA that compliance conditions, schedules, and interim limits for addressing noncompliance of municipal treatment plants with the federal minimum of secondary treatment must be contained in judicial or administrative orders. EPA also maintains that the National Municipal Policy prohibits them from awarding sewerage grants to municipalities where construction of their sewage treatment facilities would take place after July 1, 1988 unless the municipality is covered by an administrative or judicial order.

3. Direct the Department to litigate against the City of Coos Bay pursuant to ORS 468.035 and ORS 454.020 for noncompliance and have a federal or state court issue a court order that would include a schedule for attaining compliance.

This alternative would not expedite compliance. City officials have already hired an engineer to finalize their facility plan, to evaluate plant reliability, and to direct field investigations of infiltration and inflow sources. The City is already making all recommended interim equipment installations and operation modifications, and has agreed to a stringent design/construction schedule. Department engineering staff do not consider any compression of this agreed schedule to be realistically attainable.

4. Issue a Stipulated Compliance Order to the City of Coos Bay. The order would contain interim effluent limitations, a schedule of milestones for bringing the City into compliance, and penalties for failure to meet milestones by the specified dates in the compliance schedule. It would also settle past violations without civil penalty (Attachment E).

The Department staff recommend Alternative 4 for the following reasons: (1) it recognizes the Commission's authority to enforce water quality objectives of the State under ORS 468.090, et seq.; (2) this mechanism has been used in the past to address similar water quality violations by other municipalities; (3) the Order recognizes that the terms of the existing NPDES permit cannot be met; (4) Stipulated

Compliance Orders have satisfied EPA in the past with regard to the National Municipal Policy and compliance with the Clean Water Act; (5) the City of Coos Bay is agreeable to the Order; and (6) the Order would reinforce the City's ongoing sewer system planning efforts and would represent a positive commitment by the City to solve its sewage treatment and disposal problems in the shortest practical time.

The order would settle past violations, while specifying a civil penalty for any future violation of the Order. The Department is authorized to assess a civil penalty ranging from \$100 to \$10,000 for a violation of an Order by the Commission (OAR 340-12-055(1)). The proposed Order specifies a civil penalty of \$250 for each day of each violation (Attachment E, page 5, paragraph F). The Department considers this amount to be reasonable and equitable, considering the size of Plant No. 2.

Summation

1. The City of Coos Bay violates provisions of the Clean Water Act by failing to meet secondary treatment requirements for Treatment Plant No. 2.
2. The City has hired an engineering firm to evaluate their sewerage problems, to recommend alternatives for correcting these problems, and to update and complete facility planning necessary to secure EPA grant assistance to construct required improvements.
3. The City has helped to develop and has agreed to a realistic schedule of planning, design, and construction, and has presented evidence that it can meet modified interim permit limitations without impairing the effectiveness of effluent disinfection.
4. The first alternative outlined in this report for addressing Coos Bay's compliance problems at Plant No. 2 would involve assessing a civil penalty for past violations. In issuing the stipulated compliance order covering Plant No. 1, the Commission settled past violations without penalty. There are no definite aggravating factors in the past violations at Plant No. 2. However, there are several mitigating factors in view of which staff recommend against assessing a civil penalty.
5. Each of the remaining alternatives would involve setting interim and final effluent limits and establishing a compliance schedule. The second alternative would do this through the NPDES permit process, the third through litigation and a court order, and the fourth through an EQC stipulated compliance order.

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September 9, 1988
Page 8

6. The Department staff prefer the issuance of a stipulated compliance order since it would address concerns over noncompliance and the National Municipal Policy and act as a positive commitment by the City to adequately treat and dispose of its municipal sewage.

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 E.

Fred Hansen

Attachments (7)

- A. NPDES Permit No. 100036 covering Coos Bay Plant No. 2
- B. Notice of Violation and Intent to Assess a Civil Penalty dated May 6, 1987
- C. Summary of violations, 1986 - 1988, Coos Bay Plant No. 2
- D. National Municipal Policy
- E. Environmental Quality Commission Stipulated Compliance Order

David Mann:kjc
WJ902
229-6890
August 5, 1988

Permit Number: 100036
 Expiration Date: 11-30-89
 File Number: 19821
 Page 1 of 4 Pages

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

WASTE DISCHARGE PERMIT

Department of Environmental Quality
 522 Southwest Fifth Avenue, Portland, OR
 Mailing Address: Box 1760, Portland, OR 97207
 Telephone: (503) 229-5696

Issued pursuant to ORS 468.740 and The Federal Clean Water Act

ISSUED TO:

City of Coos Bay
 500 Central Ave.
 Coos Bay, OR 97420

SOURCES COVERED BY THIS PERMIT:

Type of Waste	Outfall Number	Outfall Location
Domestic Sewage	001	Coos Bay R.M. 4.5

PLANT TYPE AND LOCATION:

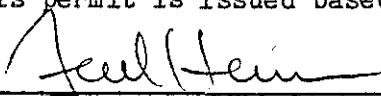
Activated Sludge - STP #2
 West End of Fulton Street
 Empire, Oregon

RECEIVING SYSTEM INFORMATION:

Major Basin: South Coast
 Minor Basin: Coos
 Receiving Stream: Coos Bay
 County: Coos
 Applicable Standards: OAR 340-41-325

Issued in response to Application No. OR-202358-2 received 1-26-84.

This permit is issued based on the land use finding in the permit record.


 Fred Hansen, Director

MAR 1 1985
 Date

PERMITTED ACTIVITIES

Until this permit expires or is modified or revoked, the permittee is authorized to construct, install, modify, or operate a waste water collection, treatment, control and disposal system and discharge to public waters adequately treated waste waters only from the authorized discharge point or points established in Schedule A and only in conformance with all the requirements, limitations, and conditions set forth in the attached schedules as follows:

	<u>Page</u>
Schedule A - Waste Disposal Limitations not to be Exceeded...	2
Schedule B - Minimum Monitoring and Reporting Requirements...	3
Schedule C - Compliance Conditions and Schedules.....	4
Schedule D - Special Conditions.....	-
General Conditions.....	Attached

Each other direct and indirect discharge to public waters is prohibited.

This permit does not relieve the permittee from responsibility for compliance with any other applicable federal, state, or local law, rule, standard, ordinance, order, judgment, or decree.

SCHEDULE B

Minimum Monitoring and Reporting Requirements
 (unless otherwise approved in writing by the Department)

Outfall Number 001 (sewage treatment plant outfall)

<u>Item or Parameter</u>	<u>Minimum Frequency</u>	<u>Type of Sample</u>
Total Flow (MGD)	Daily	Continuous Recorder
Quantity Chlorine Used	Daily	Usage
Effluent Chlorine Residual	Daily	Grab
BOD-5 (influent)	2 per Week	Composite
BOD-5 (effluent)	2 per Week	Composite
TSS (influent)	2 per Week	Composite
TSS (effluent)	2 per Week	Composite
pH (influent and effluent)	2 per Week	Grab
Fecal Coliform (effluent)	2 per Week	Grab
Average Percent Removed (BOD & TSS)	Monthly	Calculation
Digester pH	Daily	Grab
Digester Temperature	Daily	Grab
Digester CO ₂ Production	2 per Week	Grab

Monitoring reports shall include a record of the location and method of disposal of all sludge and a record of all applicable equipment breakdowns and bypassing.

Reporting Procedures

Monitoring results shall be reported on approved forms. The reporting period is the calendar month. Reports must be submitted to the Department by the 15th day of the following month.

SCHEDULE C

Compliance Conditions and Schedules

1. An annual progress report related to sewerage collection system improvements, maintenance, and infiltration/inflow analysis shall be submitted on or before January 1 of each year.
2. At the end of each calendar quarter (December, March, June, and September), the permittee shall submit to the Department of Environmental Quality a detailed account enumerating new sewer connections, total sewer connections and outstanding, undeveloped commitments (in single dwelling equivalents) served by the treatment facilities.
3. The permittee shall conduct and enforce the industrial waste pretreatment program as approved by the Department June 2, 1983. Federal categorical pretreatment standards and schedules shall be enforced as they are promulgated by EPA if they are more stringent than the permittee's pretreatment standards. An annual report shall be submitted by January 1 of each year on the status of industrial compliance with pretreatment requirements.
4. The permittee is expected to meet the compliance dates which have been established in this schedule. Either prior to or no later than 14 days following any lapsed compliance date, the permittee shall submit to the Department a notice of compliance or noncompliance with the established schedule. The Director may revise a schedule of compliance if he determines good and valid cause resulting from events over which the permittee has little or no control.
5. Construction of sewer extensions and connections thereto is permitted as long as the added waste load will not cause any of the limitations of the permit to be exceeded and provided that plans and specifications are submitted to and approved by the Department of Environmental Quality prior to construction pursuant to ORS 468.742.

NPDES GENERAL CONDITIONS

- G1. All discharges and activities authorized herein shall be consistent with the terms and conditions of this permit. The discharge of any pollutant more frequently than or at a level in excess of that identified and authorized by this permit shall constitute a violation of the terms and conditions of this permit.
- G2. Monitoring records:
- a. All records of monitoring activities and results, including all original strip chart recordings for continuous monitoring instrumentation and calibration and maintenance records, shall be retained by the permittee for a minimum of three years. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the permittee or when requested by the Director.
 - b. The permittee shall record for each measurement or sample taken pursuant to the requirements of this permit the following information: (1) the date, exact place, and time of sampling; (2) the dates the analyses were performed; (3) who performed the analyses; (4) the analytical techniques or methods used; and (5) the results of all required analyses.
 - c. Samples and measurements taken to meet the requirements of this condition shall be representative of the volume and nature of the monitored discharge.
 - d. All sampling and analytical methods used to meet the monitoring requirements specified in this permit shall, unless approved otherwise in writing by the Department, conform to the Guidelines Establishing Test Procedures for the Analysis of Pollutants as specified in 40 CFR, Part 136.
- G3. All waste solids, including dredgings and sludges, shall be utilized or disposed of in a manner which will prevent their entry, or the entry of contaminated drainage or leachate therefrom, into the waters of the state, and such that health hazards and nuisance conditions are not created.
- G4. The diversion or bypass of any discharge from facilities utilized by the permittee to maintain compliance with the terms and conditions of this permit is prohibited, except (a) where unavoidable to prevent loss of life or severe property damage, or (b) where excessive storm drainage or runoff would damage any facilities necessary for compliance with the terms and conditions of this permit. The permittee shall immediately notify the Department in writing of each such diversion or bypass in accordance with the procedure specified in Condition G13.
- G5. The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State, or local laws, or regulations.

- G6. Whenever a facility expansion, production increase, or process modification is anticipated which will result in a change in the character of pollutants to be discharged or which will result in a new or increased discharge that will exceed the conditions of this permit, a new application must be submitted together with the necessary reports, plans, and specifications for the proposed changes. No change shall be made until plans have been approved and a new permit or permit modification has been issued.
- G7. After notice and opportunity for a hearing, this permit may be modified, suspended, or revoked in whole or in part during its term for cause including but not limited to the following:
- a. Violation of any terms or conditions of this permit or any applicable rule, standard, or order of the Commission;
 - b. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts;
 - c. A change in the condition of the receiving waters or any other condition that requires either a temporary or permanent reduction or elimination of the authorized discharge.
- G8. If a toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under Section 307(a) of the Federal Act for a toxic pollutant which is present in the discharge authorized herein and such standard or prohibition is more stringent than any limitation upon such pollutant in this permit, this permit shall be revised or modified in accordance with the toxic effluent standard or prohibition and the permittee shall be so notified.
- G9. The permittee shall, at all reasonable times, allow authorized representatives of the Department of Environmental Quality:
- a. To enter upon the permittee's premises where an effluent source or disposal system is located or in which any records are required to be kept under the terms and conditions of this permit;
 - b. To have access to and copy any records required to be kept under the terms and conditions of this permit;
 - c. To inspect any monitoring equipment or monitoring method required by this permit; or
 - d. To sample any discharge of pollutants.
- G10. The permittee shall maintain in good working order and operate as efficiently as practicable all treatment or control facilities or systems installed or used by the permittee to achieve compliance with the terms and conditions of this permit.
- G11. The permittee shall provide an adequate operating staff which is duly qualified to carry out the operation, maintenance, and testing functions required to insure compliance with the conditions of this permit.
- G12. The Department of Environmental Quality, its officers, agents, or employees shall not sustain any liability on account of the issuance of this permit or on account of the construction or maintenance of facilities because of this permit.

- G13. In the event the permittee is unable to comply with all the conditions of this permit because of a breakdown of equipment or facilities, an accident caused by human error or negligence, or any other cause such as an act of nature, the permittee shall:
- a. Immediately take action to stop, contain, and clean up the unauthorized discharges and correct the problem.
 - b. Immediately notify the Department of Environmental Quality so that an investigation can be made to evaluate the impact and the corrective actions taken and determine additional action that must be taken.
 - c. Submit a detailed written report describing the breakdown, the actual quantity and quality of resulting waste discharges, corrective action taken, steps taken to prevent a recurrence, and any other pertinent information.

Compliance with these requirements does not relieve the permittee from responsibility to maintain continuous compliance with the conditions of this permit or the resulting liability for failure to comply.

- G14. If the permittee wishes to continue an activity regulated by the permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.
- G15. All applications, reports, or information submitted to the Director shall be signed and certified in accordance with 40 CFR 144.32.
- G16. This permit is not transferable except as provided in OAR 340-45-045.
- G17. Definitions of terms and abbreviations used in this permit:
- a. BOD means five-day biochemical oxygen demand.
 - b. TSS means total suspended solids.
 - c. mg/l means milligrams per liter.
 - d. kg means kilograms.
 - e. m^3/d means cubic meters per day.
 - f. MGD means million gallons per day.
 - g. Composite sample means a combination of samples collected, generally at equal intervals over a 24-hour period, and apportioned according to the volume of flow at the time of sampling.
 - h. FC means fecal coliform bacteria.
 - i. Averages for BOD, TSS, and Chemical parameters based on arithmetic mean of samples taken.
 - j. Average Coliform or Fecal Coliform is based on geometric mean of samples taken.

COPY

Permit Number: 100036
Expiration Date: 11-30-89
File Number: 19821
Page 1 of 3 Pages

MODIFICATION

**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
WASTE DISCHARGE PERMIT**

Department of Environmental Quality
811 Southwest Sixth Avenue, Portland, OR 97204
Telephone: (503) 229-5696

Issued pursuant to ORS 468.740 and The Federal Clean Water Act

ISSUED TO:

City of Coos Bay
500 Central Ave.
Coos Bay, OR 97420

SOURCES COVERED BY THIS PERMIT:

<u>Type of Waste</u>	<u>Outfall Number</u>	<u>Outfall Location</u>
Domestic Sewage	001	Coos Bay RM 4.5

PLANT TYPE AND LOCATION:

Activated Sludge - STP #2
West End of Fulton Street
Empire, OR

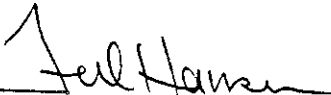
RECEIVING SYSTEM INFORMATION:

Major Basin: South Coast
Minor Basin: Coos
Receiving Stream: Coos Bay
County: Coos
Applicable Standards: OAR 340-41-325

ADDENDUM NO. 1

Permit No. 100036 has been modified by deleting Condition 3 of Schedule C and adding the attached Schedule E - "Pretreatment Activities".

This addendum shall be attached to and made part of Permit No. 100036.



