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OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS 01/19/1989

State of Oregon
Department of Environmental Quality

OREGON ENVIRONMENTAL QUALITY COMMISSION

WORK SESSION

January 19, 1989

Fourth Floor Conference Room, Executive Building
811 S. W. Sixth Avenue
Portland, Oregon 97204

NOTE: The purpose of the work session is to provide an opportunity for informal discussion of the following items. The Commission will not be making decisions at the work session.

2:30 1. Gasoline volatility cap

3:15 2. State Revolving Loan Fund Program - discussion of transition from grant program to a loan program (action item on regular agenda)

4:00 3. Land use policy discussion - background on options for land use coordination

4:30 4. Strategic planning

4:50 5. Interagency coordination policy and implementation strategy

4:55 6. Mid-Multnomah County pollution control bonds: Update on status of negotiations with Portland and Gresham

OREGON ENVIRONMENTAL QUALITY COMMISSION

REVISED TENTATIVE AGENDA

January 20, 1989

Fourth Floor Conference Room, Executive Building
811 S. W. Sixth Avenue
Portland, Oregon 97204

7:30 FIELD TRIP: Ambient air monitoring - Southeast Portland monitoring station and DEQ Laboratory air data facility

Regular meeting begins at 9:30 a.m.

Consent Items

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

A. Minutes of the December 9, 1988, EQC meeting.

B. Monthly Activity Report for November 1988.

C. Civil Penalties Settlements.

D. Tax Credits for Approval.

E. Commission member reports:

- Pacific Northwest Hazardous Waste Advisory Council (Hutchison)
- Governor's Watershed Enhancement Board (Sage)
- Strategic Planning (Wessinger)

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.

- Unified Sewerage Agency (USA): Report on progress to improve water quality in the Tualatin Basin.

Hearing Authorizations

F. Request for Authorization to Conduct Public Hearings on Proposed Rule, OAR 340-62-053, Economic Feasibility of Reuse or Recycling Waste Tires, and Revisions to Existing Rules, OAR 340-62, Permit Procedures and Standards for Waste Tire Storage Sites and Waste Tire Carriers.

G. Request for Authorization to Hold a Public Hearing on State Revolving Loan Fund (SRF) Rules.

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.

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

I. Permanent Rules for Certification of Recycling for Programs and Amendments to Existing Recycling Rules.

J. Environmental Quality Commission's report to the Legislature on the Oregon Recycling Opportunity Act and the Department's report to the Legislature on Local Government Solid Waste Reduction Programs.

K. Report to the Legislature on the METRO Waste Reduction Program.

L. METRO Solid Waste Reduction Program: Approval of Stipulated Order.

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 set time should arrive at 9:30 a.m. to avoid missing any item of interest.

The next Commission meeting will be Friday, March 3, 1989. There will be a short work session prior to this meeting at 2:30 p.m., Thursday, March 2, 1989.

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.

WORK SESSION
REQUEST FOR EQC DISCUSSION

Meeting Date: 01/19/89
Agenda Item: 1
Division: AQ
Section:

SUBJECT:

Gasoline Volatility Cap

PURPOSE:

To further reduce ozone precursors prior to the 1989 ozone season and thus have greater assurance that the Portland Metropolitan area will be in compliance with national ozone standards.

ACTION REQUESTED:

_X_ Work Session Discussion
___ General Program Background
___ Program Strategy
___ Proposed Policy
___ Potential Rules
_X_ Other:
Policy guidance on implementation of VOC controls by establishing maximum RVP (Reid Vapor Pressure) standards for motor gasoline.

___ Authorize Rulemaking Hearing
Proposed Rules (Draft) Attachment _A_
Rulemaking Statements Attachment ___
Fiscal and Economic Impact Statement Attachment ___
Draft Public Notice Attachment ___
___ Adopt Rules
Proposed Rules (Final Recommendation) Attachment ___
Rulemaking Statements Attachment ___
Fiscal and Economic Impact Statement Attachment ___
Public Notice Attachment ___
___ Issue Contested Case Decision/Order
Proposed Order Attachment ___
___ Other (specify)

AUTHORITY/NEED FOR ACTION:

_X_ Pursuant to Statute: ORS 468.295 Attachment B
Enactment Date: _____
___ Amendment of Existing Rule: _____ Attachment ___
___ Implement Delegated Federal Program: _____ Attachment ___
___ Department Recommendation: Attachment ___
___ Other: Attachment ___

_X_ Time Constraints:

To deal with 1989 Summer Ozone (May - Sept) requires policy direction, hearing authorization, public hearing and rule adoption. To meet time constraint, Emergency rule consideration may be necessary.

Gasoline volatility has been increasing in recent years, which has interfered with progress to control ozone. USEPA proposed volatility limits in August of 1987 (to be effective in May of 1989), but USEPA may not finalize in time for the 1989 ozone season.

DESCRIPTION OF REQUESTED ACTION:

Policy direction on whether to proceed on State gasoline volatility cap and regulations.

DEVELOPMENTAL BACKGROUND:

_X_ Department Report (Background/Explanation) Attachment C
___ Advisory Committee Report/Recommendation Attachment ___
___ Hearing Officer's Report/Recommendations Attachment ___
___ Response to Testimony/Comments Attachment ___
_X_ Prior EQC Agenda Items:
Agenda Item F, September 27, 1985
Agenda Item M, January 3, 1986
Provide additional background on Oregon Ozone Strategy Attachments Not included

__ Other Related Reports/Rules/Statutes: Attachment ___

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

Helps insure attainment and maintenance of ozone standard.

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

Statewide application to major petroleum suppliers, fuel distribution system operations. Would affect gasoline distribution between May - September resulting in an approximate 1¢/gal increase in 1989/91 with price increases of about 2¢/gal long term.

PROGRAM CONSIDERATIONS:

Could require compliance checks by Department staff. Audit of industry records. Periodic inspection and testing.

POLICY ISSUES FOR COMMISSION TO RESOLVE:

Do we wait for EPA? or do we act now?

COMMISSION ALTERNATIVES:

1. Wait for USEPA action.
2. Regular Rules Schedule - Hearing authorization in March 1989, public hearing(s) in April, 1989, rules adoption in June, 1989.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

1. Do not wait for EPA to act on gasoline volatility issue.
2. Proceed expeditiously with public hearings for gasoline volatility rule for Oregon.
3. Hold public hearing(s) in March 1989.

INTENDED FOLLOWUP ACTIONS:

1. Return to Commission for hearing authorization at March EQC meeting.

Approved:

Section: Ron Householder

Division: Merle A. Jacobs

Director: Lydia Taylor

Contact: Merlyn Hough/Bill Jasper

Phone: 229-6446/229-5081

MH:BJ:d
AD4252 (EQC.NEW 12/19/88)
December 29, 1988

Attachment A

POTENTIAL NEW RULES

Gasoline Volatility

Definitions

340-22-060 As used in this regulation, "gasoline" means any petroleum distillate having a Reid Vapor Pressure of more than four pounds as defined by ASTM Method D323.

Reid Vapor Pressure for Gasolines

340-22-065 No person shall sell, distribute, use, or make available for use, any gasoline having a Reid Vapor Pressure greater than 10.5 pounds per square inch during the period May 16 through September 15 of each year, beginning in 1989.

Test Method

340-22-070 Sampling and testing of gasoline shall be in accordance with ASTM Method D323 or an equivalent method approved by the Director.

468.295 Air purity standards; air quality standards. (1) By rule the commission may establish areas of the state and prescribe the degree of air pollution or air contamination that may be permitted therein, as air purity standards for such areas.

(2) In determining air purity standards, the commission shall consider the following factors:

(a) The quality or characteristics of air contaminants or the duration of their presence in the atmosphere which may cause air pollution in the particular area of the state;

(b) Existing physical conditions and topography;

(c) Prevailing wind directions and velocities;

(d) Temperatures and temperature inversion periods, humidity, and other atmospheric conditions;

(e) Possible chemical reactions between air contaminants or between such air contaminants and air gases, moisture or sunlight;

(f) The predominant character of development of the area of the state, such as residential, highly developed industrial area, commercial or other characteristics;

(g) Availability of air-cleaning devices;

(h) Economic feasibility of air-cleaning devices;

(i) Effect on normal human health of particular air contaminants;

(j) Effect on efficiency of industrial operation resulting from use of air-cleaning devices;

(k) Extent of danger to property in the area reasonably to be expected from any particular air contaminants;

(L) Interference with reasonable enjoyment of life by persons in the area which can reasonably be expected to be affected by the air contaminants;

(m) The volume of air contaminants emitted from a particular class of air contamination source;

(n) The economic and industrial development of the state and continuance of public enjoyment of the state's natural resources; and

(o) Other factors which the commission may find applicable.

(3) The commission may establish air quality standards including emission standards for the entire state or an area of the state. The standards shall set forth the maximum amount of air pollution permissible in various categories of air contaminants and may differentiate between different areas of the state, different air contaminants and different air contamination sources or classes thereof. [Formerly 449.785]

468.300 When liability for violation not applicable. The several liabilities which may be imposed pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter upon persons violating the provisions of any rule, standard or order of the commission pertaining to air pollution shall not be so construed as to include any violation which was caused by an act of God, war, strife, riot or other condition as to which any negligence or wilful misconduct on the part of such person was not the proximate cause. [Formerly 449.825]

468.305 General comprehensive plan. Subject to policy direction by the commission, the department shall prepare and develop a general comprehensive plan for the control or abatement of existing air pollution and for the control or prevention of new air pollution in any area of the state in which air pollution is found already existing or in danger of existing. The plan shall recognize varying requirements for different areas of the state. [Formerly 449.782]

468.310 Permits. By rule the commission may require permits for air contamination sources classified by type of air contaminants, by type of air contamination source or by area of the state. The permits shall be issued as provided in ORS 468.065. [Formerly 449.727]

468.315 Activities prohibited without permit; limit on activities with permit. (1) Without first obtaining a permit pursuant to ORS 468.065, no person shall:

(a) Discharge, emit or allow to be discharged or emitted any air contaminant for which a permit is required under ORS 468.310 into the outdoor atmosphere from any air contamination source.

(b) Construct, install, establish, develop, modify, enlarge or operate any air contamination source for which a permit is required under ORS 468.310.

(2) No person shall increase in volume or strength discharges or emissions from any air contamination source for which a permit is required under ORS 468.310 in excess of the permissive discharges or emission specified under an existing permit. [Formerly 449.731]

468.320 Classification of air contamination sources; registration and reporting of sources. (1) By rule the commis-

ATTACHMENT C

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Work Session Item January 19, 1989, EQC Meeting

Gasoline Volatility Cap

BACKGROUND

The U. S. Environmental Protection Agency (EPA) regards the Portland metro area as in continuing non-attainment for ozone. The Department believes the State Implementation Plan (SIP), approved by EPA, has been faithfully implemented and attainment/non-attainment status should be based upon post-1987 monitored air quality values. To achieve compliance, the one hour standard of 0.12 parts per million (ppm) cannot be exceeded more than once per year per monitoring site when averaged over a three year period.

The Department may or may not be successful in convincing EPA that attainment/non-attainment should be based upon post-1987 monitoring. To date, EPA maintains an area's status should depend upon the most recent 3 years of air quality data. Currently that would be the years 1986, 1987, and 1988. If 1986 data is included, the 3 year average is more than one exceedance per site per year. If the 1989 monitored air quality shows little or nothing in the way of exceedances, the 3 year average of 1987, 1988, and 1989 should document the area's attainment status.

Whether attainment is determined solely on the basis of post-1987 air quality or on the most recent three year average of exceedances, 1989 is a critical year for the Portland area. Given the relationship between ozone concentrations and meteorology, and the unpredictability of western Oregon's summer weather, further measures to reduce ozone precursors prior to or during the 1989 ozone season should increase the probability of attainment.

Attainment is an important issue. Under the terms of the Clean Air Act, economic sanctions can be applied to areas that fail to meet the ambient air health standards. Oregon wants to provide a

good environment for its citizens and a good base for economic development.

OZONE AND HYDROCARBONS

Ozone can be both protection and pollution in our environment. In the stratosphere, ozone protects the earth from the harmful effects of ultraviolet radiation. There is concern about the depletion of this ozone. At the ground level, ozone is the chemical that is measured to track all photochemical oxidants. When an air pollutant it has undesirable effects on people, plants and materials.

Ozone is a highly reactive compound and the main component of photochemical oxidants or smog. In high concentrations it can cause difficulty in breathing, chest pain, chest and nasal congestion, coughing, eye irritation, nausea and/or headaches. Ozone is a colorless gas that has a pungent metallic odor in high concentrations. It can reduce plant growth and crop yield. It can affect a variety of materials, resulting in fading of paint and fabric and accelerated ageing and cracking of synthetic rubbers and similar materials.

It is formed during the photochemical reaction between oxides of nitrogen (NOx) and volatile organic compounds (VOC) or hydrocarbons. The reactions occur in the presence of direct sunlight and warm temperatures. The highest concentrations of ozone generally occur downwind of urban areas. For example, the highest ozone concentrations in the greater Portland area have been measured in the Milwaukie to Molalla area.

Nitrogen dioxide, a major component of NOx is a toxic reddish-brown gas. It is formed during the combustion processes, such as in automobile engines, boilers, or from a variety of industrial sources.

Volatile organic compounds, in this case hydrocarbons emitted from gasoline, also come from a variety of sources. Hydrocarbons are one of the main components of auto exhaust, and are currently regulated in the inspection/maintenance program. In addition to the tailpipe sources, they are also generated from evaporation of gasoline, both at service stations and from the cars and trucks fuel tanks. This is the specific target area for discussion. Industrial sources are strictly regulated, but can be sizable emitters. Providing significant hydrocarbon reductions from gasoline marketing will help meet the ambient health standards and should allow for economic expansion from another source, such as an electronics manufacturing plant.

Improving the control of VOCs, specifically through the reduction of hydrocarbon emissions resulting from evaporative losses associated with gasoline marketing, will result in a reduction of ozone.

CONTROL TECHNIQUES

There are three major methods of controlling hydrocarbons from gasoline marketing operations that can be regulated by the state. They are Stage I, Stage II, and gasoline volatility control. A fourth method, based upon improving the on board vapor storage affects only new motor vehicles, and can only be regulated by the federal government. EPA has been studying this strategy as an option, but has not yet made any decision on improving on board vapor storage.

Stage I controls the emissions during the filling of the fuel trucks at the gasoline distributors and the filling of the underground tanks at the service stations. Stage I controls are in place in the major metropolitan areas in Oregon.

Stage II controls the emissions from the service station when the gasoline is used to fill the vehicle fuel tank. Stage II controls are found in a number of areas in the country and are considered a cost-effective means of obtaining hydrocarbon control.

Gasoline volatility controls regulate the Reid Vapor Pressure. RVP is a measure of how easily gasoline evaporates. The specific test method is defined in ASTM D 323. By regulating the vapor pressure of gasoline, significant emission reductions can be obtained and the value of Stage II type-controls would need to be reevaluated, at least in the short term.

EPA ACTION

The most immediately achievable reduction is through the adoption of a limit on the volatility of gasoline sold during the ozone season. Recognizing this, EPA proposed to implement a system of national gasoline evaporative emission standards in August 1987. In western Oregon, a 10.5 psi standard would initially be established, with the standard dropping to 9 psi in 1992. OMB review and delays during the changing of administrations may prevent EPA's volatility limit from taking effect before the 1989 ozone season.

STATE ACTION-A BACKUP PLAN

As a safeguard against such a circumstance, the Commission could consider its own action, adopting a limit on gasoline volatility prior to the 1989 ozone season. A phased approach, similar to the EPA approach, of a 10.5 psi (Reid Vapor Pressure) limit in 1989 followed by a 9.0 psi limit in 1991/1992 would probably be the most efficient. The Clean Air Act provides EPA with preemptive authority in setting volatility limits, so it would appear prudent to adopt the same limits proposed by EPA.

Informal discussions with some representatives of the petroleum industry have indicated that a RVP cap on motor gasoline is expected in the future, if only under federal mandate. They have also indicated that the phased approach would pose the least amount of problems to their industry, but have indicated that there may be a great concern at the 9 psi limit. Because of the marketing and distribution system of gasoline in Oregon, a RVP cap on motor gasoline could apply statewide.

GASOLINE IN OREGON

The gasoline sold in Oregon comes primarily from the Puget Sound area via the pipeline (60-70%) and California via tanker (about 30%). Other gasoline enters the state by tanker at Coos Bay and from being barged down river from the refineries in the Salt Lake area. Currently, summer gasoline sold in the Portland area during the ozone season averages about 11.5 psi RVP. A reduction to 10.5 psi represents a VOC reduction of approximately 5,000 kilograms per average summer workday, or a 4% reduction in overall VOC emissions. This means that during the 4 month period, May 15 through September 15, the environment would receive about 600 tons of VOC less than received during the same period prior to establishment of a volatility limit.

The question may arise as to what the petroleum refiners will do to change the composition of motor gasoline and can these changes be incorporated into a 1989 time frame. It is the understanding of the staff, that the refineries will be able to accommodate a 10.5 psi RVP fuel for this summer. Simplistically, it will be accomplished by reducing the amount of butane normally blended into motor gasoline.

The cost of reducing the volatility to 10.5 psi is expected to result in under a penny a gallon increase in the cost of gasoline to the consumer. Approximately 44,000,000 gallons per month of gasoline are sold within the Portland metro area during the ozone season. Statewide, there are about 120,000,000 gallons per month of gasoline sold. A $0.006-$0.008 increase, therefore, represents an overall cost of $3-4 million per ozone season, statewide.

However, the lower gasoline volatility would benefit driveability and fuel economy. The benefits of improved fuel economy, while not likely to noted by the individual motorist, would reduce the net cost to less than $1 Million per ozone season. This would result in a net cost-effectiveness of $320-$500 per ton of VOC reduction. (For perspective, VOC control cost of $2000 per ton are generally considered reasonable.)

The VOC reductions from a statewide gasoline volatility limit would benefit both the Portland area, and would also help in maintaining the ozone standard in other areas of Oregon, such as Salem, Eugene, and Medford.

Two staff memos are attached to this report. These memos discuss the issues of fuel volatility. They were prepared from different perspectives and provide additional background. The first report examines some of the historical data, showing how fuel volatility has increased over the years and provides some estimates on the emission reductions that might be achieved. The second report discusses the EPA's 1987 volatility proposal and also how the different states address the issues of fuel quality.

DISCUSSION ON A PROPOSAL FOR A RULE

To facilitate discussion, proposed rule amendments which would establish a maximum RVP on motor gasoline sold in the state are included in the Commission package. Any rule adoption, would be proposed under ORS 468.295. This is the Commission's general authority for rulemaking.

The staff has had discussions with its counterparts in the Washington Department of Ecology and regional pollution control agencies. Both staffs are working on how to improve hydrocarbon controls through RVP controls. It is a desire that the result from both states will be compatible, since both states appear to be following the same paths. The timetables, however, may be different, since the Seattle area ozone interest is more of a "maintenance" issue, rather than the "compliance" issue in Portland.

The neighboring states of Idaho and California have adopted volatility controls on gasoline. Idaho and California have incorporated all of the standards associated in ASTM D-439. Furthermore, California has specifically adopted a statewide standard of 9.0 psi RVP. California also has very specific legislative mandate for that 9.0 psi standard. The gasoline currently manufactured in California for sale in Oregon does not necessarily meet the tighter California standards.

CONCLUSION

There is an issue of compliance and maintenance with the ozone standard in the Portland metropolitan area for 1989. Obtaining more control on hydrocarbon emissions will result in less pressure on the ozone standard. Hydrocarbon emissions resulting from fuel evaporative losses and gasoline marketing can be controlled through the establishment of both a volatility standard and implementation of Stage II vapor controls, though only the impact of a volatility standard has been discussed. The USEPA has proposed nationwide RVP specifications that would affect the volatility of gasoline sold in Oregon. For a variety of reasons, there is doubt that USEPA will enact volatility standards in sufficient time for the 1989 ozone season. The Commission has the authority to establish RVP standards for motor gasoline sold, and should consider such action as a public health measure, pending action by the USEPA.

If the Commission directs that a program be developed to implement RVP controls for the 1989 ozone season, the phased approach outlined earlier appears reasonable.

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY

INTEROFFICE MEMORANDUM

DATE: September 30, 1988

TO: John Kowalczyk, Nick Nikkila

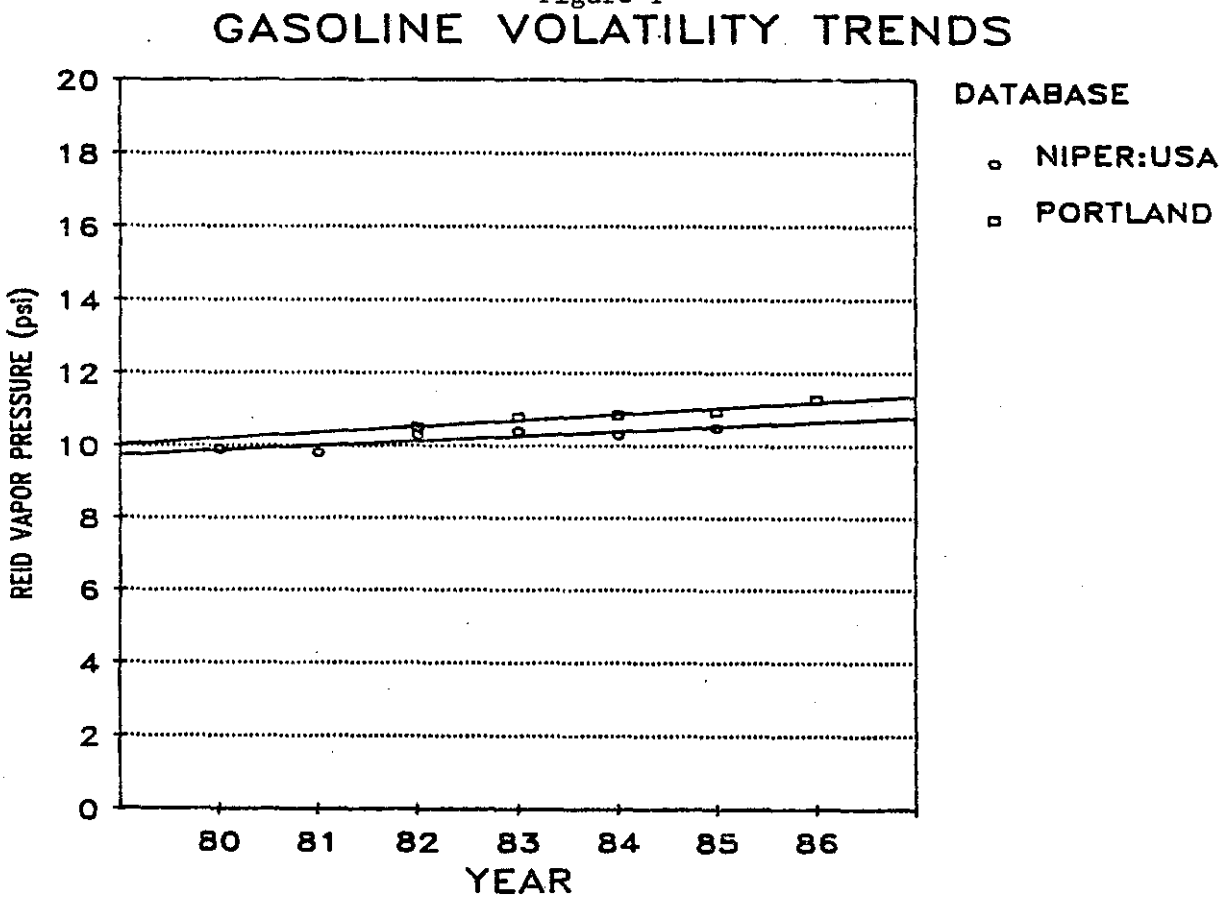
FROM: Merlyn Hough

SUBJECT: Gasoline Volatility and Stage II Information

BACKGROUND

As you are aware, gasoline volatility has been steadily increasing in the non-California U.S. and Portland in particular in recent years. Figure 1 outlines the trend and shows that the gasoline volatility in Portland has consistently been above the national average. This increasing trend is of concern because it results in more gasoline vapors in the atmosphere which contributes to ozone formation downwind of the Portland area.

Figure 1



Three options have been identified to further reduce gasoline-related emissions: (1) Onboard canisters and improved evaporative control systems on new motor vehicles; (2) Volatility limits on gasoline; and (3) Stage II service station controls. The first option (onboard controls) would possibly be the most cost-effective option in the long-term but would require several years to provide significant air quality benefits, would require action at the national level by the U.S. Environmental Protection Agency, and would probably require signoff by the National Highway Traffic Safety Administration regarding safety issues. The second and third options (volatility limits and Stage II controls) could be implemented at either the state or national level.