Fred Hansen, Director

SEP 29 1987

Date

SCHEDULE E

The permittee shall implement the following pretreatment activities:

1. The permittee shall conduct and enforce the industrial waste pretreatment program as approved by the Department and the General Pretreatment Regulations (40 CFR 403). The following shall be implemented or submitted by the permittee:
 - a. Enforce federal pretreatment regulations as promulgated by EPA or local limitations, whichever are more stringent. Locally derived limitations shall be defined as pretreatment standards under Section 307(d) of the Clean Water Act.
 - b. Issue wastewater discharge permits, orders, or similar mechanisms, to all significant industrial users. These shall, at a minimum, contain limitations, sampling protocols, compliance schedule (if appropriate), and reporting requirements. A significant industrial user is any discharger into the wastewater treatment facility who:
 - is subject to national categorical pretreatment standards promulgated by EPA under Section 307(b) or (c) of the Clean Water Act (CWA);
 - has in its waste toxic pollutants as defined pursuant to Section 307 and Section 502 of the CWA;
 - has a nondomestic flow of 25,000 gallons or more per average work day;
 - contributes more than 5 percent of the average dry weather hydraulic, organic or solids handling load to the permittee's wastewater treatment system; satisfies other, or more restrictive criteria of the permittee's formal pretreatment program;
 - is determined by the Department or the permittee to have a significant impact or potential for significant impact to adversely affect the wastewater treatment facility by either upset, inhibition, pass through of pollutants, sludge contamination or other means.
 - c. As appropriate, update the industrial user survey. At a minimum, this shall include maintaining and updating records identifying the nature, character, and volume of pollutants contributed by significant industrial users. Records shall be maintained for a 3-year period.

- d. Carry out inspections and monitoring activities on significant industrial users to determine compliance with applicable pretreatment standards. Monitoring of significant industrial users shall be commensurate with the discharge but shall not be less than semi-annually.
 - e. Provide to the Department by March 1 of each year, a report (2 copies) that describes the permittee's pretreatment program activities over the previous calendar year. The content of this report shall be as established by the Department.
2. A methodology for developing local limits is being established by the Department. Within six months after the Department's methodology is made available, the permittee shall develop local limits to prevent interference, pass through of pollutants, and sludge contamination.
 3. Require accidental spill and prevention program from industrial users having a history of, or possessing the potential for, accidental discharges or spills that could upset the treatment process or cause a violation of this NPDES permit.
 4. The permittee shall require appropriate and timely corrective action should it be determined that an industrial user violates the approved industrial pretreatment program or 40 CFR 403.
 5. The permittee shall perform at a minimum, on a semi-annual basis (wet and dry season), chemical analyses of its influent, effluent, and final sludge for specific toxic pollutants of concern if any of the pollutants listed in 40 CFR Part 122, Table II of Appendix D are anticipated to be present at the POTW due to industrial discharge. The exact sampling frequency and protocol shall be as described by the Department in Schedule B of this NPDES permit.
 6. The permittee shall request and obtain approval from the Department before implementing any significant changes to the approved local pretreatment program.

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BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY, OF THE STATE OF OREGON,)	NOTICE OF VIOLATION AND INTENT TO ASSESS CIVIL PENALTY
	)	No. WQ-SWR-87-29
Department,	)	COOS COUNTY
v.)	
)	
CITY OF COOS BAY,)	
)	
Respondent.)	

I

This notice is being sent to Respondent, City of Coos Bay pursuant to Oregon Revised Statutes (ORS) 468.125(1) and Oregon Administrative Rules (OAR) Section 340-12-040(1) and (2).

II

On or about March 1, 1985, the Department of Environmental Quality (Department) issued National Pollutant Discharge Elimination System Waste Discharge Permit No. 100036 (Permit) to Respondent. The Permit authorized Respondent to construct, install, modify, or operate a wastewater collection, treatment, control and disposal system and discharge to public waters adequately treated waste waters only from the authorized discharge point or points and only in conformance with all the requirements, limitations and other conditions set forth in the Permit. The Permit expires on November 30, 1989. At all material times cited herein, the Permit was and is now in effect.

III

In November, December, 1986, and January, February, 1987, Respondent violated Condition 1 of Schedule A of the Permit, and ORS 468.720(2) in that Respondent exceeded the total suspended solids (TSS) and biochemical

1 oxygen demand (BOD) waste discharge limitations. Specific violations are
 2 listed below. Monthly average (mn. avg.), weekly average (wk. avg.) and
 3 daily maximum (daily max.) are in pounds per day. Monthly concentration
 4 (mn. conc.) and weekly concentration (wk. conc.) are in milligrams per
 5 liter (mg/l).

6	<u>Date of Violation</u>	<u>Parameter</u>	<u>Waste Discharge Limitation</u>	<u>Reported Waste Discharged</u>
7	11/24/86	BOD daily max.	1,010	2,550
	11/24/86	TSS daily max.	1,010	27,788
8	11/25/86	BOD daily max.	1,010	9,221
	11/25/86	TSS daily max.	1,010	14,043
9	11/23-29/86	BOD wk. avg.	758	5,886
	11/23-29/86	TSS wk. avg.	758	13,962
10	11/23-29/86	BOD wk. conc.	45	815
	11/23-29/86	TSS wk. conc.	45	1,702
11	November 1986	BOD mn. avg.	505	1,532
		TSS mn. avg.	505	2,370
12		BOD mn. conc.	30	214
		TSS mn. conc.	30	290
13	12/18/86	TSS daily max.	1,010	1,228
	12/31/86	TSS daily max.	1,010	2,201
14	12/28-31/86	TSS wk. avg.	758	885
	12/28-31/86	BOD wk. conc.	45	56
15	12/28-31/86	TSS wk. conc.	45	173
	December 1986	TSS mn. conc.	30	46
16	1/1/87	TSS daily max.	1,010	1,552
	1/27/87	TSS daily max.	1,010	1,592
17	1/1-3/87	TSS wk. avg.	758	1,552
	1/25-31/87	TSS wk. conc.	45	59
18	January 1987	TSS mn. conc.	30	36
	2/1/87	TSS daily max.	1,010	3,561
19	2/12/87	TSS daily max.	1,010	1,549
	2/1-7/87	TSS wk. avg.	758	822
20	2/1-7/87	TSS wk. conc.	45	49
	February 1987	TSS mn. conc.	30	34

22 IV

23 If five (5) or more days after Respondent receives this notice, the
 24 one or more violations cited in Paragraph III of this notice continue,
 25 or any similar violation occurs, the Department will impose upon Respondent

26 ///

1 a civil penalty pursuant to Oregon statutes and OAR, Chapter 340, Divisions
2 11 and 12. In the event that a civil penalty is imposed upon Respondent,
3 it will be assessed by a subsequent written notice, pursuant to ORS
4 468.135(1) and (2), ORS 183.415(1) and (2), and OAR 340-11-100 and
5 340-12-070. Respondent will be given an opportunity for a contested case
6 hearing to contest the allegations and penalty assessed in that notice,
7 pursuant to ORS 468.135(2) and (3), ORS Chapter 183, and OAR Chapter 340,
8 Division 11. Respondent is not entitled to a contested case hearing at
9 this time.

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5-6-87
Date

Tom Bispham
Thomas R. Bispham, Administrator
Regional Operations, DEQ

Certified Mail P 497 014 780

TABLE A
Coos Bay WWTP No. 2
Summary of Effluent Characteristics
During NPDES Violations

Type of Violation/Date	NPDES Permit Limitations				Reported Effluent Characteristics						Remarks Description in Ops. Log	
	BOD		TSS		Flow	BOD		%	TSS			%
	ppm	lbs/day	ppm	lbs/day	(mgd)	ppm	lbs/day	Removed	ppm	lbs/day	Removed	
Daily Violations	--	1010	--	1010								
Nov. 24, 1986					1.10	279	{2550}	--	3040	{27,788}	--	Hydraulic Overload
Nov. 25, 1986					0.82	1350	{9721}		2056	{14,063}	--	Hydraulic Overload
Dec. 18, 1986					0.76	N/A	N/A	N/A	192	{1228}	--	Hydraulic Overload
Dec. 31, 1986					0.98	N/A	N/A	N/A	269	{2201}	--	Hydraulic Overload
Jan. 1, 1987					1.58	N/A	N/A	N/A	118	{1552}	55	Hydraulic Overload
Jan. 27, 1987					1.50	34.2	443	48.2	123	{1592}	--	Hydraulic Overload
Feb. 1, 1987					2.09	N/A	N/A	N/A	204	{3541}	--	Hydraulic Overload
Feb. 12, 1987					1.32	N/A	N/A	N/A	141	{1549}	--	Hydraulic Overload
Dec. 3, 1987	--	810		810	2.14	24.6	439	48.8	72	{1293}	23.8	Hydraulic Overload
Average*					1.37	--	{6135}			{6090}		
Ave. Max Week												
Nov. 23 - 29, 1986	45	758	45	758	1.17	{814.5}	{5885}	--	{2548}	{20915}	--	Hydraulic Overload
Dec. 28 - 31, 1986					0.95	{56.3}	454	56.0	{112.3}	{884}	--	Hydraulic Overload
Jan. 1 - 3, 1987					1.67	N/A	N/A	N/A	{118.0}	{1552}	55.0	Hydraulic Overload
Jan. 25 - 31, 1987					1.34	25.6	328	58.4	{59.8}	694.2	--	Hydraulic Overload
Feb. 1 - 7, 1987					1.14	N/A	N/A	N/A	{49.8}	822	--	Hydraulic Overload
Apr. 17 - 23, 1988	45	607	30	607	0.74	{61.6}	381	70.9	{37.5}	229	85	Toxic Conditions
Apr. 24 - 30, 1988					0.72	{55.1}	322	72.0	{34.6}	210	83.6	Toxic Conditions
Average*					1.09	{246.9}	{5885}		{422.8}	{6043}		
Month												
Mar. 1985	30	665	30	665	0.80	12.3	100	89.9	{32.4}	267	86.4	Hydraulic Overload
Nov. 1986	30	505	30	505	0.86	{214.2}	{1532}	--	{291}	{2370}	--	Hydraulic Overload
Dec. 1986					0.85	25.0	179	81.3	{46.7}	319	65.6	Hydraulic Overload
Jan. 1987					1.10	22.5	206	74.5	{36.6}	369	72.7	Hydraulic Overload
Feb. 1987					1.16	12.4	107	87	{34.2}	391	68.6	Hydraulic Overload
Average*					0.95	{214.2}	{1532}		{88.2}	{2370}		

[] - Violation
N/A - Data Not Available
* - Average of Violations Only

ATTACHMENT C

NATIONAL MUNICIPAL POLICY

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

STATEMENT OF POLICY

When the Clean Water Act (CWA) was passed in 1972, Congress gave municipalities until 1977 to comply with its requirements. Congress authorized Environmental Protection Agency (EPA) to extend the deadline to 1983 and then again to July 1, 1988, for some municipalities. In addition, Congress amended the Act in 1981 to modify the basic treatment requirements. Therefore, Congress has authorized EPA to give some municipalities several additional years to achieve compliance and has also provided more reasonable treatment requirements for certain types of facilities.

The CWA requires all publicly owned treatment works (POTWs) to meet the statutory compliance deadlines and to achieve the water quality objectives of the Act, whether or not they receive Federal funds. The EPA will focus on POTWs that previously received Federal funding assistance and are not currently in compliance with their applicable effluent limits, on all other major POTWs, and on minor POTWs that are contributing significantly to an impairment of water quality. EPA's goal will be to obtain compliance by POTWs as soon as possible, and no later than July 1, 1988. Where there are extraordinary circumstances that preclude compliance of such facilities by July 1, 1988, EPA will work with States and the affected municipal authorities to ensure that these POTWs are on enforceable schedules for achieving compliance as soon as possible thereafter, and are doing all they can in the meantime to abate pollution to the Nation's waters.

IMPLEMENTATION STRATEGY

The Agency is committed to pursuing a clear course of action that fulfills the intent of Congress and results in the maximum improvement in water quality. The Agency is also committed to protecting the public's financial investment in wastewater treatment facilities. To meet these objectives, the Agency expects EPA Regions and States to adhere to the National policy stated above and to use the following mechanisms to carry out the intent of this policy.

EPA Regions will cooperate with their respective States to develop strategies that describe how they plan to bring noncomplying facilities into compliance. These strategies should include a complete inventory of all noncomplying facilities, should identify the affected municipalities consistent with the National policy, and should describe a plan to bring these POTWs into compliance as soon as possible. Regions and States will then use the annual State program grant negotiation process to reach agreement on the specific activities they will undertake to carry out the plan.

Based on the information in the final strategies, the permitting authority (Region or approved NPDES State) will require affected municipal authorities to develop one of the following as necessary:

Composite Correction Plan: An affected municipality that has a constructed POTW that is not in compliance with its NPDES permit effluent limits will be required to develop a Composite Correction Plan (CCP). The CCP should describe the cause(s) of noncompliance, should outline the corrective actions necessary to achieve compliance, and should provide a schedule for completing the required work and for achieving compliance.

Municipal Compliance Plan: An affected municipality that needs to construct a wastewater treatment facility in order to achieve compliance will be required to develop a Municipal Compliance Plan (MCP). The MCP should describe the necessary treatment technology and estimated cost, should outline the proposed sources and methods of financing the proposed facility (both construction and O&M), and should provide a schedule for achieving compliance as soon as possible.

The permitting authority will use the information in these plans and will work with the affected municipality to develop a reasonable schedule for achieving compliance. In any case where the affected municipal authority is unable to achieve compliance promptly, the permitting authority will, in addition to setting a schedule for achieving full compliance ensure that the POTW undertakes appropriate interim steps that lead to full compliance as soon as possible. Where there are extraordinary circumstances that make it impossible for an affected municipal authority to meet a July 1, 1988 compliance date, the permitting authority will work with the affected municipality to establish a fixed-date schedule to achieve compliance in the shortest, reasonable period of time thereafter, including interim abatement measures as appropriate. The general goal is to establish enforceable compliance schedules for all affected municipalities by the end of FY 1985. Once schedules for affected municipalities are in place, the permitting authority will monitor progress towards compliance and will take follow-up action as appropriate. Nothing in this policy is intended to impede or delay any ongoing or future enforcement actions.

OVERVIEW

EPA Headquarters will overview the implementation of this policy to ensure that actions taken by Regions and States are consistent with National policy and that the Agency as a whole is making progress towards meeting the statutory deadlines and achieving the water quality objectives of the Act.

JAN 2 1984
Date


William D. Ruckelshaus

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

3	DEPARTMENT OF ENVIRONMENTAL QUALITY,	)	STIPULATION AND FINAL ORDER
4	OF THE STATE OF OREGON	)	No. WQ-SWR-88-72
5		)	COOS COUNTY
6	Department,)	
7	v.)	
8	CITY OF COOS BAY)	
9	Respondent.)	

WHEREAS:

1. On March 1, 1985, the Department of Environmental Quality (Department or DEQ) issued National Pollution Discharge Elimination System (NPDES) Waste Discharge Permit Number 100036 (Permit) to City of Coos Bay (Respondent), pursuant to Oregon Revised Statutes (ORS) 468.740 and the Federal water Pollution Control Act Amendments of 1972, P.L. 92-500. The Permit authorizes the Respondent to construct, install, modify or operate waste water treatment control and disposal facilities (facilities) at Sewage Treatment Plant No. 2 located in Empire, Oregon and to discharge adequately treated waste waters into the Coos Bay, waters of the state, in conformance with the requirements, limitations and conditions set forth in the Permit.

Addendum No. 1 covering pretreatment activities was issued and made part of the permit on September 29, 1987. The Permit expires on November 30, 1989.

2. Condition 1 of Schedule A of the Permit does not allow Respondent to exceed the Following waste Discharge limitations after the Permit issuance date:

///

1 Outfall Number 001

2	Average Effluent		Monthly	<u>Effluent Loadings</u>		Daily
	Concentrations			Average	Weekly		Maximum
3	<u>Monthly</u>	<u>Weekly</u>	<u>lb/day</u>	<u>lb/day</u>	<u>lbs</u>	

4 Parameter

5 May 1 - October 31

6 BOD	20 mg/l	30 mg/l	337	505	674
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7 TSS	20 mg/l	30 mg/l	337	505	674
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8 FC per 100 ml	200	400			
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9 November 1 - April 30

10 BOD	30 mg/l	45 mg/l	505	758	1010
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11 TSS	30 mg/l	45 mg/l	505	758	1010
--------	---------	---------	-----	-----	------

12 FC per 100 ml	200	400			
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13 Other Parameters (year-around)

Limitations

14 pH Shall be within the range 6.0 - 9.0

15 Average dry weather flow
16 to the treatment facility 2.02 MGD

17 3. During the time period the permit has been in effect, Respondent
18 has not been able to consistently meet the above effluent limitations.