The three control options would control gasoline vapors in different ways. Onboard controls would reduce refueling emissions (ie, Stage II) and vehicle running losses (diurnal and hot soak emissions). Volatility limits would reduce gasoline evaporation throughout the gasoline distribution system (terminals, bulk plants, barge loading, Stage I and Stage II) and vehicle running losses. Stage II service station controls would reduce gasoline vapors from refueling and evaporation from underground storage tanks but would not affect running losses. Onboard and Stage II controls would also reduce benzene and other toxic emissions. The California Air Resources Board supports and is implementing a multi-faceted approach using all three of these control options.[1]

VOLATILITY LIMITS

Portland area gasoline has an average volatility of about 11.5 pounds per square inch (psi) Reid vapor pressure (RVP).[2,3] An RVP reduction of 1.0 psi (to 10.5 psi) would provide a 9% reduction in gasoline distribution system emissions and a 7-8% reduction in vehicle emissions.[4,5] This would provide about a 4% reduction, or a 4-5 megagram per day (Mg/d) reduction, in overall volatile organic compound (VOC) emissions in the Oregon portion of the Portland-Vancouver Air Quality Maintenance Area (Portland AQMA). An RVP reduction of 2.5 psi (to 9.0 psi) would provide a 20-22% reduction in gasoline distribution system emissions and a 15-16% reduction in vehicle emissions.[4,5] This would provide a 7-8% reduction (9-10 Mg/d) in overall VOC emissions in the Portland AQMA. This 7-8% airshed reduction from a 9.0 RVP limit compares to 5-7% calculated airshed benefits for Detroit, Rhode Island, and New York City.[4,6] Since it is on the high side of the range for these other areas, the more conservative lower end of the Portland range is used in the subsequent tables and charts.

Figure 2 outlines the VOC emissions in the Portland AQMA for various RVP gasoline (1986 basis). Figure 3 indicates the VOC reduction for various RVP gasoline.

Figure 2

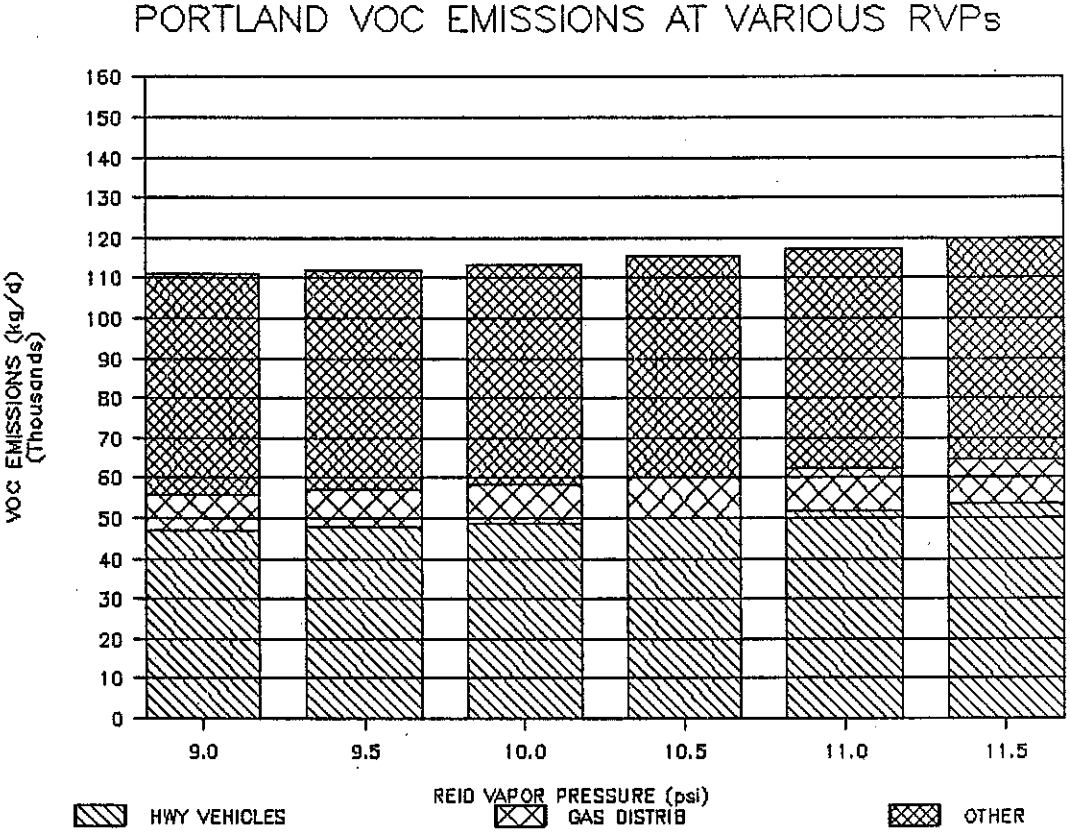
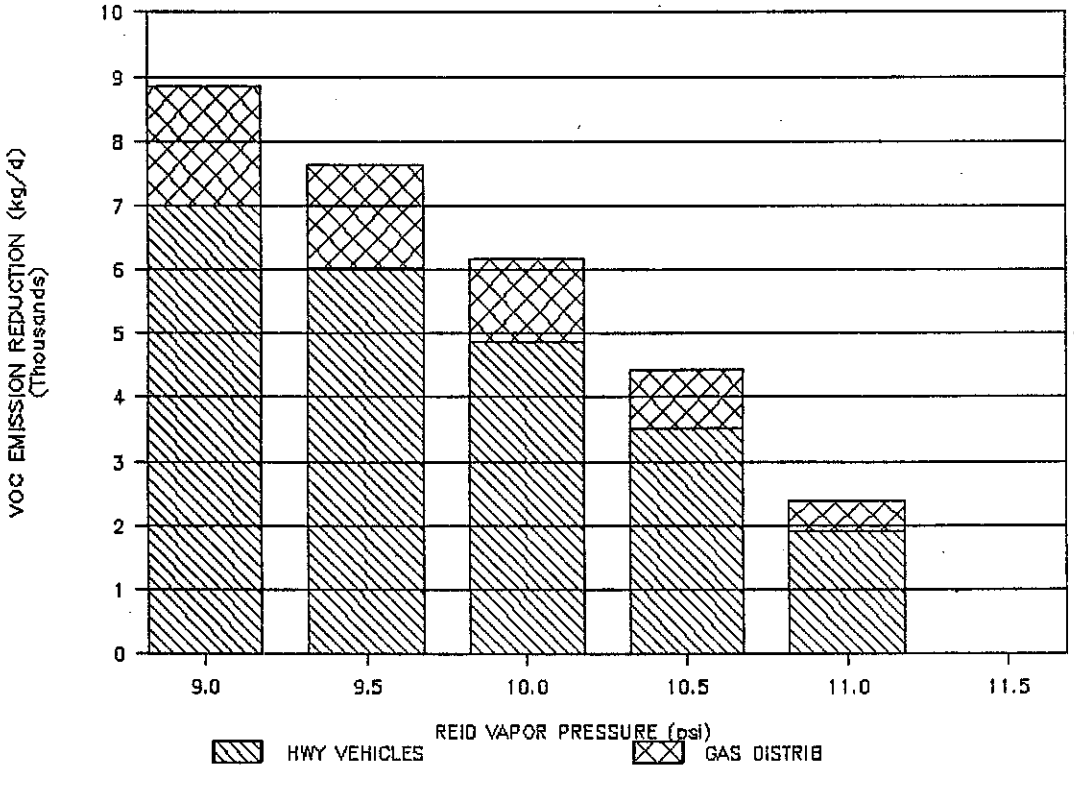


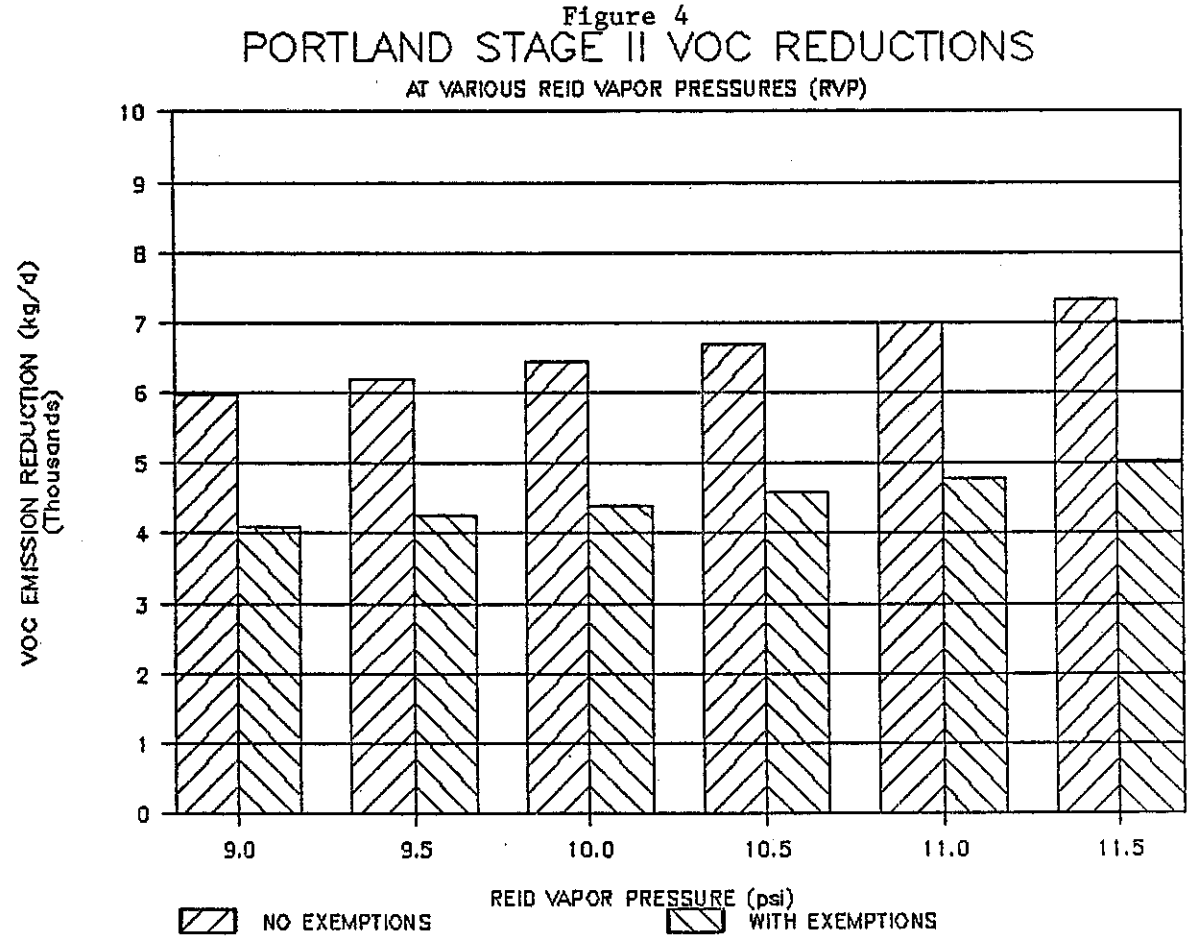
Figure 3



STAGE II SERVICE STATION CONTROLS

Stage II service station vapor recovery equipment has a maximum potential efficiency of 95% control of refueling emissions. The California in-use efficiency is 80-92% due to some equipment defects.[1] EPA has estimated the Stage II control efficiency at 63-92% depending on the number of exempt smaller service stations.[7] Stage II service station controls would provide a 3-6% reduction (4-7 Mg/d) in overall VOC emissions in the Portland AQMA as outlined in Figure 4.

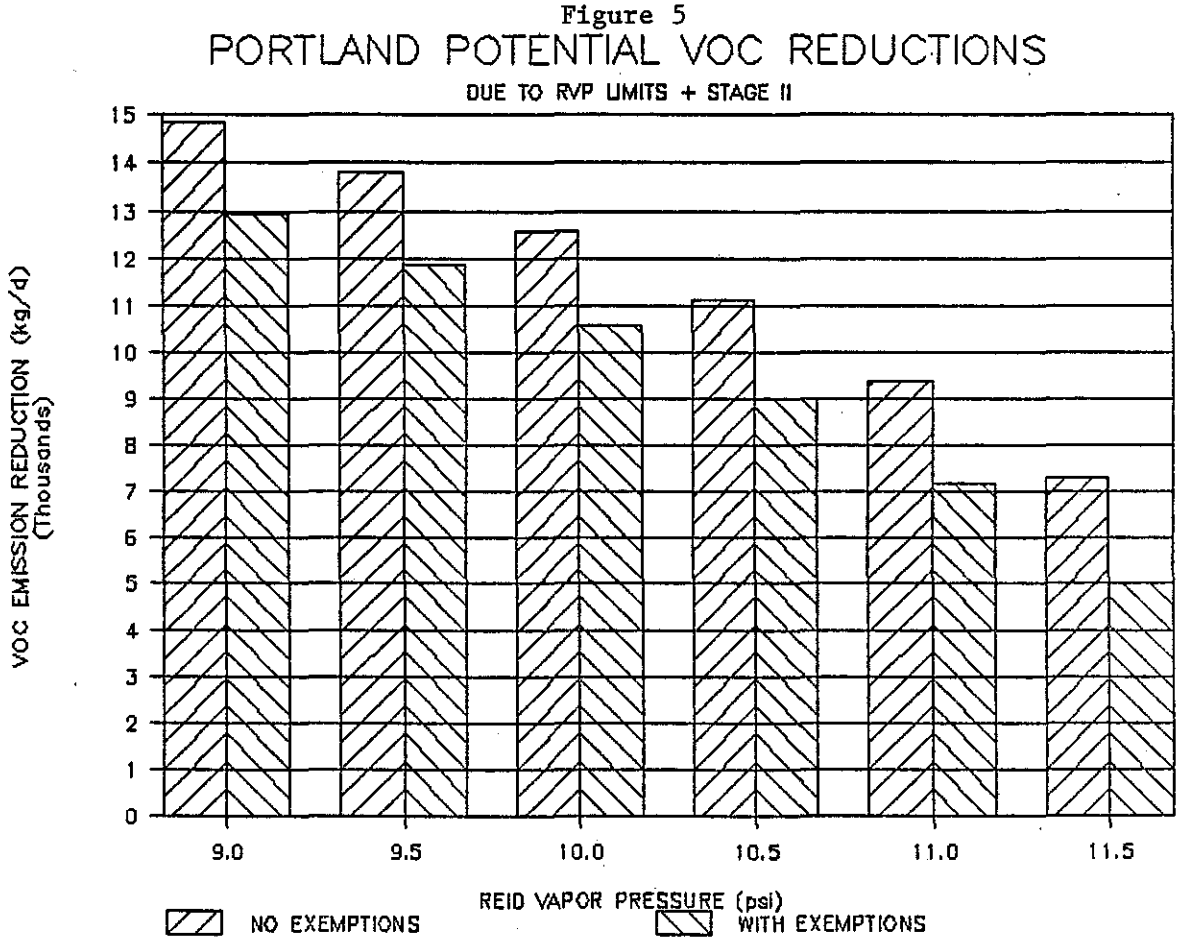
Figure 4



COMBINATION OF VOLATILITY LIMITS AND STAGE II

Volatility limits could be combined with Stage II service station controls. The combination of a 10.5 psi RVP limit and Stage II would provide a 8-9% reduction (9-11 Mg/d) in overall VOC emissions in the Portland AQMA depending on the number of service station exemptions. The combination of a 9.0 psi RVP limit and Stage II would provide an 11-12% reduction (13-15 Mg/d) in overall VOC emissions in the Portland AQMA depending on the number of service station exemptions. The VOC reductions from these and other combinations are outlined in Figure 5.

Figure 5



COST-EFFECTIVENESS

A number of cost-effectiveness estimates have been made for various gasoline-related control strategies. Onboard controls would cost $15 to $30 per vehicle or $190 to $390 per ton of VOC reduction.[7,8] A 1.0 psi reduction in RVP would cost 0.6 to 0.8 cents per gallon or $320 to $500 per ton.[8] A 2.5 psi reduction in RVP would cost 1.5 to 2.0 cents per gallon or $400 to $600 per ton.[6,8] Stage II service station controls would cost $620 to $1940 per ton with station-size exemptions and $1470 to $2890 per ton without exemptions.[7,8]

REFERENCES

1. P.D. Venturini and D.C. Simeroth, "California Perspective on Controlling Evaporative Emissions," Air Pollution Control Association Annual Meeting, Paper 85-37.4, Detroit, Michigan, June 17, 1985.

2. C.L. Dickson and P.W. Woodward, "Motor Gasolines, Summer 1985," National Institute for Petroleum and Energy Research, June 1986.

3. P.B. Bosserman, compilation of 1980-86 summer gasoline volatility data for Portland area gasoline shipments, Oregon Department of Environmental Quality, December 11, 1986.

4. R.F. Stebar et al., "Gasoline Vapor Pressure Reduction - an Option for Cleaner Air," Research Laboratories and Environmental Activities Staff, General Motors Corporation, SAE Paper 852132, International Fuels and Lubricants Meeting, Tulsa, Oklahoma, October 21-24, 1985.

5. P.B. Bosserman, "Changes in VOC Emissions from Changes in RVP," inter-office memorandum, Oregon Department of Environmental Quality, January 21, 1987.

6. S. Majkut, Regulation No. 11.7 and Hearing Officer's decision and response to comments from public hearing, Rhode Island Department of Environmental Management, August 11, 1988.

7. U.S. Environmental Protection Agency, "Evaluation of Air Pollution Regulatory Strategies for Gasoline Marketing Industry," EPA-450/3-84-012a, Office of Air and Radiation, USEPA, Washington D.C., July 1984.

8. C.H. Schleyer and W.J. Koehl, "A Comparison of Vehicle Refueling and Evaporative Emission Control Methods for Long-Term Hydrocarbon Control Progress," SAE Paper 861552, International Fuels and Lubricants Meeting, Philadelphia, Pennsylvania, October 6-9, 1986.

PERCENT VOC REDUCTIONS DUE TO GASOLINE RVP CHANGES

	HIGHWAY VEHICLES		GASOLINE MARKETING	
RVP	PBB	GM	PBB	GM
9.0	16.5	15.0	22.3	20.0
9.5	14.3	12.7	18.2	16.7
10.0	11.5	10.0	13.9	13.0
10.5	8.2	7.0	9.4	9.0
11.0	4.4	3.7	4.8	4.7
11.5	0.0	0.0	0.0	0.0

PORTLAND AREA VOC EMISSIONS (1986, kg/d) AT VARIOUS GASOLINE RVP

	HIGHWAY VEHICLES		GASOLINE MARKETING		VEHICLES+MARKETING			TOTAL VOC (kg/d)	
RVP	PBB	GM	PBB	GM	PBB	GM	OTHER	PBB	GM
9.0	46112	46713	9127	9228	55238	55941	54878	110116	110819
9.5	46999	47680	9443	9492	56443	57172	54878	111321	112050
10.0	48179	48836	9800	9800	57979	58636	54878	112857	113514
10.5	49649	50206	10203	10160	59852	60365	54878	114730	115243
11.0	51456	51820	10651	10580	62107	62400	54878	116985	117278
11.5	53720	53720	11162	11074	64882	64794	54878	119760	119672

VOC EMISSION DIFFERENCES (1986, kg/d) AT VARIOUS GASOLINE RVP

	HIGHWAY VEHICLES		GASOLINE MARKETING		VEHICLES+MARKETING	
RVP	PBB	GM	PBB	GM	PBB	GM
9.0	7608	7007	2035	1846	9644	8853
9.5	6721	6040	1719	1582	8440	7622
10.0	5541	4884	1362	1274	6903	6158
10.5	4071	3514	959	914	5030	4429
11.0	2264	1900	511	494	2775	2394
11.5	0	0	0	0	0	0

	GASOLINE VEHICLE REFUELING			STAGE II REDUCTION		RVP LIMIT+STAGE II	
RVP	1986 STAGE II	STAGE II		NO EXC	W/EXC	NO EXC	W/EXC
9.0	6489	500	2382	5990	4108	14842	12960
9.5	6715	517	2464	6197	4250	13819	11872
10.0	6968	537	2557	6431	4411	12589	10568
10.5	7255	559	2662	6696	4592	11125	9021
11.0	7573	583	2779	6990	4794	9384	7188
11.5	7937	611	2913	7325	5024	7325	5024

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMORANDUM

DATE: January 4, 1989

TO: Nick Nikkila, Ron Householder

FROM: Bill Jasper

SUBJECT: Update on Fuel Volatility Issues

The following updates my report of September 21, 1987 on the issues associated with EPA's rule making activity of fuel volatility and on board vapor control. The main change in the report is the update on the status of EPA's rule making proposal and the deletion of references to gasoline quality and how that can be regulated. The time frame between EPA's initial proposal and today, and the fact that EPA has not been able to finalize its rule proposal, is in itself a measure of the complexities of reducing emissions from gasoline marketing and vehicle refueling.

Gasoline marketing and vehicle refueling are a sizable impact on the total VOC emissions. In the Portland area for 1985, the Emission Inventory estimated their impact at over 8%. Current vapor control efforts are limited to Stage I vapor recovery and the on board controls built into automobiles and light trucks.

Over the past fifteen years the volatility of motor gasoline has been steadily increasing. Summer grade gasoline used to have Reid Vapor Pressure (RVP) values of 8 to 9 psi. There has been a three to four number increase in RVP, with some samples of motor gasoline as high as 15-18 psi being reported. The increase in RVP has prompted concerns about air pollution control efforts now in place. The following is a summary of some of the activities currently proposed.

EPA NOTICE OF PROPOSED RULE MAKING -- AUGUST 19, 1987

EPA published in the Federal Register of August 19, 1987 notice of proposed rule making (NPRM) that affects fuels and gasoline volatility. The NPRM calls for public hearings sometime in October/November and opens the docket for public comment. Briefly EPA's NPRM does several things.

When implemented, the rules would require 1) that the auto manufacturers increase the ability of the vehicles produced to control evaporative emissions **(on board vapor storage)**. 2) The rules would establish nationwide volatility controls on commercial gasoline and gasoline/alcohol blends **(RVP controls)**. 3) The rules provide for revised sampling techniques that can be used for enforcement purposes **(sampling of gasolines at the service station hose outlet)** and also provide for changes in the evaporative test procedure **(SHED)**.

EPA is in the process at this date, of re-proposing the NPRM, with the additional safety information. EPA needs to address

safety issues raised by the NHTSA (National Highway Traffic Safety Administration) and the re-proposal appears to do this but in the process EPA may delete the suggested limits on RVP. Part of the uncertainty appears due to the changing in administrations in the capitol. Because of the apparent inaction by EPA, it is prudent for the state to consider a parallel action in order to be prepared for the 1989 ozone season.

Nationwide Status -- Nationwide EPA has 61 non-California cities in non-attainment status for ozone. Modeling indicates that if no additional efforts are made, that there will still be some improvements in the mid-1990's. However by 2010, emission inventories will be worse than in 1988. This would be an indication that the greater Portland area and other areas in the state will have continued ozone attainment concerns well into the next century.

New Car Vapor Storage -- The EPA is proposing that the certification standard be changed to provide for better on board vapor control. EPA notes in the NPRM that "manufacturers of most gasoline-fueled vehicles would need to make minor improvements in the design of their existing evaporative emission control systems." EPA notes that evaporative emissions from carburetor cars are higher than from fuel injected vehicles. In the support document, EPA stated that vehicle manufacturers need to improve the capacity and purging process at least on some vehicles in order to meet the emission standards in the field. The effect of the EPA NPRM would be to have a new regulation that will require the car makers to build a better or larger system.

Vapor Pressure Controls -- Currently there are almost 30 states that regulate fuel volatility. Of these states, only California has adopted RVP control regulations for the expressed purpose of air pollution control. EPA notes in their NPRM that the federal preemption applies to states' adoption of RVP control, if EPA promulgates its own RVP controls. EPA believes that its rules will not override state controls that have been adopted for quality control purposes unless EPA's proposals are more stringent. That is because those state rules were adopted for the purposes of quality control. EPA stated that its regulations would not override California rule because the Clean Air Act California exemption.

It is EPA's opinion that when (and if) it adopts regulations affecting RVP, those regulations will override any similar statute or regulation adopted by states for the purposes of air pollution control. California and any state that implements RVP controls for air pollution purposes and uses its SIP process could have more stringent RVP controls.

The gist of the proposed RVP standard, is to incorporate a 9 psi RVP standard for all Class C areas (as defined by ASTM designations) for 1992. Other ASTM Class areas have different values. This 9 psi value was used by many states, but apparently not by Oregon, in its SIP work. Oregon used a 10.5 psi value

during the last SIP update. The NPRM also proposes a 10.5 psi RVP limit between 1989 and 1991. Western Oregon is a Class C area. Eastern Oregon (East of 122° Longitude) is an ASTM Class B area.

The values that are proposed for 1989-1991 for western Oregon are 10.5 psi. In eastern Oregon the fuel would be allowed a 10.5 pound value in May and 9.1 psi for the rest of the summer. In 1992 the values would change to 9.0 psi for western Oregon. In eastern Oregon the values would be 9.0 psi for May and 7.8 psi for the rest of the summer. The fuel limits are shared with Washington (all months) and Idaho and Nevada (all except May).