19 4. DEQ and the Respondent recognize that until new or modified
20 facilities are constructed and put into full operation, Respondent will
21 continue to violate the permit effluent limitations at times.

22 5. Respondent presently is capable of treating its effluent so as to
23 meet the following effluent limitations, measured as specified in the

24 Permit:

25 / / /

26 / / /

1 violation of any interim effluent limitations set forth in Paragraph 5
2 above. Furthermore, this Stipulation and Final Order is not intended to
3 limit, in any way, the Department's right to proceed against Respondent in
4 any forum for any past or future violations not expressly settled herein.

5 NOW THEREFORE, it is stipulated and agreed that:

6 8. The Environmental Quality Commission shall issue a final order:

7 A. Requiring Respondent to comply with the following schedule:

8 (1) By November 15, 1988, certify completed installation and
9 startup of approved chemical feed and flow measurement
10 equipment.

11 (2) By March 1, 1989, submit an approvable draft facilities
12 plan supplement for Plant No. 2 improvements, including
13 analysis of 1987-89 infiltration-inflow investigations,
14 and advertise public hearing.

15 (3) By April 1, 1989, arrange for local funding and notify
16 the Department in writing when such has been
17 accomplished.

18 (4) By May 1, 1989, select and designate an engineer for
19 final design, and authorize start of design.

20 (5) By November 1, 1989, submit final design documents for
21 approval.

22 (6) On February 1, 1990, July 1, 1990, and February 1, 1991
23 submit progress reports.

24 (7) By April 15, 1991, certify completion of construction.

25 (8) By May 15, 1991, certify attainment of full operational
26 level and meet all waste discharge limitations of the

1 NPDES permit in effect at that time.

2 B. Requiring Respondent to meet the interim effluent limitations
3 set forth in Paragraph 5 above until May 15, 1991.

4 C. Requiring Respondent to comply with all the terms, schedules
5 and conditions of the Permit, except those modified by Paragraph
6 8.B. above, or of any other NPDES waste discharge permit issued to
7 Respondent while this stipulated final order is in effect.

8 D. Requiring Respondent, should Respondent fail to comply with
9 the above schedule, to cease allowing new connections to
10 Respondent's sewage collection system upon written requirement of
11 the Department.

12 F. Requiring Respondent, upon receipt of a written notice from
13 the Department for any violations of the Stipulation and Final
14 Order, to pay civil penalties in the amount of \$250 for each day
15 of each violation.

16 9. If any event occurs that is beyond Respondent's reasonable control
17 and that causes or may cause a delay or deviation in performance of the
18 requirements of this Stipulation and Final Order, Respondent shall promptly
19 notify the Department verbally of the cause of delay or deviation and its
20 anticipated duration, the measures that have been or will be taken to
21 prevent or minimize the delay or deviation, and the timetable by which
22 Respondent proposes to carry out such measures. Respondent shall confirm in
23 writing this information within five (5) working days of the on-set of the
24 beginning event. It is Respondent's responsibility in the written
25 notification to demonstrate to the Department's satisfaction that the delay
26 or deviation has been or will be caused by circumstances beyond the control

1 and despite due diligence of Respondent. If Respondent so demonstrates,
2 the Department shall extend times of performance of related activities under
3 the Stipulation and Final Order as appropriate. Circumstances or events
4 beyond Respondent's control include, but are not limited to, acts of Nature,
5 unforeseen strikes, work stoppages, fires, explosion, riot, sabotage, or
6 war. Increased cost of performance or consultant's failure to provide
7 timely reports shall not be considered circumstances beyond Respondent's
8 control.

9 10. Regarding the violations set forth in Paragraph 3 and 4 above,
10 which are expressly settled herein without penalty, Respondent and the
11 Department hereby waive any and all of their rights to any and all notices,
12 hearing, judicial review, and to service of a copy of the final order
13 herein. The Department reserves the right to enforce this order through
14 appropriate administrative and judicial proceedings.

15 11. Regarding the schedule set forth in Paragraph 8.A. above,
16 Respondent acknowledges that Respondent is responsible for complying with
17 that schedule regardless of the availability of any federal or state grant
18 monies.

19 12. The terms of this Stipulation and Final Order may be amended by
20 the mutual agreement of the DEQ and Respondent.

21 13. Respondent acknowledges that it has actual notice of the contents
22 and requirements of the Stipulation and Final Order and that failure to
23 fulfill any of the requirements hereof would constitute a violation of this
24 stipulated final order. Therefore, should Respondent commit any violation
25 of the Stipulation and Final Order, Respondent hereby waives any rights it
26 / / /

1 might have to an ORS 468.125(1) advance notice prior to the assessment of
2 civil penalties. However, Respondent does not waive its rights to an ORS
3 468.135(1) notice of assessment of civil penalty.

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RESPONDENT

August 16, 1988
Date


(Name Jeffrey R. Towery)
(Title City Manager Pro Tem)

DEPARTMENT OF ENVIRONMENTAL QUALITY

Date

Fred Hansen
Director

1 FINAL ORDER

2 IT IS SO ORDERED:

3 ENVIRONMENTAL QUALITY COMMISSION

4
5
6 _____
Date

William P. Hutchison, Jr., Chairman

7
8
9 _____
Date

Wallace B. Brill, Member

10
11
12 _____
Date

Emery N. Castle, Member

13
14
15 _____
Date

Genevieve Pisarski Sage, Member

16
17
18 _____
Date

William Wessinger, Member

DIRECTOR'S PARAGRAPH

September 9, 1988, EQC Meeting

Agenda Item K: Request for Adoption of Proposed Remedial Action Rules Regarding Degree of Cleanup and Selection of the Remedial Action, OAR Chapter 340, Division 122.

This agenda item establishes a new division -- 340-122-010 to 340-122-110 -- to implement Senate Bill 122 (ORS 466.540 to 466.590), commonly referred to as the Oregon superfund law.

This 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 provisions 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". 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 purpose of these proposed rules is to establish the process and the criteria for making these decisions.

The law further requires the Department to establish an Advisory Committee to assist the Department in the development of these rules. The Remedial Action Advisory Committee met for 8 months and worked long and hard to come up with the consensus proposal presented to you for adoption today.

Allan Solares, senior policy analyst of the Environmental Cleanup Division, who worked with the Advisory Committee, is present to answer any questions you might have.

ERRATA

To: Environmental Quality Commission
Subject: Agenda Item K, September 9, 1988, EQC Meeting

Request for Adoption of Proposed Remedial Action Rules
Regarding Degree of Cleanup and Selection of the
Remedial Action, OAR Chapter 340, Division 122.

Pages 8 to 11 of the Staff Report should be replaced with the attached pages.

These include:

- Preliminary Assessments
- Removal
- Remedial Investigations
- Feasibility Studies
- Remedial Action
- Public Notice and Participation
- Administrative Record

The Oregon superfund law establishes a comprehensive program for the identification, investigation and cleanup of sites contaminated by a wide range of hazardous substances from a variety of sources. Site cleanups under this law can range from simple soil removals involving a single contaminant and taking only a few days, to complex and massive groundwater cleanups of dozens of hazardous substances requiring years to study and clean up. Consequently, these proposed rules must provide the flexibility necessary to work with this wide range of sites.

Proposed Rules are Flexible and Adaptable

These proposed rules achieve this flexibility in two ways. First, the Director has the discretion to determine whether a particular activity must be performed and also to determine the sequence or combination in which activities will be performed. The only statutorily required activities are public comment and the Preliminary Assessment. The latter is necessary to determine whether a release has occurred and if additional investigation or cleanup is needed. Second, the Director also has the discretion to determine the scope of the specific tasks, information or criteria that must be pursued within each activity.

This principle of flexibility is specifically stated in proposed OAR 340-122-050(1), and is found throughout the proposed rules in decisions that are at the Director's (or Department's) discretion. With this flexibility the Department can tailor the investigation and cleanup at each site to the size and complexity of the problem and thereby avoid overly prescriptive and specific rules that would cause excessive, insufficient, or inappropriate work to be performed at many sites.

Scope and Applicability

The Oregon superfund law is one of several cleanup authorities available to the Director. Although the Oregon superfund law may be applied in large part to "past practices" and "abandoned sites", the statutory authority covers all releases of hazardous substances regardless of when they occurred, whether they were permitted at the time, or whether a cleanup has occurred pursuant to another law. This section clarifies the relationship of the Oregon superfund law to "exempted releases", "permitted releases"

and "other cleanup actions". It preserves the Department's administrative and enforcement discretion to select under which authority to proceed.

Statutorily-Exempted Releases. The proposed rules reflect ORS 466.540(14)(a) to (d) which already exempts releases that occur from workplace exposure; engine exhaust emissions; nuclear materials; and normal application of fertilizers.

Conditional Exemption for Permitted Releases. These proposed rules provide that the cleanup of contamination resulting from a "permitted release" shall be exempt from these proposed rules unless the Director determines that investigation or cleanup is necessary to protect public health or the environment. A permitted release includes: 1) releases of specifically named hazardous substances subject to a control, and 2) releases under a sludge management plan. Such releases must occur in compliance with a permit that is still in effect and legally enforceable. The first exemption above does not apply to unidentified releases from a permitted facility, nor to releases that occurred under a permit that is now expired or has been revoked.

This approach was taken because it is presumed that in most cases a permitted release protects public health and the environment, and that no remedial action would be necessary. Also, as long as the permit is in effect, the Department has the ability to use its permitting authority to require cleanup or other actions to prevent migration or further releases, or to mitigate damage. Releases that result from a 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.

Coordination of Cleanup Decisions. Each permitting or cleanup law has unique provisions regarding the chemical substances covered, investigatory and enforcement powers, liable persons, penalties and damages, and funds available for the Department to oversee or undertake cleanup activities. In each case, the Department must consider the factors and the circumstances at each site in order to determine which authority is the most appropriate. The Department intends to develop policy and procedures for making these determinations in an effective and timely manner.

Other Cleanup Actions. The proposed rules provide that where a cleanup has already been completed under another authority, these proposed rules shall not apply. These other authorities are: spill response for oil and hazardous materials, corrective action for hazardous wastes, and cleanup of oil spills on surface waters. It is presumed that a cleanup under another authority

protects public health and the environment so that no action under these proposed rules is necessary. As with permitted releases, these proposed rules may apply if the Director finds that additional investigation or removal or remedial action is necessary to protect public health and the environment from contamination which remains after such a cleanup action.

Relationship to the Federal Superfund Program (CERCLA/SARA).

The terms used for the major activities -- Preliminary Assessment, Remedial Investigation, Feasibility Study, Removal and Remedial Action -- are the same as those used in the federal Superfund program under the Comprehensive Environmental Response and Comprehensive Liability Act (CERCLA) and the Superfund Amendments and Reauthorization Act (SARA). However despite the usage of similar terms, the specific procedures or substantive requirements under the federal program and statutes have not been adopted. The use of similar terminology simply provides some basic consistency in identifying similar stages of cleanups for both federal and state law. These proposed rules provide requirements that are unique and appropriate to Oregon.

Definitions 340-122-030

The definitions in the proposed rules are in addition to those provided in ORS 466.540. They cover new terms that require definition or statutory terms that need clarification.

Standards 340-122-040

These proposed rules have four standards. First, that protection of public health and the environment includes the prevention, elimination, or minimization of potential and actual adverse impacts to biological receptors; present and future uses of the environment; ecosystems and natural resources; and aesthetic characteristics of the environment.

Second, that the environment shall be restored to the Background Level or the lowest concentration level that is "feasible" under proposed OAR 340-122-090. (This is discussed in depth in the section on "Selection of the Remedial Action".)

Based on a recommendation by the RAAC, a new subsection has been added to further clarify the purpose of the standard.

"Background before contamination is the standard, a goal that might not be possible in some instances or feasible in others, based on the qualifying factors as applied under 340-122-090(1)(b) of these rules." [OAR 340-122-040(2)(c)]

As stated in Chairman Jack Beatty's letter to the RAAC, explaining the purpose of the new language:

"The Committee chose to start with background - the state existing before contamination. The procedure we approved says in effect, if arsenic is the contaminant, you start with the goal of restoring the site to the background level of arsenic before contamination by humans. You apply the qualifying factors provided in the legislation. You may well not be able to attain background because of those considerations, but you start with background as the goal if attainable."

Third, that a removal or remedial action shall prevent or minimize future releases and migration, and not result in further degradation of the environment.

Fourth, long-term care or management of contamination remaining after a cleanup shall be imposed where necessary.

Activities 340-122-050

There are five major activities -- Preliminary Assessment, Removal, Remedial Investigation, Feasibility Study, and Remedial Action -- that must be performed by any person who is ordered or authorized to do so by the Director. In most cases, this would be the potentially responsible party under the liability provisions of ORS 466.567. These activities could also be performed, at the Director's discretion, by the Department in situations where a potentially responsible party is recalcitrant, bankrupt, or not identifiable. As discussed above, the scope, order and performance of these activities is subject to the discretion of the Director and will be adapted to suit the complexity of the problem. Generally, the actual on-site work will be performed by consultants and contractors hired by the potentially responsible party or the Department. The Department will oversee the on-site work of the contractor, as necessary, and will review the workplans, draft proposals, data, analyses, etc. that the contractor develops.

Preliminary Assessment 340-122-060

The purpose of the Preliminary Assessment is to confirm whether a release has occurred and to determine whether further investigation or cleanup is needed. The proposed rule identifies a list of items that may be included in a Preliminary Assessment. The list includes information such as the facility history, hazardous substances used, facility owners and operators, and potential or immediate threats. The Preliminary Assessment will include a visit to the site. ORS 466.563 requires that the Preliminary Assessment shall be conducted as expeditiously as possible within the budgetary constraints of the Department. The proposed rule allows existing information to constitute the equivalent of all or part of a Preliminary Assessment or site inspection. Preliminary Assessments need not be performed on

EXECUTIVE SUMMARY

TO: Environmental Quality Commission

FROM: Fred Hansen, Director *Fred Hansen*

SUBJECT: Agenda Item K, September 9, 1988, EOC Meeting.
Executive Summary of Staff Report Requesting Adoption of
Proposed Remedial Action Rules Regarding Degree of
Cleanup and Selection of the Remedial Action, OAR
Chapter 340, Division 122.

Oregon Superfund Law

The Oregon superfund law establishes a comprehensive program for the identification, investigation and cleanup of sites contaminated by a wide range of hazardous substances from a variety of sources. Site cleanups under this law can range from simple soil removals to complex and massive groundwater cleanups of dozens of hazardous substances. Consequently, these proposed rules must provide the flexibility necessary to work with this wide range of sites. (A summary of environmental cleanup activities and program can be found in Attachment II.)

Cleanup Rules Requirement

ORS 466.553 requires development of 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". The Director appointed the Remedial Action Advisory Committee (RAAC) to assist the Department in developing these rules. (A list of RAAC members can be found in Attachment V.)

Fundamental Policy Issue

These rules address the basic issue referred to as "How clean is clean?". This issue has been the most difficult and most significant issue faced in the national effort, the federal Superfund program, to cleanup up contaminated sites. The issue is significant because generally as the degree of protection increases so do the costs.

The issue is made difficult by several factors. First the research available on the toxicological and epidemiological effects of hazardous substances on public health or the environment is very limited both in its depth and in the number of chemicals adequately investigated. Only a small fraction of the chemicals investigated have federal or state standards, and those

standards were developed for other purposes such as drinking water and occupational exposure. Furthermore, the techniques used to investigate site characteristics, especially hydrogeology, are limited by their relative newness and inherent uncertainty. In addition, the state of knowledge on how hazardous substances interact with various soil and groundwater conditions is also limited and full of uncertainty. Lastly the state of the art of remedial action technologies is rapidly developing but still relatively inexperienced and requiring extensive experimentation and innovation, although many promising techniques have been and are under development. All in all, there is a lack of data, knowledge, and experience, in the investigation and cleanup of contaminated sites. Yet despite the uncertainty, the issue must be addressed.

We come back to the public policy question which could be summarized in the alternative phrase -- "How safe is safe?". What levels of risk can and should the public be expected or required to live with? How certain must the evidence be to support a specific concentration level at a particular site? How much should be spent to investigate the site and determine the optimal cleanup level? How much should be spent to cleanup a site?

The fundamental issue which the Remedial Action Advisory Committee had to resolve was whether or not to have a target for cleanups, and if so, what the target should be. The RAAC spent a large part of its time considering various formulations in order to find a formulation that could be supported by a consensus of the committee. The Advisory Committee developed a flexible target -- Background Level or the lowest feasible concentration level -- combined with a process-oriented investigation and decision making approach that achieved a practical and unique equilibrium between the inherently conflicting concerns of protection and feasibility. This approach was supported by a consensus of the committee and is being proposed by the Department. (This approach is described in subsequent sections.)

During the public comment period, the Department received testimony opposing this approach and advocating that the standard of Background or lowest feasible concentration level be eliminated, leaving the Department to simply weigh the statutory requirements of achieving, to the maximum extent practicable, protection, cost effectiveness and the use of permanent solutions and alternate technologies. (This public comment and the Department's response can be found in the "Summary and Response to Comments" in Attachment III.)

Proposed Rules Summary

These proposed rules identify the basic investigatory activities and cleanup options as well as the criteria and decisions, necessary for the Director to determine the cleanup level and select the remedial action.

These include:

- Preliminary Assessments
- Removal
- Remedial Investigations
- Feasibility Studies
- Selection of the Remedial Action
- Public Notice and Participation
- Administrative Record

These activities are performed by any person who is ordered or authorized to do so by the Director, or by the Department. The scope, order and performance of these activities is subject to the discretion of the Director and will be adapted at each site to suit the complexity of the problem.

Scope: Permitted Releases and Other Cleanup Actions

These proposed rules provide that the investigation or cleanup of contamination either resulting from a "permitted release" or remaining after a cleanup under other specified authorities, shall be exempt from these proposed rules unless the Director determines that investigation or cleanup may be necessary to protect public health or the environment. This conditional exemption is based on the presumption that an approved permitted release or cleanup action already protects public health and the environment, and that no remedial action would be necessary.

Standards

This section proposes 4 fundamental standards. The first standard elucidates the meaning of protection of public health and the environment by requiring that a removal or remedial action must prevent, eliminate, or minimize potential or actual adverse impacts to biological receptors, present and future uses of the environment, ecosystems, natural resources, and aesthetic characteristics of the environment. The second standard requires that in the event of a release or a threat of a release, the environment must be restored or protected, respectively, at the Background Level if it is feasible or at the lowest concentration level that is feasible. The third standard requires prevention or minimization of future releases and migration, or degradation due to the removal or remedial action. The fourth standard requires long term care or management of residual contamination where necessary.

The purpose of the Preliminary Assessment is to confirm whether a release has occurred and to determine whether further investigation or cleanup is needed.

Removal is generally a short term or interim action to stabilize a site or take care of an immediate hazard although it can result in a final cleanup.

The purpose of a Remedial Investigation is to determine the full nature and extent of the contamination and public health or

environmental impacts. It includes a characterization of the site and the hazardous substances, and an endangerment assessment.

The purpose of a Feasibility Study is to develop and evaluate options that will attain various degrees of cleanup, ranging from Background Level, to the lowest concentration level attained by the highest and best technology, to the lowest concentration level attained by a technology that is "feasible", to "other measures" that supplement, or substitute for, cleanup.

Selection of the Remedial Action defines the requirements, criteria, policy preferences, burden of proof and other factors involved in the Director's decision on cleanup levels and options. This section is further described in subsequent sections.

The Public Notice and Participation section requires notice and opportunity to comment prior to the approval of a remedial action.

The Administrative Record section specifies the types of documents which will be included in the official record to justify the Director's selection of a remedial action.

Alternatives

The Department considered several alternatives to address the complex problems associated with the selection of the remedial action and decisions on cleanup levels. The alternatives considered included: 1) numeric cleanup standards, 2) risk assessment, 3) Background Level, 4) technology-based, 5) a hybrid approach, 6) an expedited approach for petroleum underground storage tanks (USTs) and 7) a "fast track" approach for motor fuel and heating USTs. Alternative #5 was selected for all hazardous substance releases, except petroleum releases from USTs which will be addressed at a subsequent EQC meeting.

"Protection" and "Feasibility" Requirements

The proposed rules require that remedial actions meet two statutory requirements. First, the remedial action must be protective of present and future public health, safety, and welfare and the environment. Second, to the maximum extent practicable, the remedial action must be cost effective, implementable, effective, and use permanent solutions and alternative technologies or resource recovery technologies. (The first requirement will be referred to as "protection" and the second requirement as "feasibility".)

Background or the Lowest Feasible Concentration Level

The proposed rules establish a target for cleanups. The remedial action must attain the Background Level. Background Level is defined as the concentration level of hazardous substances existing in the environment at the site prior to any and all releases at the site, i.e., the naturally occurring levels, if any. Background Level is presumed to be protective. However, if no remedial action option can technically achieve Background Level, or if the options that can achieve it are not "feasible", the Director may change the cleanup target from Background Level

to the lowest concentration level that is "feasible" and protective.

The potentially responsible party is responsible for demonstrating to the Director that a concentration level higher than Background Level is protective. However, at no time can the concentration of hazardous substances left in the environment after a remedial action is completed, exceed a "ceiling", which is the maximum concentration level that would be protective. This ceiling could be determined from the endangerment assessment or existing numeric standards or other information.

"Feasibility" consists of four elements: cost effectiveness, implementability, effectiveness (of the remedy), and the use of permanent solutions, alternative or resource recovery technologies. These elements must be achieved to the greatest degree feasible, and cannot compromise the requirement of protection. The cost effectiveness element allows the Director to consider the incremental costs and total costs of an option relative to the degree of protection achieved. The implementability element involves factors such as: reliability, availability and difficulty of options. The effectiveness (of the remedy) element involves factors such as: expected reduction in toxicity, mobility and volume; and the magnitude of residual risks after completion. The last element expresses a preference for permanent solutions and the use of alternative or resource recovery technologies.

Other Measures

The proposed rules allow the Director to require "Other Measures" to supplement, or where no other option is "feasible", to substitute for, the cleanup of hazardous substances. Other measures may include engineering and institutional controls such as site stabilization, caps, environmental hazard notice, alternate drinking water supply, fences, etc.

MEMORANDUM

To: Environmental Quality Commission
From: Director *[Signature]*
Subject: Agenda Item K, September 9, 1988, EQC Meeting

Request for Adoption of Proposed Remedial Action Rules
Regarding Degree of Cleanup and Selection of the
Remedial Action, OAR Chapter 340, Division 122.

BACKGROUND

Sites containing hazardous substances 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 hazardous substances may migrate off-site, further polluting the environment.

Sites contaminated with hazardous substances exist throughout the state. These sites range from abandoned industrial areas with on-site contamination to residential areas affected by migrating hazardous substances. The federal Superfund program is involved in remediating very few of the contaminated sites in Oregon. Most sites will not rank high enough to be listed as a national priority and qualify for federal funds.

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 to 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 purpose of these proposed rules is to provide the process and the criteria for making these decisions.

ORS 466.553 requires development of 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". The statute further requires that, to the maximum extent practicable, the remedial action (i.e., the cleanup method or technology) be cost effective and use permanent solutions and alternative treatment technologies.

The Legislature also specified eight factors that the Environmental Quality Commission may, as appropriate, take into account when considering the proposed remedial action rules. These factors are: the long term uncertainties associated with land disposal; the goals, objectives and requirements of the "Notice of Environmental Hazards" law; the persistence, toxicity, mobility and propensity to bioaccumulate of hazardous substances and their constituents; the short-term and long-term potential for adverse health effects from human exposure to the hazardous substance; the long-term maintenance costs; the potential for future remedial action costs if the alternative action in question were to fail; the potential threat to human health and the environment associated with excavation, transport and redisposal or containment; and the cost effectiveness of the remedial action.

Rule Development Process

With these statutory guidelines, the Department began the rulemaking process. Pursuant to the requirements under ORS 466.555, the Director appointed the Remedial Action Advisory Committee (RAAC) to assist the Department in developing rules. The committee, chaired by Judge John Beatty, consists of 22 members representing citizens, local governments, environmental organizations, and industry. A list with the names of the advisory committee members is attached. (See Attachment III) The RAAC members attended monthly meetings from November 1987 through March 1988, and twice-monthly meetings in April and May 1988. In addition to full RAAC meetings, smaller workgroups tackled specific issues, including leaking underground fuel tanks, technical/scientific issues, and risk assessment. In addition, a Drafting Subcommittee carefully reviewed the proposed rules. Staff also worked closely with the attorneys from the Department of Justice.

Interested members of the public were placed on a mailing list and received copies of the draft proposed rules or other materials, including minutes and articles. In addition, members of the audience had opportunities to comment at all Remedial Action Advisory Committee meetings.

Early drafts of the proposed rules focused on the determination of the degree of cleanup and the selection of the remedial action alone. It soon became evident that these determinations could only be made with sufficient investigation and evaluation of the alternatives for cleanup. Therefore, additional sections were

developed on Preliminary Assessments, Remedial Investigations, and Feasibility Studies. The purpose of the Preliminary Assessment is to confirm whether a release has occurred and to determine whether further investigation or cleanup is needed. The Remedial Investigation determines the full nature and extent of the contamination. Lastly, the Feasibility Study is used to develop and evaluate options for cleaning up the contaminated site.

ORS 466.553(2)(a) requires adoption of rules within one year of the effective date of Senate Bill 122, which was enacted on July 16, 1987. The Department and the RAAC worked hard to meet this statutory deadline but the complexity of the issues necessitated a one month extension. The revised schedule allowed for improved clarity in the proposed rules, more opportunity for staff to respond to public comments, and two additional RAAC meetings to resolve remaining issues. The principles and most of the language of the proposed rules have been approved by the Remedial Action Advisory Committee. This consensus would not have been achieved without the extra time allotted to resolve outstanding issues.

Request for Adoption of Proposed Rules

The Department requests the adoption of rules to implement ORS 466.540 to 466.590. Attached are the Proposed Remedial Action Rules, OAR 340-122-010 to 340-122-110, Oregon Revised Statute 466.540 to 466.575, the Remedial Action Advisory Committee Members list, the draft public hearing notice -- "A Chance to Comment", the Statement of Need for Rulemaking, the Statement of Land Use Consistency, and the Fiscal and Economic Impact Statement.

ALTERNATIVES AND EVALUATION

The Department considered several alternatives to address the complex problems associated with cleanup decisions. These alternatives, which are discussed in more depth below, range from: 1) a specific numeric cleanup standard for each hazardous substance, 2) an acceptable level of risk based on a site-specific risk assessment, 3) Background Level, 4) technology-driven cleanup levels, 5) an approach which combines selected elements of the other alternatives, 6) an expedited approach for petroleum releases from leaking underground storage tanks (UST), and 7) a soil cleanup level matrix for motor fuel and heating oil releases from USTs.

Remedial actions must meet two statutory requirements. First, the remedial action must be protective of public health, safety, welfare and the environment. Second, to the maximum extent practicable, the remedial action must be cost effective, and use permanent solutions and alternative technologies or resource recovery technologies. The proposed rules also add two elements to this second requirement, which are that the remedial action

shall be implementable and be effective. (See proposed OAR 340-122-090(1).) The first requirement will be referred to by the terms "protection" or "protectiveness" and the second requirement by the terms "feasible" or "feasibility".

Alternative #1: Numeric Standards

Early in the rulemaking process, the Department considered promulgating specific numeric cleanup standards for hazardous substances. These numeric standards would provide clear guidance for cleanups and expedite decisionmaking. However, this expediency is outweighed by the difficulties of promulgating numeric cleanup levels which will be protective of public health, safety, welfare and the environment. Many of the numeric standards which currently exist were not developed as guidelines for cleanup levels. Further, some numeric standards have had to be revised to be more stringent after additional knowledge was gathered on the acute and chronic effects of the exposure to the hazardous substance.

Most hazardous substances do not currently have numeric standards on which to base cleanups. The Department does not have the resources to develop cleanup levels for all of these substances. In addition, the Remedial Action Advisory Committee advised that it would be technically difficult to develop a single numeric cleanup level for each hazardous substance that would be protective at all the diverse sites at which it would be applied. A single numeric cleanup level is not designed to take into account site-specific factors such as hydrogeology, exposure levels, biological receptors, or potential for migration. For these reasons, the Department decided not to use specific numeric cleanup levels that would be applicable at all sites and rather favored using a process to determine site-specific cleanup levels based on investigations and evaluation of cleanup options with existing standards as a factor that may be considered in selecting the remedial action.

Alternative #2: Risk Assessment and "Acceptable Level of Risk"

Another alternative considered was the use of risk assessment to identify an acceptable level of risk and require cleanup of contaminants to that level. This risk assessment approach could require cleanup to levels only slightly more protective than the levels identified as posing a risk. This approach would meet the statutory requirement of protection, but result in minimum protection.

There are many uncertainties associated with risk assessments. Adequate scientific data on hazardous substances, toxicology, and epidemiology is often nonexistent or difficult to obtain. This could lead to a decision for a cleanup level that is not adequately protective. Further, future scientific studies may prove that concentrations of hazardous substances, thought to be

safe today, are in fact harmful. Risk assessment is also a very expensive and time-consuming methodology. Although it was recognized that some type of risk assessment may be helpful in assessing concentration levels that might pose a hazard, the RAAC and the Department felt that risk assessment should not provide the primary basis for determining cleanup levels.

Alternative #3: Mandatory Background Levels

Another alternative considered was requiring that every site cleanup attain Background Levels. Background Level is defined as the natural concentration, if any, of a hazardous substance or hazardous substances existing in the environment at the site before the occurrence of any or all past or present releases. Cleanup to Background Level would ensure maximum protection of public health, safety, welfare and the environment and therefore fulfill the statutory requirement to be protective. However, Background Level may not be technically achievable or it may not be feasible; e.g. it may prohibitively expensive. Since the Legislature also required that, to the maximum extent feasible, the remedial action be cost effective, the Department believes that a goal that every cleanup aim for Background Level is necessary but that it must be balanced with criteria for feasibility to achieve the proper balance.

Alternative #4: Technology-based

Technology-based cleanup levels was another alternative that was considered. This approach would identify a range of cleanup levels that could be achieved with various technologies. For example, the lowest concentration level that a remedial action can technically achieve will be attained by the "Highest and Best Technology". The lowest concentration level that is also "feasible", i.e. cost effective, implementable, and effective, will be attained by the "Best Feasible Technology". Also, the Legislature directed the Department to protect public health, safety, welfare and the environment. Evaluating only the technologies without also determining whether the resulting concentration levels protect public health, safety, welfare and the environment, however, would not fulfill the statutory requirement of protection.

Alternative #5: Preferred Approach

The final approach considered, incorporates elements from the above alternatives. It is favored by the RAAC and the Department and is proposed in these rules. Background Level is used as the target for cleanup, but with the option to change the target to the "lowest concentration level" if Background Level is not "feasible" and provided it does not exceed the "ceiling" of "protectiveness". Technology-based cleanup levels are used (in the Feasibility Study) to identify a range of cleanup options that could be developed. Risk assessment (referred to in the Remedial

Investigation as an "Endangerment Assessment") may be used to help identify concentration levels that may pose a hazard at a particular site. Numeric standards may be used for soil cleanup levels for releases of motor fuel and heating oil from leaking underground storage tanks, and as information used in the selection of cleanup actions for other releases.