Alcohol Fuels & RVP -- The proposal lists three options for alcohol blended fuels. All of the options deal with fuels that have received EPA waivers, such as gasohol, MTBE, and the like. Under option 1, EPA would continue the total exemption of alcohol fuels from any RVP limits. Under option 2, there would be a 1 psi allowance. Under option 3, all blends would be required to meet the same levels as conventional motor gasolines. The NPRM states that EPA leans to option 2, but will consider testimony and arguments for either of the other two options.

Gasohol -- Gasohol has not made significant inroads into the gasoline market in Oregon. That market trend appears to be continuing. I base that upon current lack of penetration and a lack of local supply of alcohol for splash blending. Should alcohol and other oxygenated fuels make significant inroads into the northwest, it would appear that they would arrive through the conventual distribution system, ie, pipeline already blended by the refineries in Puget Sound.

Enforcement -- EPA reviewed the enforcement methods currently used by states that have adopted ASTM D 439. California is the only state that has in place an extensive sampling network to assure compliance. Many states have reporting requirements, as in Hawaii where the refiners are required to test and report the RVP and other specified parameters. It appears from the NPRM, that EPA believes that states should institute a rigorous enforcement program to monitor fuel RVP.

Benzene the Carcinogen -- EPA discusses the role of RVP control on benzene exposure. The NPRM indicates that overall benzene exposure will be reduced with improved volatility limits. While it assumed that the refineries will balance the gasoline blending with aromatics in place of butane and other light compounds, the overall exposure to benzene will be reduced. The reasoning advanced indicates that the reduction in exposure will be achieved because of the overall reduction in gasoline volatility.

There is another health benefit that can also be studied when considering control strategies. That would be the benefit to the worker from controlling benzene emissions. Since Oregon prohibits self-serve gasoline, either Stage II or RVP control would be a benefit to the gas station attendant. California has studied benzene as a pollutant and enacted regulations requiring Stage II

vapor recovery system in all large volume service stations statewide. This was an important step for California, since it had already mandated Stage II systems in its air pollution control areas. It may be prudent for the DEQ to work with the WCB/APD to jointly explore benefits from this area of VOC controls.

Lead and Lead Phase down -- This proposal does not affect the lead phase down that is occurring. EPA does state in its NPRM, that the lead phase down is on schedule. They note that the date for a total ban on leaded gasoline has not been set. EPA does indicate that the results of the proposed RVP actions are not going to be a direct influence on the lead phase down program.

WORK SESSION
REQUEST FOR EQC DISCUSSION

Meeting Date: 1/19/89
Agenda Item: 2
Division: WQ
Section: CG

SUBJECT:

Alternatives for Transition from the Construction Grants Program to the State Revolving Fund Program.

PURPOSE:

The Department requests EQC direction on how the Construction Grants Program should be phased out and what sewerage works projects should be eligible for the remaining grant funds.

ACTION REQUESTED:

_X_ Work Session Discussion
- _X_ General Program Background
- _X_ Program Strategy
- _X_ Proposed Policy
- _X_ Potential Rules
- ___ Other: (specify)

___ Authorize Rulemaking Hearing
- Proposed Rules (Draft) — Attachment ___
- Rulemaking Statements — Attachment ___
- Fiscal and Economic Impact Statement — Attachment ___
- Draft Public Notice — Attachment ___

___ Adopt Rules
- Proposed Rules (Final Recommendation) — Attachment ___
- Rulemaking Statements — Attachment ___
- Fiscal and Economic Impact Statement — Attachment ___
- Public Notice — Attachment ___

___ Issue Contested Case Decision/Order
- Proposed Order — Attachment ___

___ Other: (specify)

AUTHORITY/NEED FOR ACTION:

___	Pursuant to Statute: _____ Enactment Date: _____	Attachment ___
___	Amendment of Existing Rule: _____	Attachment ___
___	Implement Delegated Federal Program: _____	Attachment ___
_X_	Department Recommendation: Alternatives for transition from the Construction Grants Program to a State Revolving Fund	Attachment A
___	Other:	Attachment ___
___	Time Constraints: (explain)	

DESCRIPTION OF REQUESTED ACTION:

Provide direction to the Department for transition from the Construction Grant Program to the State Revolving Fund. This will be used to determine which sewerage facility projects will be eligible for construction grant funding.

DEVELOPMENTAL BACKGROUND:

_X_	Department Report (Background/Explanation)	Attachment B
___	Advisory Committee Report/Recommendation	Attachment ___
___	Hearing Officer's Report/Recommendations	Attachment ___
___	Response to Testimony/Comments	Attachment ___
___	Prior EQC Agenda Items:	
_X_	Other Related Reports/Rules/Statutes: Construction Grant and State Revolving Fund Projections	Attachment C

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

Any of the alternatives outlined in this staff report would be consistent with the Water Quality Act of 1987 (Clean Water Act Amendments) and with Oregon Revised Statutes. The 1987 Legislature gave the Department the authority to establish a State Revolving Fund, but did not specify how the Department should transition from the construction grant program to the revolving fund program. At the staff level, the Department's efforts have been directed at maximizing the revolving fund,

subject to the recognition that some remaining projects should be financed with construction grants.

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

The proposed alternative will limit the number of communities eligible to receive a federal grant for construction of municipal sewerage facilities. By limiting grants, the state would increase the ultimate size of the State Revolving Fund, thereby, expanding the total pool of money available for loans to communities for sewerage projects. The Commission should take into account several factors when considering a transition strategy.

1. The primary advantage of the grant program has been that it provides a source of funds that is not repaid. However, the advantages of the grant program have been reduced by diminished federal participation (75% grant funding to 55%), and by limiting the portions of a project eligible for grant financing.

2. The SRF will provide low interest loans for 100 percent of a project's costs. The primary disadvantage is that the loans must be repaid.

3. The transition from grant financing to loan financing amounts to a tradeoff between funding of sewerage facilities now and in the future. Funds allocated to grants in the short term will reduce the size of the State Revolving Fund. The SRF will be the only known significant source of financial assistance for construction of sewerage facilities in the future.

4. Community affordability is another significant issue. Small communities experiencing little population growth would be better off with a grant than a loan. Loans may be prohibitively expensive for many small communities.

PROGRAMMATIC CONSIDERATIONS:

Congress chose to phase out the Construction Grants Program in 1987. Federal funds will continue to be provided to the states through 1994. Until 1991, the state has the option to use some of this money for awarding construction grants or for making loans. After 1991, available federal money must be put in the State Revolving Fund (SRF) and used for loans. States were given the flexibility to phase out the grant program quickly or they could choose to allocate substantial funds for grants, and implement the SRF more slowly. The

more money that is used to finance sewerage facilities with grants, the smaller the pool of money available for use in the revolving fund program. To demonstrate this flexibility, Attachment C presents three options for the allocation of funds to grants and to the SRF from FY 1989 through FY 1995.

The other major consideration is to ensure that Oregon is able to utilize all of the federal grant funds made available to it for these programs. If Oregon is unable to commit all of the federal funds, the unused portion will be lost to the state; therefore, the Department must start working with communities now to ensure all funds will be obligated. The Department believes that if a course of action is determined now, whatever alternative is chosen, no funds will be lost.

POLICY ISSUES FOR COMMISSION TO RESOLVE:

What types of projects should receive construction grant funding as the program is phased out.

COMMISSION ALTERNATIVES:

1. Direct the Department to establish a final construction grant priority list for the duration of the grant program . The proposed alternative would modify OAR 340-53 by:

    (1) Establishing a final list of projects eligible for funding;

    (2) Limiting projects eligible for grant assistance to those communities with documented water quality problems (Letter Classes A, B, and C on the priority list);

    (3) Requiring communities to request by June 30, 1989 to be placed on the final priority list;

    (4) Limiting total eligible project costs to $1,500,000 for those projects rated a Letter Class A, B, or C after the FY89 priority list was approved on September 9, 1988; and

    (5) Removing the requirement for the Commission to approve the construction grants priority list.

2. Direct the Department to terminate grant funding and implement the SRF program as quickly as possible.

3. Direct the Department to continue to award grants to communities in priority rank order through September 30, 1991 or until all available grant funds are exhausted.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department Recommends that the Commission adopt Alternative 1.

This alternative appears to be the best approach for providing needed grant funds to small communities and those already in the process of obtaining a grant. The Department also believes that this alternative does not significantly diminish the ultimate size of the State Revolving Fund for future sewerage facilities funding.

INTENDED FOLLOWUP ACTIONS:

Draft rule modifications for OAR 340-53.

Request authorization from the Commission to hold a public hearing on the rule modifications.

Request approval of rule modification from Commission.

Develop final construction grants priority list.

Approved:

Section: Thomas J. Lucas

Division: Michael J. Downs

Director: Fred Hansen by Lea Taylor

Contact: Richard Kepler
Phone: 229-6218

(Kepler:kjc)
(WJ1420)
(1/4/89)

ALTERNATIVES FOR TRANSITION FROM THE CONSTRUCTION GRANTS PROGRAM TO A STATE REVOLVING FUND

Alternative 1 -- Develop a Final Grant Priority List and Limit Grants to Those Projects with Documented Water Quality Problems:

1. Direct the Department to establish a final construction grant priority list for the duration of the grant program. The proposed alternative would modify OAR 340-53 by:

    (1) Establishing a final list of projects eligible for funding;

    (2) Limiting projects eligible for grant assistance to those communities with documented water quality problems (Letter Classes A, B, and C on the priority list);

    (3) Requiring communities to request by June 30, 1989 to be placed on the final priority list;

    (4) Limiting total eligible project costs to $1,500,000 for those projects rated a Letter Class A, B, or C after the FY89 priority list was approved on September 9, 1988; and

    (5) Removing the requirement for the Commission to approve the construction grants priority list.

Under this alternative projects on the present FY89 priority list with Letter Class A, B and C ratings would continue to pursue a grant. Communities would also be allowed to submit documentation of water quality problems to the Department for evaluation and placement on a final grant priority list. Projects rated a Letter Class A, B, or C after approval of the FY89 priority list on September 9, 1988 would be limited to total eligible project costs of $1,500,000. Those projects that fail to reach Class A, B or C status before June 30, 1989 would then only be eligible for a loan under the revolving fund program.

Advantages: This alternative assures that projects currently eligible for a grant with a Letter Class A, B or C rating will not be denied that opportunity. It also allows one final chance for small communities with water quality problems to get their projects on the list and obtain a grant. In addition, it clearly fixes a point of transition from grants to the revolving fund program. Finally, it should limit the amount of money that will be awarded for grants and should not significantly reduce the size of the revolving fund. The amount of money that potentially would be used for grants is not absolutely known, but staff believes that it should not exceed $25 million. About $133.9 million would then be available from the SRF.

Disadvantages: This alternative does erode the potential size of the revolving fund. However, the staff does not believe that the revolving fund would shrink significantly.

Alternative 2 -- Offer as Many Grants as Possible:

This alternative would be implemented simply by awarding grants to communities in priority order through September 30, 1991, or until available grant funds were exhausted, whichever comes first. The Department would continue to assist communities in qualifying for grant funds, and would prepare a new project priority list for Commission approval in 1989 and 1990. The Department would continue to move forward to implement the SRF program, since 50 percent of all FY 1989 and 1990 federal appropriations must be used for the revolving fund program.

Advantages: This alternative would amount to a $44.4 million grant set-aside (total amount of grant funds allowed by law), which would be sufficient to fund all known projects with documented water quality problems, and several potential new projects as well. It would also give many communities ample time to complete grant qualification work.

Disadvantages: The primary disadvantage with this alternative would be its adverse impact on the size of the revolving fund; approximately $111.4 million would be available for loans rather than $133.9 million under Alternative 1.

Alternative 3 -- Make the SRF as Large As Possible:

This alternative would be implemented by rescinding approval of the FY89 construction grant project priority list, by adopting SRF rules, and by directing staff to implement the SRF program as quickly as possible.

Advantages: Approximately $165 million would be available for project loans over the next seven (7) years. This approach would provide as much money as possible for subsequent loans from the revolving fund.

Disadvantages: There would not be any funds for construction grants. Many communities are developing facilities plans with the anticipation of receiving a construction grant in this fiscal year. Some communities, particularly small rural communities, may lack the financial capability to construct major sewerage facility improvements without grant assistance. Since the SRF is a new program, it is not known if there are sufficient projects able to qualify for loan funds on short notice.

SRF Task Force Support

An attempt was made to convene the SRF Task Force to review the three transition alternatives, however, due to Christmas holiday schedules, this was not possible. Staff instead phoned members individually. Eight of ten members were contacted; all eight members supported Alternative 1. Several members expressed strong support for ending the grant program in the near future, with the provision that communities on the project priority list for documented water quality problems, be allowed to receive a construction grant.

BACKGROUND

To help address the pollution problems of the nation's waters, the U. S. Congress passed the Clean Water Act in 1972. Part of this legislation established a grant program to provide federal assistance to municipalities for the construction of sewerage facilities needed to meet the requirements of the new Act. Over $44.6 billion has been appropriated for the national construction grants program. Of this amount, $515 million has been used in Oregon to build sewerage facilities.

Congress has amended the Clean Water Act several times to reduce the level of federal funding for projects. Important changes included reducing federal grant participation, reducing eligibility to certain project components, and restricting funding to existing needs only, and not for future growth capacity. In 1987, when the Clean Water Act was reauthorized, Congress chose to phase out the construction grant program and replace it with a State Revolving Fund program.

A State Revolving Fund is a pool of money from which loans can be made for construction of sewerage facilities. As loans are repaid, the money is returned to the revolving fund to be used for more loans.

The revolving fund program was intended to provide a simple, stream-lined, state operated program, that would help fund projects without reliance on federal grants. Because of statutory requirements in the Act and requirements developed by the U.S. Environmental Protection Agency, the program is burdened with more cumbersome bureaucracy than originally was envisioned by the states. These added federal requirements make the program less desirable for cities; however, the Department believes the availability of loans at below market interest rates will still make the program attractive, particularly after construction grant funds are no longer available. Once federal grant funds have been loaned out through the SRF program, the repayed funds are no longer subject to many of the federal requirements, and the SRF should become easier to manage and less cumbersome.

Grants will not be available to municipalities for construction of sewerage facilities after September 30, 1991, and states are required to set up a State Revolving Fund if they wish to receive further federal funds. During the 1987 legislative session, the Department did receive authorization through ORS 468.423 to establish a State Revolving Fund program. The Department intends to return to the 1989 Legislature to request the 20 percent state matching funds needed to receive federal funds. If the Legislature chooses not to authorize the needed state match or provides a lower amount than requested, the Department will immediately proceed to contact further communities on the priority list and initiate procedures to enable grants to be awarded.

The Department is establishing procedures to implement the program. An Advisory Task Force was created to assist in program development, and proposed rules to govern the SRF program have been prepared. A request for authorization to hold hearings on the rules will come before the Commission at the January 20, 1989 EQC meeting. If authorization is given, public hearings must be held, and the final rules must be adopted by the Commission. Once the rules are adopted, the Department must prepare a priority list of potentially eligible loan recipients, and submit an intended use plan and application for funds to EPA. The Department has reserved funds for potential project loans from the 1988 federal grant allotment. If application is made to EPA by June 30, 1989, the reserved funds will be used for loans; if the date is not met, the funds can be redirected to grants.

The Department is requesting Commission policy direction in the transition from the construction grant program to the State Revolving Fund program (SRF). There are several items and issues of general interest, enumerated below, which should be considered before a transition strategy alternative is selected.

1. The Department has found it useful to make available financial incentives to ease the financial burdens on communities when requiring improvements to their sewerage facilities. The primary advantage of the grant program has been the availability of a source of funds which does not need to be repaid. However, the advantages of the grant program have been diminished through reduction in participation (now 55 percent of eligible costs), elimination of funds for growth capacity, and project eligibility restrictions. The advantage of the SRF is the program's ability to provide low interest loans for 100 percent of project costs including growth capacity. Also under the SRF, project eligibility has been broadened to include storm sewers, estuary and nonpoint source projects. The primary disadvantage is that the loans must be repaid.

2. The federal legislation allows for flexibility in the transition from grants to the SRF; i.e., the program can be phased out quickly or states can choose to allocate substantial funds for grants, and implement the SRF more slowly. To demonstrate this flexibility, Attachment D presents three options for the allocation of funds between grants and loans from FY 1989 through FY 1995.

3. The transition from grant financing to loan financing amounts to a tradeoff between funding of sewerage works now and in the future. Funds allocated to grants in the short term will reduce the size of the State Revolving Fund. The SRF will be the only known significant source of financial assistance for construction of sewerage facilities. In effect, emphasis on grants will result in fewer funds for loans in the future. Conversely, emphasis on loans will mean fewer funds for grants in the immediate future.

4. Community affordability is another significant issue. It appears that small communities experiencing very little population growth would be better off with a grant than a loan, and, further, a loan may be prohibitively expensive. For example, preliminary evaluation of financial capability in some small communities suggests that loan financing under the SRF program will result in sewer use charges of $40 - $60 per month. In contrast, City of Portland homeowners pay about $8.50 per month. If low interest rate loans through the SRF were not available at all, sewer use charges could become very expensive for many communities.

5. For the state to be able to commit all the federal grant funds available, the Department must start working with potential grant and loan recipients now to ensure that all federal grant funds can be obligated. Both the grant and loan requirements dictate at least a six month lead time before an award can be made. Therefore, the Department needs to know whether a community will receive a grant or loan so they can be guided through the appropriate qualification process. There are still federal funds available from the FY 1988 allocation which must be obligated to grants and/or loans by September 30, 1989 or the unused funds will be returned to the federal government and lost to the state.

CONSTRUCTION GRANT AND STATE REVOLVING FUND PROJECTIONS

(This chart identifies three options available to Oregon during the grant/loan transition. Column 1 shows how the grant/loan split would work if the funds are used partly for grants and partly for loans through 1990. Column 2 show how dollars would be allocated to grants and loans if the maximum allows by federal law is used for grants. Column 3 shows how dollars would be allocated to grants and loans if the maximum allowed by federal law is used for loans.)

State Fiscal Year	Total Oregon Allotment As Authorized (Millions)	1. DEQ Recommended Grant Loan Split			2. If Oregon Takes as Much in Grant Funding as Allowed by Federal Law			3. If Oregon Takes as Much in SRF Funding as Allowed by Federal Law*		
		Estimated $ for Grants (Millions)	Estimated $ for SRF (Millions)	20% State Match (Millions)	Estimated $ for Grants (Millions)	Estimated $ for SRF (Millions)	20% State Match (Millions)	Estimated $ for Grants (Millions)	Estimated $ for SRF (Millions)	20% State Match (Millions)
1989	$ 20.1	$15	$ 5.1	$ 1.0	$20.1	$ 0	$ 0	$ 0	$ 20.1	$ 4.0
1990	21.3	5	16.3	3.3	10.6	10.6	2.1	0	21.3	4.3
1991	27.4	5	22.4	4.5	13.7	13.7	2.7	0	27.4	5.5
1992**	27.4	0	27.4	5.5	0	27.4	5.5	0	27.4	5.5
1993	20.6	0	20.6	4.1	0	20.6	4.1	0	20.6	4.1
1994	13.7	0	13.7	2.7	0	13.7	2.7	0	13.6	2.7
1995	6.9	0	6.9	1.4	0	6.9	1.4	0	6.9	1.4
Total	**$149.3**	**$25**	**$112.4**	**$22.5**	**$44.4**	**$92.9**	**$18.5**	**$ 0**	**$137.3**	**$27.5**

*Though DEQ has the option of putting all of the funds in the SRF during 1989, DEQ has been operating under the assumption that at least part of the funds would go to grants and is currently working with cities to get them grants.

**Grants are not allowed after 1992.

Just

WORK SESSION
REQUEST FOR EQC DISCUSSION

Meeting Date: 1/19/89
Agenda Item: 3
Division: MSD
Section: ADM

SUBJECT:

DEQ Land Use Coordination Program

PURPOSE:

To provide EQC directive to the department in carrying out its land use coordination responsibilities.

ACTION REQUESTED:

_X_ Work Session Discussion
___ General Program Background
___ Program Strategy
___ Proposed Policy
___ Potential Rules
_X_ Other: (specify)
EQC policy/directive on DEQ focus and level of involvement in the statewide land use program.

___ Authorize Rulemaking Hearing
Proposed Rules (Draft) Attachment ___
Rulemaking Statements Attachment ___
Fiscal and Economic Impact Statement Attachment ___
Draft Public Notice Attachment ___
___ Adopt Rules
Proposed Rules (Final Recommendation) Attachment ___
Rulemaking Statements Attachment ___
Fiscal and Economic Impact Statement Attachment ___
Public Notice Attachment ___
___ Issue Contested Case Decision/Order
Proposed Order Attachment ___
___ Other: (specify)

AUTHORITY/NEED FOR ACTION:

___	Pursuant to Statute: _____ Enactment Date: _____	Attachment ___
___	Amendment of Existing Rule: _____	Attachment ___
___	Implement Delegated Federal Program: _____	Attachment ___
___	Department Recommendation:	Attachment ___
_X_	Other: Department request.	Attachment ___
_X_	Time Constraints: (explain) None specified.	

DESCRIPTION OF REQUESTED ACTION:

The EQC should review and discuss the DEQ's land use responsibilities and internal coordination program as outlined in Attachment A. The EQC should determine the agency's focus or direction on land use involvement, and the degree of emphasis on land use in carrying out DEQ statutory environmental responsibilities.

DEVELOPMENTAL BACKGROUND:

_X_	Department Report (Background/Explanation)	Attachment _A_
___	Advisory Committee Report/Recommendation	Attachment ___
___	Hearing Officer's Report/Recommendations	Attachment ___
___	Response to Testimony/Comments	Attachment ___
___	Prior EQC Agenda Items: (list)	Attachment ___
___	Other Related Reports/Rules/Statutes:	Attachment ___

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

State legislation directs agencies to comply with the statewide land use goals and acknowledged comprehensive plans in carrying out programs related to land use. DEQ presently operates consistent with a coordination agreement which has been approved by the LCDC. This agreement is scheduled for review by LCDC, December 1990.

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

DEQ's present program requires persons seeking permits or approvals from DEQ to provide a statement of land use compatibility from the appropriate local planning agency.

PROGRAMMATIC CONSIDERATIONS:

Programmatic information will be provided in response to EQC requests.

POLICY ISSUES FOR COMMISSION TO RESOLVE:

What level of land use involvement is appropriate for DEQ at the statewide level?

To what degree should land use issues be considered in carrying out DEQ's regulatory responsibilities?

COMMISSION ALTERNATIVES:

Determine level and scope of DEQ involvement in land use based on provided information.

Direct staff to determine programmatic considerations based on EQC identified range of involvement options.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

None recommended.

INTENDED FOLLOWUP ACTIONS:

In accordance with EQC directives.

Approved:

Section: _____

Division: _____

Director: _____

Contact: Roberta Young

Phone: 229-6408

Roberta Young
EQCMSD-3
1-10-89

Attachment A

BACKGROUND

State Agency Land Use Responsibilities:

- Agencies must assure that decisions affecting land use are consistent with statewide goals and acknowledged plans.
- Agencies must prepare a coordination agreement for LCDC approval. The agreement identifies agency activities relating to land use and procedures to assure statewide goal and local plan compliance.

Statewide Land Use Program Status:

- The initial plan approval process by LCDC is completed. Approximately three-fourths of jurisdictions have been notified to begin updating their plans.(periodic review)

Contacts Made in Developing Overview:

- In developing the land use overview, staff from the following agencies were contacted to discuss information on current issues and agency land use programs: 1000 Friends Friends, DLCD, Columbia River Gorge Commission, Fish and Wildlife, Energy, Water Resources, Forestry, Health Division, Geology, and Transportation.

CURRENT STATEWIDE ISSUES

Secondary Lands:

- LCDC is directed by the Legislature to develop the means to identify secondary resource lands and allow certain uses. DEQ position is that parcels under 5 acres should be prohibited until a determination as to whether public facility planning is appropriate; supports outright use for solid wastes sites in Primary Farm and Forest zones.

Urban/Rural Lands:

- Through a Curry County Supreme Court case,LCDC is required to adopt a definition of urban and rural lands and policy on allowable development. DEQ is supportive of public facility planning in exception areas and all urban/rural areas.

Supersiting:

- This involves the Legislature's decision to override the local planning process in major facility siting.{airports, landfills, correction facilities, transportation facilities} DEQ encourages jurisdictions to identify needs and permit landfills as an allowable use.

State Agency Coordination Agreement:

- LCDC has approved a schedule for certification of agency agreements. DEQ's submittal date is mid-1990.

Columbia River Gorge National Scenic Area:

- State agencies need to determine that land use findings are consistent with the Scenic Area Act in issuing permits within the Scenic Area boundary.

DEQ'S LAND USE ISSUES

Coordination Agreement Update:

- This involves revising the agreement to comply with LCDC's current state agency coordination agreement rule by December 1990. In this effort, existing programs will be assessed and new activities/programs will be included in the agreement.