Under the proposed rules, a remedial action is required to attain cleanup to Background Level unless the Director determines, based on the potentially responsible party's showing, that Background Level is not "feasible". If this is done, some hazardous substance concentrations might be allowed to remain in the environment. However, at no time can the concentration of hazardous substances left in the environment after a remedial action is completed, exceed a "ceiling", which is the maximum concentration level of a hazardous substance that could remain at the site and still be protective of public health, safety, welfare, and environment. The ceiling could be determined from the site-specific endangerment assessment, and site characterization, existing numeric standards, and relevant scientific information.

Alternative #6: Petroleum Releases from Leaking USTs

The Department and the RAAC determined that the preferred approach (Alternative #5) is not appropriate for most of the large universe of leaking underground storage tanks (USTs) containing petroleum. A separate section has been proposed for cleanup of petroleum released from leaking underground storage tanks. These proposed rules are directly based on the Environmental Protection Agency's proposed federal regulations for underground storage tanks and thus may be subject to revision as the federal rules are revised.

There are five activities required for corrective actions for petroleum USTs: 1) Report the release, 2) control the release from the source, and clean up the visibly contaminated soil and most of the free product, 3) determine the extent of remaining contamination, 4) determine the extent of further remediation required, and 5) take the necessary cleanup actions under an approved Corrective Action Plan.

If, after the initial reporting and abatement steps, a Corrective Action Plan is required, the petroleum cleanup level will be based on a review of several risk factors rather than on Background Levels. However, the Department retains the ability to investigate releases and to determine cleanup levels with the hybrid approach under the other provisions of the proposed rules at the Director's discretion. This may be necessary, for example, at sites with extensive groundwater contamination.

(See "Note" under the "Recommendation" below.)

Alternative #7: Soil Cleanup Level Matrix for Motor Fuel and Heating Oil Releases from USTs

Concerns were also raised that despite the expedited approach for cleanup of petroleum UST leaks, determination of a site-specific cleanup level is still too burdensome a process for simple releases of motor fuel and heating oil which result in soil contamination and pose little hazard to groundwater or biological receptors. The proposed rules would require the Department to study and develop a matrix with numeric soil cleanup levels for motor fuel and heating oil which may include constituents such as benzene, xylene, toluene and ethylbenzene found in motor fuel and heating oil. The matrices would contain specific, stringent cleanup levels based on specific factors such as the geology of the site and the distance of the contamination to groundwater, which will be highly protective of public health, safety, welfare and the environment.

(See "Note" under the "Recommendation" below.)

Recommendation

The RAAC and the Department have proposed Alternatives #5, 6 and 7 which are discussed in more detail in the next section in "Summary of Major Elements and Impact" under "Selection of the Remedial Action" and "Corrective Action for Petroleum UST Releases".

[NOTE: The Department has decided to postpone adoption of this section of the proposed rules -- 340-122-120 -- pending an opportunity to evaluate the final federal regulations which are now scheduled for release on September 10. The description of Alternatives 6 and 7 were proposed by the Department as section 340-122-120 of the proposed rules. This section incorporated virtually all of the proposed UST corrective action regulations (Subpart F) from the Environmental Protection Agency. The final federal regulations, which are now proposed for release by September 10, 1988, will not be available in sufficient time to evaluate them and propose revisions, as the Department had planned. Consequently, the Department has decided to postpone adoption of this section of the proposed rules until the final federal rules have been received and appropriate revisions can be considered.

SUMMARY OF MAJOR ELEMENTS AND IMPACT

These proposed rules identify the basic investigatory activities and cleanup options as well as the criteria and decisions, necessary to determine the cleanup level and the remedial actions to protect the public health, safety, welfare and the environment.

These include:

- Preliminary Assessments
- Removal
- Remedial Investigations
- Feasibility Studies
- Remedial Action
- Public Notice and Participation
- Administrative Record

The Oregon superfund law establishes a comprehensive program for the identification, investigation and cleanup of sites contaminated by a wide range of hazardous substances from a variety of sources. Site cleanups under this law can range from simple soil removals involving a single contaminant and taking only a few days, to complex and massive groundwater cleanups of dozens of hazardous substances requiring years to study and clean up. Consequently, these proposed rules must provide the flexibility necessary to work with this wide range of sites.

Proposed Rules are Flexible and Adaptable

These proposed rules achieve this flexibility in two ways. First, the Director has the discretion to determine whether a particular activity must be performed and also to determine the sequence or combination in which activities will be performed. The only statutorily required activities are public comment and the Preliminary Assessment. The latter is necessary to determine whether a release has occurred and if additional investigation or cleanup is needed. Second, the Director also has the discretion to determine the scope of the specific tasks, information or criteria that must be pursued within each activity.

This principle of flexibility is specifically stated in proposed OAR 340-122-050(1), and is found throughout the proposed rules in decisions that are at the Director's (or Department's) discretion. With this flexibility the Department can tailor the investigation and cleanup at each site to the size and complexity of the problem and thereby avoid overly prescriptive and specific rules that would cause excessive, insufficient, or inappropriate work to be performed at many sites.

Scope and Applicability

The Oregon superfund law is one of several cleanup authorities available to the Director. Although the Oregon superfund law may be applied in large part to "past practices" and "abandoned sites", the statutory authority covers all releases of hazardous substances regardless of when they occurred, whether they were permitted at the time, or whether a cleanup has occurred pursuant to another law. This section clarifies the relationship of the Oregon superfund law to "exempted releases", "permitted releases"

and "other cleanup actions". It preserves the Department's administrative and enforcement discretion to select under which authority to proceed.

Statutorily-Exempted Releases. The proposed rules reflect ORS 466.540(14)(a) to (d) which already exempts releases that occur from workplace exposure; engine exhaust emissions; nuclear materials; and normal application of fertilizers.

Conditional Exemption for Permitted Releases. These proposed rules provide that the cleanup of contamination resulting from a "permitted release" shall be exempt from these proposed rules unless the Director determines that investigation or cleanup is necessary to protect public health or the environment. A permitted release includes: 1) releases of specifically named hazardous substances subject to a control, and 2) releases under a sludge management plan. Such releases must occur in compliance with a permit that is still in effect and legally enforceable. The first exemption above does not apply to unidentified releases from a permitted facility, nor to releases that occurred under a permit that is now expired or has been revoked.

This approach was taken because it is presumed that in most cases a permitted release protects public health and the environment, and that no remedial action would be necessary. Also, as long as the permit is in effect, the Department has the ability to use its permitting authority to require cleanup or other actions to prevent migration or further releases, or to mitigate damage. Releases that result from a 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.

Coordination of Cleanup Decisions. Each permitting or cleanup law has unique provisions regarding the chemical substances covered, investigatory and enforcement powers, liable persons, penalties and damages, and funds available for the Department to oversee or undertake cleanup activities. In each case, the Department must consider the factors and the circumstances at each site in order to determine which authority is the most appropriate. The Department intends to develop policy and procedures for making these determinations in an effective and timely manner.

Other Cleanup Actions. The proposed rules provide that where a cleanup has already been completed under another authority, these proposed rules shall not apply. These other authorities are: spill response for oil and hazardous materials, corrective action for hazardous wastes, and cleanup of oil spills on surface waters. It is presumed that a cleanup under another authority

protects public health and the environment so that no action under these proposed rules is necessary. As with permitted releases, these proposed rules may apply if the Director finds that additional investigation or removal or remedial action is necessary to protect public health and the environment from contamination which remains after such a cleanup action.

Relationship to the Federal Superfund Program (CERCLA/SARA).

The terms used for the major activities -- Preliminary Assessment, Remedial Investigation, Feasibility Study, Removal and Remedial Action -- are the same as those used in the federal Superfund program under the Comprehensive Environmental Response and Comprehensive Liability Act (CERCLA) and the Superfund Amendments and Reauthorization Act (SARA). However despite the usage of similar terms, the specific procedures or substantive requirements under the federal program and statutes have not been adopted. The use of similar terminology simply provides some basic consistency in identifying similar stages of cleanups for both federal and state law. These proposed rules provide requirements that are unique and appropriate to Oregon.

Definitions 340-122-030

The definitions in the proposed rules are in addition to those provided in ORS 466.540. They cover new terms that require definition or statutory terms that need clarification.

Standards 340-122-040

These proposed rules have four standards. First, that protection of public health and the environment includes the prevention, elimination, or minimization of potential and actual adverse impacts to biological receptors; present and future uses of the environment; ecosystems and natural resources; and aesthetic characteristics of the environment.

Second, that the environment shall be restored to the Background Level or the lowest concentration level that is "feasible" under proposed OAR 340-122-090. (This is discussed in depth in the section on "Selection of the Remedial Action".)

Based on a recommendation by the RAAC, a new subsection has been added to further clarify the purpose of the standard.

"Background before contamination is the standard, a goal that might not be possible in some instances or feasible in others, based on the qualifying factors as applied under 340-122-090(1)(b) of these rules." [OAR 340-122-040(2)(c)]

As stated in Chairman Jack Beatty's letter to the RAAC, explaining the purpose of the new language:

"The Committee chose to start with background - the state existing before contamination. The procedure we approved says in effect, if arsenic is the contaminant, you start with the goal of restoring the site to the background level of arsenic before contamination by humans. You apply the qualifying factors provided in the legislation. You may well not be able to attain background because of those considerations, but you start with background as the goal if attainable."

Third, that a removal or remedial action shall prevent or minimize future releases and migration, and not result in further degradation of the environment.

Fourth, long-term care or management of contamination remaining after a cleanup shall be imposed where necessary.

Activities 340-122-050

There are five major activities -- Preliminary Assessment, Removal, Remedial Investigation, Feasibility Study, and Remedial Action -- that must be performed by any person who is ordered or authorized to do so by the Director. In most cases, this would be the potentially responsible party under the liability provisions of ORS 466.567. These activities could also be performed, at the Director's discretion, by the Department in situations where a potentially responsible party is recalcitrant, bankrupt, or not identifiable. As discussed above, the scope, order and performance of these activities is subject to the discretion of the Director and will be adapted to suit the complexity of the problem. Generally, the actual on-site work will be performed by consultants and contractors hired by the potentially responsible party or the Department. The Department will oversee the on-site work of the contractor, as necessary, and will review the workplans, draft proposals, data, analyses, etc. that the contractor develops.

Preliminary Assessment 340-122-060

The purpose of the Preliminary Assessment is to confirm whether a release has occurred and to determine whether further investigation or cleanup is needed. The proposed rule identifies a list of items that may be included in a Preliminary Assessment. The list includes information such as the facility history, hazardous substances used, facility owners and operators, and potential or immediate threats. The Preliminary Assessment will include a visit to the site. ORS 466.563 requires that the Preliminary Assessment shall be conducted as expeditiously as possible within the budgetary constraints of the Department. The proposed rule allows existing information to constitute the equivalent of all or part of a Preliminary Assessment or site inspection. Preliminary Assessments need not be performed on

"permitted releases" (340-122-030(2)) or other completed cleanup actions (340-122-030(3)) unless the Director determines one is needed. The proposed rule requires the Department to request additional information if the initial information received by the Department is not sufficiently reliable or definite and to place a memo in a file, which is open to the public, if the Department determines that a Preliminary Assessment is not warranted.

Removal 340-122-070

The Director may perform, or require the potentially responsible party to perform, a removal at any time from the discovery of a release through completion of a final remedial action. A removal may cover a wide range of actions from assessment, monitoring, security measures, alternative water supplies, evacuation and housing, disposal of removed material, cleanup of a hazardous substance, and other actions as may be necessary to prevent, minimize or mitigate damage to public health or the environment.

Remedial Investigation 340-122-080(1) and (2)

The purpose of a Remedial Investigation is to determine the full nature and extent of the contamination, and includes three major elements: characterization of the hazardous substances, characterization of the site, and an endangerment assessment, which evaluates potential or actual hazards to public health and the environment. The proposed rule identifies a list of items that may be included in each of these three Remedial Investigation elements.

Feasibility Study 340-122-080(3)

The purpose of a Feasibility Study is to develop options that will attain various degrees of cleanup. The Feasibility Study includes two major elements: the development of remedial action options and the evaluation of these options.

The proposed rule identifies a list of remedial action options that the Director may require the potentially responsible party to develop. These options identify cleanup levels ranging from Background Level, to the lowest concentration level attained by the highest and best technology, to the lowest concentration level attained by a technology that is "feasible" (see discussion of "feasible" under proposed 340-122-090), to "other measures" that supplement, or substitute for, cleanup.

Selection of the Remedial Action 340-122-090

The previous sections outline the information needed for the Director to determine the cleanup level and to select the remedial action. That information, plus other specified information, form the Administrative Record upon which the Director must base his determination. This section provides the specific requirements,

the cleanup target and the preferences, criteria, and factors that guide the Director's determination.

The goal of these proposed rules is to clean up sites all the way to Background or the lowest concentration level that is "feasible". Background Level is the goal that remedial actions must strive to attain and the benchmark that the Director uses to begin the selection of the remedial action. However, if the technology to attain Background Level is not available or the remedial action is not "feasible", then the concentration level may begin to rise above Background Level. This approach can be summarized by the phrase -- Cleaner is better, background is best.

Although the concentration level may rise above Background Level, it may not rise higher than is needed to find a "feasible" solution. Also, it may not exceed a concentration level that is considered protective. The highest concentration level that is considered protective would establish a "ceiling". The concentration level could not go above this ceiling. If there was no "feasible" remedial action below that ceiling, other measures to supplement or substitute for cleanup may be employed. This ceiling could be determined with existing health standards, the endangerment assessment that is part of a Remedial Investigation or other relevant information.

Further, the use of Other Measures are intended only to supplement the lowest concentration level that is "feasible". Other Measures will not generally be used in lieu of cleanup to the lowest concentration level, except as provided under the provision for Other Measures to substitute for cleanup. (See "Supplemental or Substitute Measures" below.)

"Protection" and "Feasibility" requirements. The proposed rules require that remedial actions meet two requirements. First, the remedial action must be protective of present and future public health, safety, and welfare and the environment. Second, to the maximum extent practicable, the remedial action must be cost effective, implementable, effective, and use permanent solutions and alternative technologies or resource recovery technologies. (In this report, the first requirement is referred to as "protection" or "protectiveness", and the second requirement as "feasible" or "feasibility". These two requirements are described in detail in the appropriate sections below.)

Background Level or the Lowest Concentration Level. The proposed rules establish a goal for cleanups. The remedial action must attain the Background Level. Background Level is presumed to be protective. However, if no remedial action option can technically achieve Background Level, or if the options that can attain it are not "feasible", the Director may change the cleanup target from Background Level to the lowest concentration level that is "feasible".

Background Level is defined as the concentration level of hazardous substances existing in the environment at the site prior to any and all releases at the site. If there were naturally-occurring hazardous substances such as arsenic, then the natural levels of arsenic are the Background Level for that site. For hazardous substances that are only synthetic and created by manufacturing, the Background Level would be zero.

The Background Level would be the same even if there have been multiple releases over a period of time at a site by one or more responsible parties, or if the contamination came onto the site due to migration. Background Level is the target that all cleanups initially aim for. It is not related to the determination or allocation of liability among potentially responsible persons.

Protection. The potentially responsible person is responsible for demonstrating to the Director that a concentration level higher than Background Level is protective. Under the proposed rules for protection -- proposed 340-122-090(5) -- if the Director is selecting between two remedial action options, and one achieves a lower concentration level than the other, then on the basis of protection alone, the Director would choose the option with the lowest concentration level. However, the Director could also reject that option on the basis of "feasibility". An example of this is an option costing millions of dollars more than another option, while only reducing the concentration level by an insignificant amount more than the other option.

"Feasibility", however, would not result in a remedial action that is not protective. If "feasibility" drove the concentration level above the level which was considered to provide "minimum protection", i.e. the "ceiling", then the Director would have to add "Other Measures" to supplement, or, as a last resort, to substitute for, cleanup.

In identifying this "ceiling", the Director may consider the site characterizations of the site and the hazardous substances, and the endangerment assessment, or other relevant cleanup or health standards, criteria or other guidance (e.g, maximum contaminant level goals or drinking water standards), and relevant and available scientific information to determine what is protective.