Periodic Review:

- Most of the jurisdictions have entered the LCDC required plan update process. It is appropriate to review DEQ's participation in this process.

Land use Compatibility Review:

- Local government signs off on land use compatibility for DEQ permits affecting land use. Under current procedures, DEQ is responsible for land use issues/conflicts that relate the adequacy of the local land use findings.

LAND USE COORDINATION BENEFITS TO DEQ

General Public Awareness:

- DEQ's participation in the land use program results in a heightened public awareness of the agency's programs and how they relate to planning issues in a local jurisdiction.

Local Government Awareness:

- Through an understanding of DEQ's authorities, local government is better able to address existing environmental problems and plan accordingly to prevent future problems.

APPROPRIATE DEQ ROLE IN LAND USE

The basis for DEQ's role in the statewide land use program is two-fold. The role is in part determined by statutory mandate, and in part by DEQ definition and structure. For example, a minimal role would likely be limited to land use statutory requirements. With a broader role, DEQ might activity participate in land use planning issues beyond those directly affecting DEQ's programs. Role options may include the following:

- Monitor planning activity at the local level and comment or object to planning actions when appropriate.
- Provide technical assistance to local government; promote awareness of DEQ programs and environmental issues.
- Focus on priority DEQ-related land use issues/problems by policy or geographic area.
- Focus participation primarily at statewide level on LCDC policy/rulemaking.

WORK SESSION
REQUEST FOR EQC DISCUSSION

Meeting Date: 1/19/89
Agenda Item: 5
Division: OD
Section: ADM

SUBJECT:

Interagency Coordination Policy and Implementation Strategy

PURPOSE:

To develop a final draft of a proposed EQC policy statement and implementation strategy intended to ensure continuation and enhancement of Interagency Coordination efforts. The final draft would then be presented to the EQC at a regular meeting for adoption.

ACTION REQUESTED:

X	Work Session Discussion	
___	General Program Background	
___	Program Strategy	
X	Proposed Policy	Attachment A
___	Potential Rules	
X	Other:	
	Proposed Implementation Strategy	Attachment B
___	Authorize Rulemaking Hearing	
	Proposed Rules (Draft)	Attachment ___
	Rulemaking Statements	Attachment ___
	Fiscal and Economic Impact Statement	Attachment ___
	Draft Public Notice	Attachment ___
___	Adopt Rules	
	Proposed Rules (Final Recommendation)	Attachment ___
	Rulemaking Statements	Attachment ___
	Fiscal and Economic Impact Statement	Attachment ___
	Public Notice	Attachment ___
___	Issue Contested Case Decision/Order	
	Proposed Order	Attachment ___
___	Other: (specify)	

AUTHORITY/NEED FOR ACTION:

___ Pursuant to Statute: _____ Attachment ___
Enactment Date: _____
___ Amendment of Existing Rule: _____ Attachment ___
___ Implement Delegated Federal Program:
_____ Attachment ___
___ Department Recommendation: Attachment ___
_X_ Other:
EQC Request at August Retreat Attachment _C_

___ Time Constraints: (explain)
None Identified

DESCRIPTION OF REQUESTED ACTION:

The Commission should review and discuss the proposed Interagency Coordination Policy (Attachment A) and the draft Implementation Strategy (Attachment B). The drafts should be modified as appropriate. The revised documents would then be presented to the Commission for adoption as a regular agenda item at the next meeting.

DEVELOPMENTAL BACKGROUND:

_X_ Department Report (Background/Explanation) Attachment _C_
___ Advisory Committee Report/Recommendation Attachment ___
___ Hearing Officer's Report/Recommendations Attachment ___
___ Response to Testimony/Comments Attachment ___
___ Prior EQC Agenda Items: (list)
Attachment ___
___ Other Related Reports/Rules/Statutes:
Attachment ___

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The proposed policy and implementation strategy are not required by statute. The drafts were initiated at EQC request. The proposed policy and implementation strategy are consistent with general legislative intent. The strategic plan which will be developed over the course of the next few months may deal with the issue of interagency coordination in greater depth.

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

The public and the regulated community will be better served if coordination between agencies is improved. The result should be earlier identification of potential problems, and the opportunity to address public issues in a more efficient way.

PROGRAMMATIC CONSIDERATIONS:

Most of the steps outlined in the implementation strategy could be implemented without additional resources for DEQ. The steps are already being implemented or a brief one time effort would be needed.

To the extent that DEQ staff spends more time reviewing other agency proposals and providing input to other agency processes, additional resource will have to be allocated to this purpose.

DEQ's request that other agencies assist by representation on work groups and reviewing DEQ proposals will impose additional work on other agencies.

POLICY ISSUES FOR COMMISSION TO RESOLVE:

- What level of involvement is appropriate for the Commission?
- Are there other implementation approaches that should be considered?

COMMISSION ALTERNATIVES:

1. Discuss and revise the proposed Policy and draft Implementation Strategy, and direct the Department to place the proposal on the next agenda for adoption.
2. Refer the drafts back to the Department with additional directions for revisions.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

It is recommended that the Commission accept Alternative 1 above and proceed to discussion of the draft proposed policy and implementation strategy.

INTENDED FOLLOWUP ACTIONS:

Return to the next meeting for adoption of the final draft.

Initiate letters and actions to assure that DEQ is on the appropriate mailing lists of other agencies, and that other agencies are on DEQ's mailing lists.

Advise DEQ staff of the policy and expected implementation actions.

Approved:

Section: _____

Division: _____

Director: Fred Hansen

Contact: Harold Sawyer

Phone: 229-5776

HLS:l
(IACOORD)
12/27/88

Proposed Interagency Coordination Policy Statement

Achievement of State and Federal Environmental Quality objectives requires that close cooperation and coordination take place between a number of state, federal and local agencies responsible for management of Oregon's natural resources.

Extensive coordination efforts are presently underway between the agencies involved with management of natural resources in Oregon.

The extent and effectiveness of interagency coordination is a product of a fragile balance between the allocation of scarce agency resources to coordination efforts, and the personal committment of agency managers and employees.

It is the policy of the Environmental Quality Commission to strongly encourage continued and enhanced coordination between respective agency staff members, between the respective agency directors, and between respective members of governing boards and commissions. A strategy for implementation of this policy should be developed and reviewed as part of the strategic plan update process.

Proposed Implementation Strategy for Interagency Coordination Policy

In order to ensure continuation and enhancement of interagency coordination efforts, the Environmental Quality Commission endorses the following strategy:

The Department will:

1. Assure that other agencies are on the mailing list for and receive notices and agendas of EQC meetings.

2. Request other agencies to place DEQ on their mailing lists for notices and agendas of Commission meetings, and notices of rulemaking or other significant actions.

3. Review rules and policies proposed by other agencies, and provide comments and recommendations on matters which are of mutual interest to DEQ.

4. Provide copies of letters and other correspondence to other agencies as appropriate to further communication and coordination on issues of common concern.

5. Evaluate the potential for projects and programs to affect or be affected by other agencies, and invite representatives of appropriate agencies to participate on work groups and task forces formed to advise the Department relative to such projects and programs.

6. Provide advise when requested through service on advisory groups established by other agencies.

7. Provide copies of public notices of proposed permits and other planning actions to other natural resource agencies to assure greater opportunity for exchange of information and opportunity for input to DEQ processes. Provide special flagging of notices of actions or permits known to be of special interest to other agencies.

8. Request informal assistance of staff of other agencies when evaluating the impact of proposed rules and permits.

The Commission will:

a. Meet periodically with members of other Commissions to discuss issues of joint interest.

b. Seek to assure that other affected agencies and their governing Commissions are informed of potential EQC actions through personal informal communications.

Attachment C

At the August 22-23, 1988, EQC retreat at Silver Falls, the topic of interagency coordination was discussed. The consensus for followup action was summarized as follows:

> 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.

The next step was targeted for discussion at the EQC Work Session on January 19, 1989.

Approved_____
Approved with Corrections_____
Corrections made_____

MINUTES ARE NOT FINAL UNTIL APPROVED BY THE EQC

ENVIRONMENTAL QUALITY COMMISSION

Minutes of the One Hundred Ninety-Second Meeting
December 9, 1988

Clackamas Community College
Environmental Learning Center
19600 South Molalla
Oregon City, Oregon

Commission Members Present:

Bill Hutchison, Chairman
Emery Castle, Vice Chairman
Wallace Brill
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.

FORMAL MEETING

CONSENT ITEMS:

Agenda Item A: Minutes of the November 4, 1988 EQC Meeting, and Minutes of the October 20-21 Retreat at the Flying M Ranch.

The minutes of the November 4, 1988 EQC Meeting and the October 20-21, 1988 Retreat were circulated to the Commission in advance of the meeting. A proposed amendment to the wording of the action taken on Agenda Item N on page 12 of the November 4, 1988 minutes was also circulated.

ACTION: It was MOVED by Commissioner Castle, seconded by Commissioner Sage, and unanimously passed to approve the November 4, 1988 EQC meeting minutes as amended and the October 20-21, 1988 retreat minutes.

Agenda Item B : **Monthly Activity Report for September and October 1988.**

Action: It was MOVED by Commissioner Wessinger, seconded by Commissioner Castle, and unanimously passed to approve the Activity Reports for September and October 1988.

Agenda Item C: **Civil Penalty Settlement Agreements.**

There were no civil penalty settlement proposals presented for Commission action.

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

Director's Recommendation: It is recommended that the Commission issued tax credits certificates for pollution control facilities listed in the report.

Action: It was MOVED by Commissioner Wessinger, seconded by Commissioner Castle, and unanimously passed to approve the tax credits for the listed reports.

Chairman Hutchison abstained from voting on Tax Credit Application T2305 because the applicant is a client of his law firm.

PUBLIC FORUM

No one appeared at the public forum.

HEARING AUTHORIZATIONS

Agenda Item E: **Request for Authorization to Conduct a Public Hearing Concerning Proposed Rules for Delegation of Air Quality Construction Approval to the Department.**

Statutory provision enacted in 1985 authorizes the Commission to delegate its authority to enter an order either approving construction or prohibiting construction of new air contaminant

sources based on review of plans and specifications. Current rules adopted by the EQC prior to 1985 authorize the Director to approve plans (issue notice that construction may proceed), but require the Commission to issue orders prohibiting construction (disapproval of plans). At the August 1988, EQC retreat, the Department was directed to develop the rules necessary to fully delegate to the authority to take action on Air Quality plans and specifications to the Department. This agenda item proposes the rule amendment necessary to accomplish this purpose.

Director's Recommendation: It is recommended that the Commission authorize a public hearing to consider rule revisions that would delegate to the director authority for both air quality construction plan approval and issuance of orders prohibiting construction.

Chairman Hutchison asked how often plans had been disapproved in the past. Director Hansen replied that there had been very few, if any which had been denied. Tom Bispham, Regional Operations Manager, stated that the reason few had been denied is because the department staff works with the source to resolve differences and get plans revised so that approval can be granted. Generally, the source wants to get on with construction and is interested in revising proposals as necessary to demonstrate compliance with applicable statutes and rules in order to obtain approval. Chairman Hutchison questioned the need to include "denial" authority in its delegation of authority to the Department since denials were so rare and would constitute a major action. He felt more comfortable with an alternative to the Director's Recommendation that would stick with existing rules and have orders prohibiting construction brought to the Commission.

Commissioner Sage asked what the intent of reserving plan approval to the Commission was. Director Hansen replied that most statutory authority rests with the Commission, but that much of it which requires plan review and approval/disapproval has been delegated to the director. This specific item was one which was discussed during the August retreat as being one which could be delegated. Director Hansen further indicated that because denial was a rare event, and would likely be a major issue that would end up before the Commission on appeal, an alternative that has denial actions brought before the Commission as suggested by the Chairman would also be appropriate.

Commissioner Wessinger expressed the view that approval or denial of construction plans and specifications was not a policy matter.

> **Action:** It was MOVED by Commissioner Wessinger, seconded by Commissioner Sage, and passed by majority to approve the

Director's Recommendation to conduct a hearing on the rule amendments. Chairman Hutchison cast a no vote.

ACTION ITEMS

Agenda Item F: Proposed Adoption of LRAPA Eugene-Springfield Carbon Monoxide (CO) Attainment Redesignation and Adoption of Maintenance Plan as a Revision to the State Implementation Plan, OAR 340-20-047.

Data show that the Eugene-Springfield area, once in non-attainment for Carbon Monoxide (CO) has met applicable criteria for attaining the federal CO standard. CO non-attainment in the Eugene-Springfield area was primarily related to traffic circulation. Attainment was achieved by changing traffic flow. An inspection and maintenance program was not required.