"Feasibility". "Feasibility" consists of four elements: cost effectiveness, implementability, effectiveness and the use of permanent solution, alternative or resource recovery technologies. The proposed rule -- 340-122-090(1)(b) requires that the remedial action shall, to the maximum extent practicable, fulfill these four elements. Necessarily, there will be tradeoffs among these elements. For example, a remedial action option may be cost effective but very difficult to implement, or vice versa. These elements will be balanced against each other and achieve a unique equilibrium in each case. As a group, these elements must be

achieved to the greatest degree or extent that is feasible, and without compromising the requirement for protection. Criteria, preferences and factors which the Director may consider in evaluating these four elements are described in proposed rules 340-122-090 (6) to (9).

Cost-effectiveness. The cost-effectiveness element allows the Director to consider the incremental costs and total costs of an option relative to the degree of protection it achieves, and relating to another remedial action option achieving the same protection; plus other relevant criterion.

Effectiveness. The effectiveness element allows the Director to consider factors such as: expected reduction in toxicity, mobility and volume; short term risks from the cleanup itself; length of time to implement the remediation; the magnitude of residual risks after completion; long term care and management requirements; reliability of engineering and institutional controls; potential for failure; and other relevant criterion.

Implementability. The implementability element allows the Director to consider factors such as: the operational reliability of the option; the availability of equipment or disposal capacity, the need for permits; and other relevant criterion.

Use of Permanent Solutions and Alternative and Resource Recovery Technologies. This element expresses a preference for permanent solutions and for alternative or resource recovery technologies. Alternative technologies include available, innovative and emerging technologies. The offsite transport and disposition of hazardous substances may be preferred where "feasible" alternative treatment technologies are not available or where it would expedite the cleanup or achieve a total cleanup. The hazardous substances and contaminated materials must be taken to a secure facility that will protect public health and the environment.

Supplemental or Substitute Measures. 340-122-090 (3) and (4). The proposed rules allow the Director to require "other measures" to supplement or substitute for cleanup of hazardous substances. There may be situations where cleanup actions alone are not sufficient to protect public health or the environment. In such cases, the proposed rules authorize the Director to require other measures to supplement the cleanup. Other measures include engineering and institutional controls such as site stabilization, isolation, caps, Environmental Hazard Notice, alternate drinking water supply, security measures, fences, etc.. Other measures as a supplement to cleanup may be added in order to meet the requirements for protection and "feasibility".

In extreme cases, (e.g., to preserve cleanup options for a later date) the proposed rules authorize the Director to allow Other Measures to substitute for cleanup of a site, provided that the

Director makes certain findings. Other measures as a substitute for cleanup may be used as a last resort provided:

- 1) the Director finds there is no remedial action, even combined with supplementary measures, that is protective and "feasible",
- 2) the substitute measures include long term care and management,
- 3) periodic review is required to determine whether a technology has been developed that would be protective and "feasible", and
- 4) public notice and participation is provided.

Public Notice and Participation 340-122-100

Before approving a remedial action, the proposed rules require the Department to provide public notice and an opportunity to comment, then consider any comments received. The notice must include a brief description of the Department's preferred remedial action option and information on how to get a copy of the full proposal. In addition to publishing the notice in a local paper of general circulation and the Secretary of State's Bulletin as required by ORS 466.575, the Department must make a reasonable effort to identify and notify interested community organizations. The Department has the option to provide public notice regarding a "removal", which is generally a short term or interim action to stabilize a site or take care of an immediate hazard.

The proposed rule also requires the Department to make available to the public agency records about removals or remedial action and related investigations, and a record of pending and completed actions.

Administrative Record 340-122-110

For the purposes of the Director's selection of a removal or remedial action and enforcement, cost recovery or review, if any, the proposed rules identify the contents of the Administrative Record as including the Preliminary Assessment, Remedial Investigation, Feasibility Study, and public comments, as well as guidance documents, technical literature, or other analyses that form the basis for the Director's action. Excluded from the Administrative Record, unless the Director expressly includes them, are various documents that are: privileged or confidential, drafts or internal memoranda, and related to liability or state remedial action costs.

Corrective Action for Petroleum Underground Storage Tanks Releases
340-122-120

The Department has temporarily postponed adoption of this section pending review of the final federal regulations which are expected to be released by September 10. The Department will propose this section, as revised, at a subsequent EQC meeting.

SUMMATION

1. In 1987, the Legislature enacted a law that is codified as "Removal or Remedial Action To Abate Health Hazards" in ORS 446.540 to 466.590. This statute 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.
2. The Department proposes that the Commission adopt a new rule division for procedures governing the determination of degree of cleanup and the selection of the remedial action.
3. The proposed remedial action rules establish the standards and criteria that the degree of cleanup and the selection of the remedial action shall meet and the activities to be performed for making those determinations, including the Preliminary Assessment, Removal, the Remedial Investigation, the Feasibility Study, the Administrative Record, and public participation. The selection of the remedial action is based upon the information developed during these activities. Remedial actions are required to be both protective and "feasible". The proposed rules allow other measures, such as institutional controls, to supplement cleanups, or in extreme cases, to substitute for cleanup.

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.

Fred Hansen

ATTACHMENTS

- I. Summary and Response to Public Comments
- II. The Environmental Cleanup Division
- III. Proposed OAR Chapter 340, Division 122
- IV. Rulemaking statements: Statement of Need for Rulemaking, Land Use Consistency, Fiscal and Economic Impact
- V. List of Remedial Action Advisory Committee Members.
- VI. Draft Hearing Notice
- VII. ORS 466.540 TO 466.590

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5-23-88

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 commentators 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 commentators 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 interest 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 commentators (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 commentators, 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.

THE ENVIRONMENTAL CLEANUP DIVISION

SB 122: OREGON ENVIRONMENTAL CLEANUP LAW

To address the problem of hazardous substances that have been improperly disposed of, the Oregon Legislature passed Senate Bill 122 in 1987 (ORS 466.540 TO 466.590) that established an environmental cleanup program to investigate and clean up contaminated sites throughout the state. These sites range from large abandoned industrial areas with major groundwater contamination to small areas affected by leaks from underground storage tanks. Cleaning them up can involve removing a single contaminant from the soil in a few days or complex and massive groundwater cleanups of dozens of hazardous substances requiring years to study and clean up.

Oregon's environmental cleanup program complements the Environmental Protection Agency's Superfund program by ensuring that all contaminated sites in the state are adequately addressed. Since the federal Superfund program is intended to address only the worst sites throughout the nation, only a handful of sites in Oregon are eligible for federal attention. The rest of the problem sites must be addressed under state authority.

SITE DISCOVERY

The first task of the site discovery program is to determine the extent of the problem in Oregon. In order to locate and identify sites contaminated with hazardous substances throughout the state, the Environmental Cleanup Division's program will rely on four sources of information: existing DEQ files, records and files from other state agencies that deal with hazardous substances, information about targeted industries that have a history of causing problems, and reports from concerned citizens who know about sites where hazardous substances have been improperly disposed.

PRELIMINARY ASSESSMENT

The purpose of the Preliminary Assessment is to confirm whether a release has occurred and to determine whether further investigation or cleanup is needed. The scope of the assessment will vary in scope depending in part on the information gathered. It may include review of Department or other agency files,

management records, personal interviews with individuals familiar with the site and/or application permits and site inspection reports.

INVENTORY LIST

If a release is confirmed, the site may be included on the DEQ Site Inventory List that identifies sites needing further investigation and cleanup. The Site Inventory List will contain information about the site's history, the hazardous substances present, the owners and operators of the site, and potential or immediate threats. This information will be available to the public upon request.

STATUTORY AUTHORITY AND PROGRAM-LEAD DETERMINATION

The Director will decide whether to proceed under SB 122 authority or another authority that will effectively clean up the site. The Director will also decide which DEQ program(s) will be responsible for a particular site: Water Quality, Hazardous Waste, Solid Waste, Air Quality or Environmental Cleanup. Regardless of which DEQ program is assigned, if SB 122 authority is used, there are four major activities -- Preliminary Assessment, Remedial Investigation, Feasibility Study, and Remedial Action -- that must be performed by any person who is ordered or authorized by the DEQ Director.

REMEDIAL INVESTIGATION

The purpose of a Remedial Investigation is to determine the full nature and extent of the contamination. It will generally be done by the responsible party's contractor working under DEQ oversight. The contractor will submit a detailed work plan which will include a schedule for completing the investigation, describe the methods that will be used to take samples of soil, air and/or groundwater and surface water, identify the quality control and quality assurance methods to be used during the sampling process, and the safety procedures that will be followed.

The Remedial Investigation includes three major areas:

1. Characterization of the hazardous substances -- to identify what types of chemicals are present and how they were disposed of. Often historical records will be used to help determine this.
2. Characterization of the site -- to identify the natural areas surrounding the site, including soil characteristics and general geological and hydrogeological characteristics. This is one of the

most difficult and time-consuming aspects of the Remedial Investigation. It is extremely difficult to study contamination in soil and groundwater since it can't be seen and often little is known about the particular underground geologic features of an area such as the rate and direction of groundwater flows that can carry contamination.

3. An Endangerment Assessment -- to evaluate potential or actual hazards to public health and the environment. This will include an analysis of the surrounding populations (both human and animal), and natural areas, how they are likely to be exposed to chemicals at or migrating from the site, and potential public health or environmental threats from the contamination.

FEASIBILITY STUDY

The Feasibility Study develops a variety of options for cleaning up the site. The different options will examine the effectiveness of using various cleanup technologies. Some of these technologies may result in different levels contamination remaining in the environment when the remedial action is completed. The Feasibility Study includes two major elements: the development of remedial action options and an evaluation of these options.

The responsible party may be required to identify a variety of cleanup options with levels ranging from Background Level, to the lowest concentration level that can be attained by the highest and best technology available, to the lowest concentration level that can be attained by available technology that is "feasible" (see definition below).

In some cases, for instance where appropriate technology is not available or is not feasible, "other measures" that supplement, or substitute for, a cleanup will be necessary. These may include various engineering measures or institutional measures such as use restrictions, alternative drinking water supplies, security measures, evacuation and temporary housing.

SELECTION OF THE REMEDIAL ACTION

The information that is gathered during the Remedial Investigation and the Feasibility Study will be analyzed by the DEQ staff and is the basis for the Director's selection of the remedial action and determination of a cleanup level for a particular site. The goal of the proposed rules is to clean up sites to the background level or the lowest concentration level that is feasible.

Background is the benchmark, or goal, that the Director uses to begin the consideration of remedial action options. Background is the natural concentration level of hazardous substances that were present at the site before any or all past or present human-caused releases. However, if there is no technology capable of reaching Background Level or such technology is not feasible, then the concentration level may begin to rise above the background level.

Although the residual concentration of hazardous substances after the remedial action may be above the background level, it may not be higher than is necessary to find a "feasible" solution that is protective of public health, welfare and the environment. "Feasible" means that a cleanup uses permanent solutions and alternative technologies or resource recovery techniques, and to the maximum extent practicable, is cost-effective, implementable and effective.

The cleanup policy can be summarized by the phrase "Cleaner is better, background is best."

PUBLIC NOTICE AND PARTICIPATION

Public participation in Oregon's environmental cleanup process is very important. Information from the state's residents will help identify potential hazardous waste sites. Senate Bill 122 requires that the public be informed about the state-wide Site Discovery Program and have the opportunity to provide information to DEQ about the release or threat of release of a hazardous substance from a facility.

Before a remedial action is approved by DEQ, the public must be informed and there must be a public comment period of at least 30 days so interested citizens can submit written or verbal comments regarding the proposed remedial action. A public notice which will be published in a local newspaper and in the Secretary of State's Bulletin must include a brief description of the Department's preferred remedial action option and information about how to get a copy of the full proposal will be published. In addition, the Department will identify and notify interested community organizations about the remedial action selection process.

A public meeting on a proposed remedial action will be held if one is requested by 10 people, or a group representing 10 or more people. Any written or verbal comments on a proposed remedial action will be considered by the Director before the plan is approved. Once a remedial action is approved, the public will again be notified.

PETROLEUM UNDERGROUND STORAGE TANK RELEASES

The Department has postponed its proposed rules for this section until a subsequent EQC meeting.

LIABILITY

The law requires those responsible for causing the contamination to pay for cleaning it up. Generally, there are five categories of people that can be held strictly liable for cleanup costs:

- Owners or operators of the site when the contamination occurred
- Subsequent owners or operators of a contaminated site who knew, or should have known, that the site was contaminated when it was purchased.
- Anyone who contributed to or caused the contamination, or made it worse
- Owners or operators of a contaminated site who knew about the contamination and transferred the property without telling the potential purchasers that it was contaminated
- Anyone who interferes with or tries to stop an investigation or remedial action

Generally, owners or operators of property who did not know, and had no reason to know, the property was contaminated when they bought it or assumed operation, will not be held liable for cleanup costs. Also, anyone whose property was contaminated by waste migrating from someone else's property will generally not be liable. However, they may become liable if it is found that they did not exercise due care or notify the Department about the contamination.

CONSENT ORDERS AND CONSENT DECREES

Responsible parties who voluntarily agree to clean up their sites will proceed under settlement agreements in the form of either a Consent Order or a Consent Decree. A Consent Order is an administrative order voluntarily entered into after negotiation between the Department and the responsible party (ies). It outlines the scope of work and each party's responsibilities during the remedial action process.

A Consent Decree is a judicially-approved settlement agreement filed in circuit court. It also outline the scope of work and each party's responsibilities during the remedial action process. The entry of a consent decree is not considered or used as an admission of liability in any further judicial or administrative proceedings. The Consent Decree process provides public notice and

opportunity to comment on the proposed agreement prior to its submittal to the court.

COVENANT NOT TO SUE

Under the Consent Decree process, the Director can provide settling parties a covenant not to sue which is a release from future liability to the state for any future remedial action costs, if any. The Director may grant a Covenant Not to Sue if it is in the public interest and would expedite remedial action.

The covenant not to sue is effective only if the responsible person is in full compliance with, and satisfactorily completes all provision of the agreement as certified by the Director. The covenant does not apply to conditions that were unknown but may apply when the remedial action fails.

DE MINIMIS SETTLEMENTS

If it practicable and in the public interest, the Director may provide a de minimis settlement for potentially responsible persons whose contribution to a contaminated site was minimal in both quantity and toxicity.

INVOLUNTARY CLEANUPS

If responsible parties do not clean up their sites voluntarily, the DEQ Director can order them to do so and request the Attorney General to institute proceedings to enforce an order. The Director's order is not appealable to the EQC nor subject to judicial review.

If the responsible party fails without sufficient cause to implement the Director's order and DEQ conducts the cleanup, the Department can impose punitive damages of up to three times the amount of the state's remedial action costs.

If the responsible party cannot be located, is bankrupt, or is unable or unwilling to pay for the cleanup, DEQ can clean up the site using the Hazardous Substance Remedial Action Fund.

CIVIL AND CRIMINAL PENALTIES

The law provides for a civil penalty of up to \$10,000 for each day the law is violated and a criminal penalty of up to \$10,000 or one year in jail, or both. Civil penalties will be deposited to the Hazardous Substances Remedial Action Fund.

THE ENVIRONMENTAL CLEANUP DIVISION

SB 122: OREGON ENVIRONMENTAL CLEANUP LAW

To address the problem of hazardous substances that have been improperly disposed of, the Oregon Legislature passed Senate Bill 122 in 1987 (ORS 466.540 TO 466.590) that established an environmental cleanup program to investigate and clean up contaminated sites throughout the state. These sites range from large abandoned industrial areas with major groundwater contamination to small areas affected by leaks from underground storage tanks. Cleaning them up can involve removing a single contaminant from the soil in a few days or complex and massive groundwater cleanups of dozens of hazardous substances requiring years to study and clean up.

Oregon's environmental cleanup program complements the Environmental Protection Agency's Superfund program by ensuring that all contaminated sites in the state are adequately addressed. Since the federal Superfund program is intended to address only the worst sites throughout the nation, only a handful of sites in Oregon are eligible for federal attention. The rest of the problem sites must be addressed under state authority.

SITE DISCOVERY

The first task of the site discovery program is to determine the extent of the problem in Oregon. In order to locate and identify sites contaminated with hazardous substances throughout the state, the Environmental Cleanup Division's program will rely on four sources of information: existing DEQ files, records and files from other state agencies that deal with hazardous substances, information about targeted industries that have a history of causing problems, and reports from concerned citizens who know about sites where hazardous substances have been improperly disposed.

PRELIMINARY ASSESSMENT

The purpose of the Preliminary Assessment is to confirm whether a release has occurred and to determine whether further investigation or cleanup is needed. The scope of the assessment will vary in scope depending in part on the information gathered. It may include review of Department or other agency files,

management records, personal interviews with individuals familiar with the site and/or application permits and site inspection reports.

INVENTORY LIST

If a release is confirmed, the site may be included on the DEQ Site Inventory List that identifies sites needing further investigation and cleanup. The Site Inventory List will contain information about the site's history, the hazardous substances present, the owners and operators of the site, and potential or immediate threats. This information will be available to the public upon request.

STATUTORY AUTHORITY AND PROGRAM-LEAD DETERMINATION

The Director will decide whether to proceed under SB 122 authority or another authority that will effectively clean up the site. The Director will also decide which DEQ program(s) will be responsible for a particular site: Water Quality, Hazardous Waste, Solid Waste, Air Quality or Environmental Cleanup. Regardless of which DEQ program is assigned, if SB 122 authority is used, there are four major activities -- Preliminary Assessment, Remedial Investigation, Feasibility Study, and Remedial Action -- that must be performed by any person who is ordered or authorized by the DEQ Director.

REMEDIAL INVESTIGATION

The purpose of a Remedial Investigation is to determine the full nature and extent of the contamination. It will generally be done by the responsible party's contractor working under DEQ oversight. The contractor will submit a detailed work plan which will include a schedule for completing the investigation, describe the methods that will be used to take samples of soil, air and/or groundwater and surface water, identify the quality control and quality assurance methods to be used during the sampling process, and the safety procedures that will be followed.

The Remedial Investigation includes three major areas:

1. Characterization of the hazardous substances -- to identify what types of chemicals are present and how they were disposed of. Often historical records will be used to help determine this.
2. Characterization of the site -- to identify the natural areas surrounding the site, including soil characteristics and general geological and hydrogeological characteristics. This is one of the

most difficult and time-consuming aspects of the Remedial Investigation. It is extremely difficult to study contamination in soil and groundwater since it can't be seen and often little is known about the particular underground geologic features of an area such as the rate and direction of groundwater flows that can carry contamination.

3. An Endangerment Assessment -- to evaluate potential or actual hazards to public health and the environment. This will include an analysis of the surrounding populations (both human and animal), and natural areas, how they are likely to be exposed to chemicals at or migrating from the site, and potential public health or environmental threats from the contamination.

FEASIBILITY STUDY

The Feasibility Study develops a variety of options for cleaning up the site. The different options will examine the effectiveness of using various cleanup technologies. Some of these technologies may result in different levels contamination remaining in the environment when the remedial action is completed. The Feasibility Study includes two major elements: the development of remedial action options and an evaluation of these options.

The responsible party may be required to identify a variety of cleanup options with levels ranging from Background Level, to the lowest concentration level that can be attained by the highest and best technology available, to the lowest concentration level that can be attained by available technology that is "feasible" (see definition below).

In some cases, for instance where appropriate technology is not available or is not feasible, "other measures" that supplement, or substitute for, a cleanup will be necessary. These may include various engineering measures or institutional measures such as use restrictions, alternative drinking water supplies, security measures, evacuation and temporary housing.

SELECTION OF THE REMEDIAL ACTION

The information that is gathered during the Remedial Investigation and the Feasibility Study will be analyzed by the DEQ staff and is the basis for the Director's selection of the remedial action and determination of a cleanup level for a particular site. The goal of the proposed rules is to clean up sites to the background level or the lowest concentration level that is feasible.

Background is the benchmark, or goal, that the Director uses to begin the consideration of remedial action options. Background is the natural concentration level of hazardous substances that were present at the site before any or all past or present human-caused releases. However, if there is no technology capable of reaching Background Level or such technology is not feasible, then the concentration level may begin to rise above the background level.

Although the residual concentration of hazardous substances after the remedial action may be above the background level, it may not be higher than is necessary to find a "feasible" solution that is protective of public health, welfare and the environment.

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*Guidance
Failure of*

Attachment III
Agenda Item K
Sept. 9, 1988
EQC Meeting

340-122-001 OUTLINE OF REMEDIAL ACTION RULES

340-122-010 PURPOSE

340-122-020 DEFINITIONS

340-122-030 SCOPE (Relationship to Other Laws & Rules)

- (1) Exempted Releases
- (2) Conditional Exemption of Permitted Releases
- (3) Relationship to Other Cleanup Actions

340-122-040 STANDARDS

- (1) Protection of Public Health and Environment
- (2) Restore to Background Level or Highest Quality
- (3) Prevent or Minimize Migration/Non-Degradation with Exception
- (4) Long-Term Management

340-122-050 ACTIVITIES

- (1) 4 Activities
- (2) Case-by-Case Determination
- (3) Authority to Require, Authorize, or Perform
- (4) Short-Term Degradation Exception

340-122-060 PRELIMINARY ASSESSMENT

- (1) Preliminary Assessment Requirement
- (2) Preliminary Assessment Contents

340-122-070 REMOVAL

- (1) Authority
- (2) Remedial Action Reservation

340-122-080 REMEDIAL INVESTIGATION AND FEASIBILITY STUDY

- (1) Authority
- (2) Remedial Investigation Contents
 - (a) Characterization of the Hazardous substances
 - (b) Characterization of the Facility
 - (c) Endangerment Assessment
- (3) Feasibility Study Contents
 - (a) Development of Remedial Action Options
 - (b) Evaluation of Remedial Action Options

340-122-090 SELECTION OF THE REMEDIAL ACTION

- (1) "Protection" and "Feasibility" Requirements
- (2) Background Level or Lowest Concentration Level
- (3) Other Measures to Supplement Cleanup to Standard
- (4) Other Measures to Substitute for Cleanup
- (5) Protection
- (6) Permanent Solutions and Alternative or Resource Recovery Technologies
- (7) Cost-effectiveness
- (8) Effectiveness
- (9) Implementability
- (10) Burden of Proof for Remedial Action Option

340-122-100 PUBLIC NOTICE AND PARTICIPATION

- (1) Remedial Action Public Notice Requirements
- (2) Notice Contents
- (3) Consideration of Comments
- (4) Removal Public Notice
- (5) Availability of Records

340-122-110 ADMINISTRATIVE RECORD

- (1) Contents
- (2) Exclusions

REMEDIAL ACTION RULES

Proposed OAR 340-122-010 to 340-122-110

340-122-010 PURPOSE:

- (1) These rules establish the standards and process to be used under ORS 466.540 through 466.590 for the determination of removal, remedial action, and degree of cleanup necessary to assure protection of the present and future public health, safety, and welfare and the environment in the event of a release or threat of a release of a hazardous substances.

340-122-020 DEFINITIONS

Terms not defined in this section have the meanings set forth in ORS 466.540. Additional terms are defined as follows unless the context requires otherwise:

- (1) "Alternative technology" means a system, process, or method that permanently alters the composition of a hazardous substance through chemical, biological, or physical means so as to significantly reduce the volume, toxicity, or mobility of the hazardous substance or contaminated materials treated. Such technology may include a system, process, or method during any of the following stages of development:
 - (a) Available technology that is fully developed and in routine or commercial or private use;
 - (b) Innovative technology where cost or performance information is incomplete and where full-scale field testing is required before the technology is considered proven and available for routine use; or
 - (c) Emerging technology that has not successfully passed laboratory or pilot-scale testing.
- (2) "Background Level" means the concentration of hazardous substance, if any, existing in the environment at the site before the occurrence of any past or present release or releases.

- (3) "Director" means the Director of the Department of Environmental Quality or the Director's authorized representative.
- (4) "Environment" includes the waters of the state, any drinking water supply, any land surface and subsurface strata, sediments, saturated soils, subsurface gas, or ambient air or atmosphere.
- (5) "Facility" or "site" has the meaning set forth in ORS 466.540(6).
- (6) "Permitted release" means a release that is authorized by and in material compliance with a current and legally enforceable:
 - (a) Permit, of a specifically identified hazardous substance that is subject to a specified concentration level, standard, control, procedure, or other condition; or
 - (b) Sludge management plan approved pursuant to OAR 340-50-005 through 340-50-080.

340-122-030 SCOPE AND APPLICABILITY

(1) Exempted Releases

These rules shall not apply to releases exempted pursuant to ORS 466.540(14)(a), (b), (c), and (d).

(2) Conditional Exemption of Permitted Releases

These rules shall not apply to a permitted release of hazardous substances, unless the Director determines that application of these rules might be necessary to perform a preliminary assessment or in order to protect public health, safety, or welfare or the environment.

(3) Relationship to Other Cleanup Actions

(a) Except as provided under OAR 340-122-030(3)(b), these rules shall not apply to releases where one of the following actions has been completed:

(A) Spill response pursuant to ORS 466.605 to 466.680;

(B) Oil spill cleanup on surface waters pursuant to ORS 468.780 to 468.815;

(C) Corrective action of a release of a hazardous waste pursuant to ORS 466.005 to 466.350;

(D) Cleanup pursuant to ORS 468.700 to 468.778.

(b) Where hazardous substances remain after completion of one of the actions referred to in OAR 340-122-030(3)(a), these rules may apply if the Director determines that application of these rules might be necessary to perform a preliminary assessment or in order to protect public health, safety, or welfare or the environment.

340-122-040 STANDARDS

(1) Any removal or remedial action shall attain a degree of cleanup of hazardous substances and control of further release of hazardous substances that assure protection of present and future public health, safety, and welfare and the environment. Such protection shall prevent, eliminate, or minimize potential and actual adverse impacts from hazardous substances to:

(a) Biological receptors;

(b) Present and future uses of the environment;

(c) Ecosystems and natural resources; and

(d) Aesthetic characteristics of the environment.

(2) (a) In the event of a release of a hazardous substance, the environment shall be restored to Background Level, unless the Director determines that remedial actions designed to attain Background Level do not meet the "feasibility" requirement of OAR 340-122-090(1)(b), in which event the environment shall be restored to the lowest concentration level in accordance with OAR 340-122-090.

(b) In the event of a threat of release of hazardous substances, the Background Level of the environment shall be protected, unless the Director determines that remedial actions designed to protect the Background Level do not satisfy the "feasibility" requirement of OAR 340-122-090(1)(b), in which event the environment shall be protected to the lowest concentration level in accordance with OAR 340-122-090.

(c) As provided under (2)(a) and (2)(b), Background before contamination is the standard, a goal that might

not be possible in some instances or feasible in others, based on the qualifying factors as applied under 340-122-090(1)(b) of these rules.

- (3) A removal or remedial action shall prevent or minimize future releases and migration of hazardous substances in the environment. A removal or remedial action and related activities shall not result in degradation of the environment worse than that existing when the removal or remedial action commenced, unless short-term degradation is approved by the Director under OAR 340-122-050(4).
- (4) A removal or remedial action shall provide long-term care or management, where necessary, including but not limited to monitoring, operation, and maintenance as appropriate.

340-122-050 ACTIVITIES

- (1) The Director may perform or require to be performed the following activities:
 - (a) Preliminary Assessment, as required under OAR 340-122-060;
 - (b) Removal;
 - (c) Remedial Investigation and Feasibility Study; or
 - (d) Remedial action.
- (2) These activities, and the scope of these activities, are to be determined by the Director on a case-by-case basis. The Director may determine that all, a combination of less than all, or only one of the above activities are necessary at a facility. (For example, based upon the results of the Preliminary Assessment, the Director might find that a Remedial Investigation and Feasibility Study is not necessary.) The Director may also determine that performance of the above activities shall overlap or occur in an order different than that set forth above. (For example, the Director might find that a Removal must be undertaken during a Remedial Investigation and Feasibility Study.)
- (3) Removals, Remedial Actions, Preliminary Assessments, Remedial Investigations and Feasibility Studies, and related activities shall be performed by any person who is ordered or authorized to do so by the Director, or may be performed by the Department.

(4) The Director may allow short-term degradation of the environment during a removal or remedial action or related activities, provided that the Director finds:

(a) Such short-term degradation cannot practicably be avoided during implementation of the removal or remedial action or related activities; and

(b) The removal or remedial action or related activity is being implemented in accordance with a schedule approved by the Department; and

(c) The short-term degradation does not present an imminent and substantial endangerment to the public health, safety, or welfare or the environment.

340-122-060. PRELIMINARY ASSESSMENT

(1) (a) When the Department receives information about a release or threat of a release, the Department shall perform or require to be performed a Preliminary Assessment, including a site inspection, to confirm whether a release or a threat of release exists and whether a further investigation or removal or remedial action is needed. The Department shall ensure that the Preliminary Assessment is conducted as expeditiously as possible within the budgetary constraints of the Department.

(b) If the information received by the Department is not sufficiently reliable or definite to indicate whether a release or threat of release warrants a Preliminary Assessment, the Department shall request additional information from the person submitting the information or from the potential facility. If the Department determines that the information received does not warrant a Preliminary Assessment, the Department shall prepare a written explanation of such determination as a memorandum to the file and shall provide such memorandum to persons who request it.

(c) The Department may determine that existing information constitutes the equivalent of all or part of a Preliminary Assessment or site inspection provided the existing information was based upon a review of existing data, a good faith effort to discover additional data, and a site inspection. In such cases, the Department may elect not to perform or require to be performed an additional Preliminary Assessment or site inspection or any part of a Preliminary Assessment or site inspection.

- (2) At the discretion of the Department, a Preliminary Assessment may include but is not limited to:
 - (a) General facility information such as site name(s) and location, including a site map showing property boundaries;
 - (b) Information regarding hazardous substances present, including the name, types, and quantities of substances and storage, disposal, or handling methods;
 - (c) Preliminary identification of drainage pathways and potential pathways of exposure of human, biological, and environmental receptors from the release or threat of release;
 - (d) Review of the facility's history, including past and present uses; practices; hazardous substances used or generated; and environmental permits, approvals, violations, enforcement, or remedial actions;
 - (e) Preliminary identification of past and present owners and operators and persons potentially liable pursuant to ORS 466.567;
 - (f) Evaluation of any immediate and potential threat to public health, safety, and welfare and the environment; and
 - (g) Preliminary sampling to determine whether a release has occurred, including a map of the facility showing sampling locations.
- (3) Based upon the preliminary assessment or other information, the Director shall, as appropriate, make one or more of the following determinations:
 - (a) A release or threat of release has been confirmed;
 - (b) No further action is needed;
 - (c) Past or current regulatory action under a Department or another state or federal agency program is adequate to protect human health, safety, or welfare or the environment; or
 - (d) Additional investigation is needed.
- (4) When the Preliminary Assessment is completed, the Director shall determine the statutory authority under which any investigation, cleanup, or related activities shall be conducted. The Director may revise this determination as appropriate. The potentially

responsible person shall, as appropriate, be notified of such determination or subsequent revision.

340-122-070 REMOVAL

- (1) Based upon the Preliminary Assessment or other information, the Director may perform or require to be performed a removal that the Director determines is in compliance with the standards set forth under OAR 340-122-040(1), (3), and (4) and is necessary to prevent, minimize, or mitigate damage to the public health, safety, or welfare or the environment that might result from the release or threat of release.
- (2) The performance of a removal shall not affect the Director's authority to perform or require to be performed a remedial action in addition to the removal, if such remedial action will permanently or more fully address a release or threat of release. The Director may undertake or require that a removal be undertaken at any time from the discovery of a release or threat of a release through the completion of a remedial action.

340-122-080 REMEDIAL INVESTIGATION AND FEASIBILITY STUDY

- (1) If, based upon the Preliminary Assessment, the results of a removal, or other information, the Director determines that remedial action might be necessary to protect public health, safety, or welfare or the environment, the Director may perform or require to be performed a Remedial Investigation and/or Feasibility Study to develop information to determine the need for and selection of a remedial action.
- (2) The Remedial Investigation shall include but is not limited to characterization of hazardous substances, characterization of the facility, and an endangerment assessment.
 - (a) The characterization of the hazardous substances may include but is not limited to information regarding:
 - (A) Extent to which the source can be adequately identified and characterized;
 - (B) Amount, form, concentration, toxicity, environmental fate and transport, and other significant characterization of present substances; and

(C) Extent to which the substances might be reused or recycled.

(b) The characterization of the facility may include but is not limited to information regarding:

(A) Hazardous substances mixtures present, media of occurrence, and interface zones between media;

(B) Hydrogeologic factors;

(C) Climatologic and meteorologic factors; and

(D) Ambient air quality.

(c) The endangerment assessment may include but is not limited to information regarding:

(A) Potential routes of exposure and concentration;

(B) Characterization of toxic effects;

(C) Populations at risk;

(D) Potential or actual adverse impact on:

(i) Biological receptors,

(ii) Present and future uses of the environment,

(iii) Ecosystems and natural resources, and

(iv) Aesthetic characteristics of the environment;

(E) Extent to which substances have migrated or are expected to migrate and the threat such migration might pose to public health, safety and welfare or the environment; and

(F) Potential for release of any substances or treatment residuals that might remain after remedial action.

(3) The Feasibility Study shall include but is not limited to the development of remedial action options and the evaluation of remedial action options.

(a) The development of remedial action options may include but is not limited to the following range of options:

- (A) Remedial action attaining Background Level ;
 - (B) Highest and best technology attaining the lowest concentration levels technically achievable;
 - (C) Best feasible technology attaining the lowest concentration level that meets the requirements of OAR 340-122-090(1)(b) and (2), and does not exceed a site-specific concentration level considered protective of public health, safety, and welfare and the environment;
 - (D) Other measures to supplement or substitute for cleanup technologies, including but not limited to engineering or institutional controls (e.g., environmental hazard notice, alternative drinking water supply, caps, security measures, etc.)
 - (E) Combinations of any of the above options; and
 - (F) No action option.
- (b) (A) Remedial action options developed under OAR 340-122-080(3)(a) shall be evaluated under the requirements, criteria, preferences, and factors set forth in OAR 340-122-090 and according to any other criteria determined by the Director to be relevant to selection of a remedial action under OAR 340-122-090.
- (B) The evaluation of remedial action options developed under OAR 340-122-080(3)(a) shall include an evaluation of the extent to which the option or combination of options complies with relevant state, local, and federal law, standards, and guidance.

340-122-090 SELECTION OF THE REMEDIAL ACTION

(1) "Protection" and "Feasibility" Requirements

Based on the administrative record, the Director shall select a remedial action. Such remedial action shall:

(a) Be protective of present and future public health, safety, and welfare and the environment; and

(b) To the maximum extent practicable:

(A) use permanent solutions and alternative technologies or resource recovery technologies;

(B) be cost effective;

(C) be effective; and

(D) be implementable.

(2) Background Level or Lowest Concentration level

The remedial action shall attain the Background Level of the hazardous substances, unless the Director determines that Background Level does not satisfy the "feasibility" requirements set forth in OAR 340-122-090(1)(b), in which case the Director shall select a remedial action that attains the lowest concentration level of the hazardous substances that satisfies the "protection" and "feasibility" requirements set forth in OAR 340-122-090(1).

(3) Other Measures to Supplement Cleanup

The Director may require other measures, such as engineering and institutional controls, (e.g. environmental hazard notice, alternate drinking water supply, caps, security measures, etc.) to supplement cleanup of hazardous substances to Background Level or the lowest concentration level in accordance with OAR 340-122-090(2), where such supplementary measures are necessary to satisfy the "protection" and "feasibility" requirements set forth in OAR 340-122-090(1).

(4) Other Measures to Substitute for Cleanup

The Director may require other measures to substitute for cleanup of hazardous substances to Background Level or the lowest concentration level under OAR 340-122-090(2), provided that:

(a) The Director determines that there is no remedial action under OAR 340-122-090(2), combined with supplementary measures under OAR 340-122-090(3), that satisfies the "protection" and "feasibility" requirements of OAR 340-122-090(1);

(b) Any such substitute measures, as appropriate, include provision for long-term care and management, including monitoring and operation and maintenance, and periodic review to determine whether a remedial action satisfying the "protection" and "feasibility" requirements of OAR 340-122-090(1) has become available; and

(c) Any proposed use of substitute measures be subject to public notice and participation under OAR 340-122-100.

(5) Protection

(a) In determining whether a remedial action assures protection of the present and future public health, safety, and welfare and the environment under the "protection" requirement of OAR 340-122-090(1)(a), only Background Level shall be presumed to be protective. This presumption may be rebutted by information showing that a higher concentration level is also protective.

(b) In determining whether a concentration level higher than the Background Level is protective, the Director may consider:

- (A) The characterization of hazardous substances and the facility, and the endangerment assessment;
- (B) Other relevant cleanup or health standards, criteria, or guidance;
- (C) Relevant and reasonably available scientific information; and
- (D) Any other information relevant to the protectiveness of a remedial action.

(c) When comparing between potential concentration levels, a concentration level lower than another shall generally be considered to be more protective and preferable. This presumption may be rebutted by information showing that a higher concentration level is also protective.

(d) Any person responsible for undertaking the remedial action who proposes that the remedial action attain a concentration level higher than Background Level on the basis of protection shall have the burden of demonstrating to the Director through the Remedial Investigation and Feasibility Study that such concentration level is protective.

(6) Permanent solutions and alternative or resource recovery technologies

(a) In determining whether to select a remedial action that uses a permanent solution and alternative or resource recovery technologies under OAR 340-122-090(1)(b):

- (A) Permanent solutions shall be preferred over other remedies;
- (B) Remedial action options in which resource recovery or alternative technology is a principal element shall be preferred over remedial action options not involving such technology;
- (C) Subject to OAR 340-122-090(6)(e), the offsite transport and secure disposition of hazardous substances or contaminated materials without treatment may be preferred where alternative treatment technologies are not available or feasible;
- (D) Subject to OAR 340-122-090(6)(e) and (f), and notwithstanding the availability of feasible alternative treatment technologies as provided in OAR 340-122-090(6)(c), offsite transport and secure disposition of hazardous substances or contaminated materials may be preferred when the disposal method would significantly expedite the cleanup or would achieve a total cleanup, especially at sites with hazardous substances of small quantity or low toxicity;
- (E) The transport and secure disposition offsite of a hazardous waste under ORS 466.005 in a treatment, storage, or disposal facility shall meet 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; and
- (F) The transport and secure disposition of hazardous substances or contaminated materials, other than hazardous wastes, at an offsite facility may be allowed provided that the transport and secure disposition of such hazardous substances or contaminated materials, in the Director's determination, is adequate to protect the public health, safety, and welfare and the environment.

(7) Cost-effectiveness

(a) In determining whether a remedial action is cost-effective under OAR 340-122-090(1)(b), the Director may consider:

- (A) Costs of the remedial action relative to the costs of another remedial action option, if any, that achieves the same concentration level;
- (B) Extent to which the remedial action's short-term and long-term incremental costs are proportionate to its incremental results;
- (C) Extent to which the remedial action's short-term and long-term total costs are proportionate to its total results; and
- (D) Any other criterion relevant to cost-effectiveness of the remedial action.

(b) Costs that may be considered include but are not limited to:

- (A) Capital costs;
- (B) Operation and maintenance costs;
- (C) Costs of periodic reviews, where required;
- (D) Net present value of capital and operation and maintenance costs; and
- (E) Potential future remedial action costs.

(8) Effectiveness

(a) In determining whether a remedial action is effective under OAR 340-122-090(1)(b), the Director may consider:

- (A) Expected reduction in toxicity, mobility, and volume of the hazardous substances;
- (B) Short-term risks that might be posed to community, workers, and the environment during implementation, including potential threats to human health and the environment associated with excavation, transport, and redispersion or containment;

- (C) Length of time until full protection is achieved;
- (D) Magnitude of residual risks in terms of amounts and concentrations of hazardous substances remaining following implementation of a remedial action, including consideration of the persistence, toxicity, mobility, and propensity to bioaccumulate of such hazardous substances and their constituents;
- (E) Type and degree of long-term management required, including monitoring and operation and maintenance;
- (F) Long-term potential for exposure of human and environmental receptors to remaining contaminants;
- (G) Long-term reliability of engineering and institutional controls, including long-term uncertainties associated with land disposal, treated or untreated waste, and residuals;
- (H) Potential for failure of the remedial action or potential need for replacement of the remedy; and
- (I) Any other criterion relevant to effectiveness of the remedial action.

(9) Implementability

(a) In determining whether a remedial action is implementable under OAR 340-122-090(1)(b), the Director may consider:

- (A) Degree of difficulty associated with implementing the technology;
- (B) Expected operational reliability of the technology;
- (C) Need to coordinate with and obtain necessary approvals or permits from other agencies;
- (D) Availability of necessary equipment and specialists;
- (E) Available capacity and location of needed treatment, storage, and disposal services; and

(F) Any other criterion relevant to implementability of the remedial action.

- (10) Any person responsible for undertaking the remedial action who proposes one remedial action option over another on the basis of one or more of the elements of OAR 340-122-090(1)(b) shall have the burden of demonstrating to the Director through the remedial investigation and feasibility study that such remedial action option fulfills the requirements of OAR 340-122-090(1)(a) and (b).

340-122-100 PUBLIC NOTICE AND PARTICIPATION

- (1) The Department shall, prior to approval of a remedial action:
- (a) Provide notice and opportunity for comment and a public meeting regarding the proposed remedial action, in accordance with ORS 466.575; and
 - (b) Make a reasonable effort to identify and notify interested community organizations.
- (2) Any notice under OAR 340-122-100(1)(b) shall include but not be limited to a brief description of the Department's proposed remedial action option, if known, and information regarding where a copy of the full proposal may be inspected and copied.
- (3) The Director shall consider any comments received during the public comment period and any public meeting before approving the remedial action.
- (4) In the Director's discretion, the Department may provide public notice and opportunity for comment and a public meeting regarding a proposed removal and shall consider any comments received during such public comment period or any public meeting.
- (5) Agency records concerning removal or remedial actions and related investigations 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 removals, remedial actions, and related investigations, to be located at the headquarters and regional offices of the Department.

- (1) For purposes of the Director's selection of a removal or remedial action, and enforcement, cost recovery, or review, if any, related to the Director's action, the administrative record shall consist of the following types of documents generated for a facility up to the time of the Director's action:
 - (a) Factual information, data, and analyses that form a basis for the Director's action;
 - (b) The Preliminary Assessment and Remedial Investigation and Feasibility Study, as applicable;
 - (c) Orders, consent decrees, settlement agreements, work plans, and other decision documents;
 - (d) Guidance documents and technical literature that form a basis for the Director's action; and
 - (e) Public comments and other information received by the Department prior to the Director's action, and Department responses to significant comments.
- (2) Unless expressly designated part of the administrative record by the Director, the administrative record shall not include:
 - (a) Draft documents and internal memoranda;
 - (b) Documents relating to the liability of persons potentially liable under ORS 466.567;
 - (c) Documents relating to state remedial action costs; and
 - (d) Documents privileged under law or confidential under ORS 192.501 or 192.502.

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 446.553(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. Although the law requires protection of public health, safety, welfare and the environment, it does not define or specify the level of protection or the degree of cleanup. Rules are needed to implement the statute and to guide the decision making process for degree of cleanup and selection of the remedial action.

(3) Principal Documents Relied Upon in this Rulemaking

- ORS 466.540 to 466.575
- ORS 466.705 to 466.835
- OAR Chapter 340, Divisions 41, 47, 50, 61 and 108
- Comprehensive Environmental Response, Compensation, and Liability Act, P.L. 96-510, as amended by PL 99-499.

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 hazardous substances. The remedial actions performed pursuant to the proposed rules will identify the extent of hazardous 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

These proposed rules will have a significant but indeterminable impact on state agencies¹, local government¹, and small and large businesses that are liable for contamination due to releases of hazardous substances into the environment.

The costs are indeterminable because information is not available on the number of sites, the nature and extent of contamination, the potential public health or environmental hazards, the degree of cleanup, the technologies available, or the need for long term operation and maintenance. This information and useful cost estimates will not be available for many years.

However, we can make an estimate of the order of magnitude. The cost of federal Superfund sites have ranged from \$5 million to \$25 million and up. The costs of state superfund sites will generally range from \$50,000 to \$2 million, and a few sites up to \$20 million. The average cost may be approximately \$500,000. If there are 200 sites cleaned up over the next 5 years, total costs, based on this average, would be approximately \$100 million.

¹ A unit of state or local government is generally not liable if it acquired ownership or control of a facility through either exercise of eminent domain or involuntarily by virtue of its function as sovereign, e.g., bankruptcy, abandonment, or tax delinquency proceedings. ORS 466.567.

The major fiscal and economic impact of cleanup is actually imposed by ORS 466.540 to 466.590 (Senate Bill 122 -- the Oregon superfund law) which authorizes the cleanup of contaminated sites to protect the public health, safety, welfare and the environment. SB 122 did not address the issue of how much protection is enough, except SB 122 required the Environmental Quality Commission to develop rules on the degree of cleanup.

Even if aggregate information were available, determining the cost of cleanup at even one specific site is very difficult and depends on a large number of factors. These proposed rules, by establishing the process for determining the level of cleanup, affect the level of these costs. It is not possible to segregate the incremental costs that might be associated with various levels of cleanup resulting from these or alternative rules.

Generally speaking, as protection increases, costs increase. For example, a cleanup level of 10 parts per million (ppm) of a hazardous substance will generally cost more than a cleanup to 100 ppm. How much more it will cost will depend on the circumstances at the site and the technologies available.

These proposed rules identify the activities that will identify the characteristics of the site and the technologies available to achieve a range of cleanup levels. Based on the resulting information, the Director will weigh the options against an array of criteria and select the appropriate site-specific cleanup level. Only after completing this complex process is it possible to estimate costs at a specific site.

These proposed rules do not impose standardized requirements, like those found under some other environmental laws, where various types of equipment can be identified and costs estimated. Rather each site poses a unique risk management problem. Consequently, these proposed rules do not require cleanup to a predetermined numeric standard. Rather they specifically state that the remedial action, in addition to being protective, shall, to the maximum extent practicable, be cost effective, implementable and effective. Each remedial action must reach an equilibrium among these concerns.

This balance between varying degrees of protection and "feasibility" can best be determined by a process of investigation and analysis that considers the unique circumstances of each site and arrives at a site-specific decision. Thus it is not possible to identify whether these proposed rules would require more or less cleanup compared to another set of rules because each site is unique and the cleanup level is flexible.

Any governmental agency or business that has owned property or operated an activity, which involved the disposal, treatment, storage, generation or handling of hazardous wastes, petroleum and other hazardous substances, may be subject to the provisions of

these rules. It is not possible to predict how much of the economic impact will be borne by small business and other business, and by state agencies and local agencies. A small percentage of these sites' cleanup costs will be paid by state or federal cleanup funds, but only when a potentially responsible party is recalcitrant, bankrupt, or not identifiable. Otherwise they will be paid by the liable person(s).

Allan Solares:cc
(503) 229-5071
8/25/88

REMEDIAL ACTION ADVISORY COMMITTEE MEMBERS

Attachment V
 Agenda Item K
 Sept. 9, 1988
 EQC Meeting

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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

11/1/86

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

REMOVAL OR REMEDIAL ACTION TO ABATE HEALTH HAZARDS

Oregon Revised Statutes 466.540 to 466.590

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**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 agree-

ment 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]