The Lane Regional Air Pollution Authority (LRAPA) Board of Directors has approved a joint request by LRAPA and the Lane Council of Governments to redesignate the Eugene-Springfield area as in attainment for CO, and replace the existing State Implementation Plan (SIP) CO Control Strategy with a Maintenance Plan. This proposed CO redesignation and maintenance plan has been reviewed by department staff who found it to be at least as stringent as and consistent with corresponding state regulations. The US Environmental Protection Agency has tentatively approved the redesignation.

Director's Recommendation: It is recommended that the Commission adopt the maintenance plan as a revision to the SIP as proposed.

Don Arkell, Director of Lane Regional Air Pollution Authority, stated that redesignation plan was a positive event. The process of solving the Eugene-Springfield attainment problem involved other agencies' cooperative efforts in the development of strategies to maintain CO standards. In response to a question from Chairman Hutchison, Mr. Arkell stated that the primary components of the plan were both direct and indirect considerations. Indirectly an examination of the effect of development on traffic patterns is triggered. More directly there is an annual review between the City of Eugene, the Department of Transportation, and LRAPA to change the plan to accommodate or mitigate growth. The plan addresses developers who have been denied development opportunities because their schemes compounded air quality problems as well as those who do not want development to occur.

Action: It was MOVED by Commissioner Castle, seconded by Commissioner Brill, and unanimously passed to approve the Director's Recommendation.

Agenda Item G: Request for Exceptions to OAR 340-41-026(2) (An EQC Policy Requiring Growth and Development Be Accommodated Within Existing Permitted Loads) by the City of Halsey, Oregon.

Oregon regulations require that wastewater point source dischargers improve the level of treatment as growth occurs, so that total wasteloads to state waters do not increase. This anti-degradation policy allows for exceptions to be made by the Commission.

The City of Halsey proposes to expand the sewage treatment facilities. The expansion and upgrade are necessary to eliminate inadequate treatment facilities and to allow reserve capacity for expected population growth over the next twenty years.

All reasonable alternative methods and levels of treatment have been evaluated by Halsey as a part of their facilities planning process. Environmental impacts and cost information were examined for each alternative. The cost for alternative treatment facilities capable of meeting existing load limits exceeds EPA construction grant guidelines for what is defined as affordable.

The expected impact of increased wasteloads on existing water quality, the potential for violating water quality standards, and the impact on the beneficial uses of the receiving waters have been evaluated. The department determined that the requested wasteload increases could be granted without violating water quality standards or impairing beneficial uses.

An amendment to Agenda Item G was submitted to the Commission and becomes a part of this meeting's record. The amendment provided the Commission with the hearings officer's report and summary and evaluation of public comment received on the city's request for increases in mass discharge limitations. As a result of the hearing, the Director's Recommendation has been revised to reflect a lower limit for suspended solids.

Director's Recommendation: The director recommends that the amendment be appended to the staff report of Agenda Item G. Furthermore, the director recommends that the increased BOD_5 loading be approved as requested, but that the increased total suspended solids loading be approved for 115 pounds per day instead of 164 pounds per day as requested.

Commissioner Sage asked why the increase in limits to accommodate future growth is needed now; what is the net environmental benefit of the improved facility. **Dick Nichols**, Water Quality Division Administrator, replied that permit limits have traditionally been established based on the design capacity of the treatment facilities. The net environmental gain of the proposed improved and expanded facilities is the elimination of current violations and a decrease in the periods of discharge during low flow. In addition, the city can afford and effectively operate the proposed new facilities. The loading will increase but a conservative analysis by the Department indicates that beneficial uses will not be affected and water quality standards will not be violated.

Bob Baumgartner, Water Quality Engineer, stated that his analysis of the situation indicated that the proposed increase in allowable mass discharge loading would not cause or exacerbate any water quality problems in the river. His analysis was based on worst case assumptions that included a considerable factor of safety.

Chairman Hutchison asked if the proposed allowable increase in discharge to Muddy Creek would have an impact on the Willamette River. **Bob Baumgartner** responded that at the flow conditions involved, standards are being achieved and it is unlikely that the increased discharge will cause any detriment to the river or any other sources. **Chairman Hutchison** noted that he believes the policy to require that expansion be accommodated by increased treatment such that stream loading is not increased is a desirable policy, and that any proposed exceptions should be subjected to very careful scrutiny.

> **Action:** It was MOVED by Commissioner Castle, seconded by Commissioner Brill, and passed unanimously to approve the Director's Recommendation as amended.

Agenda Item H: Request for Exception to OAR 340-41-026(2) (An EQC Policy Requiring Growth and Development be Accommodated Within Existing Permitted Loads) by the City of Adair Village, Oregon.

The City of Adair Village is proposing to expand its existing sewage treatment facilities. This expansion and upgrade is necessary to eliminate inadequate treatment facilities and to allow reserve capacity for expected population growth over the next twenty years.

The expected impact of increased wasteloads on existing water quality, the potential for violating water quality standards, and the impact on the beneficial uses of the receiving stream were

evaluated. The department determined that the requested wasteload increase could be granted without violating water quality standards or impairing beneficial uses.

The cost of constructing, operating, and maintaining the new treatment facilities were determined for each alternative treatment method. The costs for the treatment facilities capable of meeting existing load limits were prohibitively high, and far exceed EPA construction grants guidelines for "affordable" treatment works.

An amendment to Agenda Item H was submitted to the Commission and becomes a part of this meeting's record. This amendment also provides the Commission with the hearings officer's report and summary and evaluation of public comment received on the city's request for increases in mass discharge limitations.

Director's Recommendation: The Director recommends that the amendment be appended to the staff report of Agenda Item H. No public comment was received objecting to the proposed increase. The director recommends the Commission grant the requested wasteload increase for the City of Adair Village.

Fred Hansen noted that this item was very similar to the previous agenda item relating to the City of Halsey.

Jim Ableman, Mayor of Adair Village, was asked by Commissioner Hutchison if there were any land use implications in the requested proposal. He stated that he area of the lagoon could be farm land and therefore requires a conditional use permit. Of more importance, however, were economic considerations. The City of Adair Village is only 500 people and because of its size, costs of improvements to each resident are much higher than for larger cities. The proposed new treatment plant will cost residents about $50 per month compared to figures in the staff report of $8.65 for Portland and $11.00 for Salem. He supports advanced treatment and wishes the City could afford it. However, the cost practically limits the kinds of improvements the city can make to it's sewage system. Mr. Ableman also stated that the proposed plan will initially increase monthly discharges, but that on an annual basis, discharges will be decreased.

> **Action:** It was MOVED by Commissioner Wessinger, seconded by Commissioner Brill, and passed unanimously to approve the Director's Recommendation as amended.

INFORMATIONAL REPORTS

Agenda Item I: Review of Metro Solid Waste Reduction Program.

The Department reported to the Commission on September 9, 1988 that Metro had not adequately implemented major portions of their waste reduction program. The Commission then authorized a hearing, which was held October 12, 1988, to determine the best course of action.

The Department believes that the best course of action is to negotiate a stipulated order, with penalties, covering activities in eight key elements of the Metro Waste Reduction Program. This order is scheduled to be adopted at the January 20, 1989 Commission meeting. Some important items to be in the order include salvage of lumber and reusable building materials and yard debris recycling at disposal sites, technical assistance in multifamily and commercial recycling, pilot recycling container projects, a pilot waste auditing and consulting service, and a recycled material procurement program.

Bob Martin, Metro Solid Waste Manager, reviewed the status of the Metro plan. He stated that Metro has been allocated a specific amount of capacity at the Arlington landfill and ideally that they would avoid using that capacity by encouraging reduction of the waste stream via recycling and waste reduction.

Mr. Martin said that his review of the Metro plan indicated that the necessary resources to carry out the plan were initially underestimated and that the money was never allocated during the budget process. Outside influences also affected the implementation of the plan and were never addressed to get the plan back on schedule.

Mr. Martin stated that his intention was to work with DEQ to develop a compliance order by consent. His major concern was that he might not be able to run the issues through his committees and board of directors prior to the January 20 Commission meeting.

Jeanne Roy, of Recycling Advocates expressed concern that there would be any more delay in getting Metro's plan implemented--she stated that the process of review had already delayed implementation by a year. Ms. Roy also stated that none of the essentials of the waste reduction plan should be changed. Metro could be allowed to change strategy and time lines, but not the action elements and goals of the original plan.

Ms. Roy felt that allowing yard debris programs to begin by September 1, 1989 was too much of a delay and preferred to see an

implementation date of July 1, 1989. She was concerned about a "loophole" in the program which while it required communities to submit plans by February 1, 1989, it did not set a timeline for Metro to submit plans if they were assuming responsibility for those communities. Ms. Roy stated that the best incentive for reducing waste for trash haulers is to give credit for recycling. She expressed the need to include scrap paper and plastics in the "additional materials" definitions especially with regard to multi-family dwellings. Ms. Roy also indicated that the money allocated to markets assistance was not enough and that local markets should be encouraged so that people did not begin recycling programs only to have them stopped once again for lack of funding.

Ms. Roy finally asked what will happen to the points of non-agreement between DEQ and Metro when they review the plan and establish the compliance order.

Michael Huston, DEQ legal counsel, stated that the statutory authority is there for the Commission to order implementation of the Waste Reduction Plan. Further, the Commission could seek a court directive to enforce the plan. Civil penalties could not be levied until an order was entered and subsequently violated.

Commissioner Wessinger recommended that the Commission direct the Department to negotiate a stipulated order.

Director Hansen recapped the sense of the Commission's direction as follows:

- The Department should proceed with negotiation of a stipulated order with intent that such negotiations be complete and presented to the Commission at their January meeting.

- It is absolutely critical that the order contain tight timelines.

- The stipulated order must contain stipulated penalties for non-compliance.

- The Department is not to back off too much just to get a stipulated agreement. The Commission is willing to order implementation of part or all of the existing Waste Reduction Plan if necessary.

By consensus, the Commission agreed and instructed the department to proceed on that basis.

At **Commissioner Castle's** suggestion, the Commission agreed that this item will be on the agenda for the Commission in January, even if negotiations are not fully completed by then.

The meeting was then recessed for lunch.

Following the lunch break, **Senator Bill Kennemer** briefly spoke to the Commission about a bill he is interested in introducing at the upcoming legislative session. He stated that although Oregon was a pioneer with the bottle bill, its effectiveness had decreased somewhat in the wake of other solid waste problems. In order to address these problems at the source, he is proposing a bill which would initiate a packaging tax; the intent being to provide incentives for packaging which would reduce the amount of packaging materials entering the waste stream.

Agenda Item J: Mid-Multnomah County Sewer Financing.

On April 25, 1986 the Commission entered an order requiring the implementation of a plan to provide sewer services for a portion of Mid Multnomah County. The plans calls for the Department of Environmental Quality to assist with financing outside of incorporated areas using Pollution Control Bond Fund proceeds.

The cities of Gresham and Portland and DEQ are drafting a memorandum of understanding about the structure of financing for the area. The Department seeks to assure that all loans will be repaid in full by recipients, and that the risk of default is appropriately shared by the Cities and DEQ. Further, the intent is to assure the lowest reasonable cost to residents outside the city. The first bond sale will be small, but the agreements reached initially will set the stage for subsequent bond sales.

The department will return to the Commission with additional information and seek Commission approval prior to proceeding to the first bond sale on the matter.

By consensus, the Commission accepted the Department's report in this matter.

Agenda Item K: Governor's Recommended Budget.

The agency budget request has been reviewed by the Governor and a final Governor's recommended budget decided upon.

The Governor's recommended budget will include an increase of $38.3 million dollars and 83 new positions (the equivalent of 49.9 full time positions) for the 1989-91 biennium for DEQ. The bulk of the increase will be in programs to prevent damage to the environment in groundwater, solid waste management and recycling, hazardous waste reduction, spill response, hazardous waste site assessment and asbestos abatement management. There are also major increases in environmental cleanup dollars and state match for revolving loan fund financing for local sewer projects.

The Commission accepted the report from the Department.

Other Business

Sarah Vickerman, Regional Program Director for Defenders of Wildlife, **Russell Hoeflich**, Director of the Oregon Nature Conservancy, and **Jerry Herrmann**, representing Clackamas Community College Environmental Learning Center told the Commission about a bill various conservation organizations are sponsoring establish a dedicated trust fund to finance land acquisition for wildlife conservation, outdoor recreation, interpretation and environmental education; to provide an economic incentive for establishment of effective recycling systems; and to limit the use of materials causing adverse impacts to the environment.

The proposal would have the State sell Revenue Bonds to establish the trust fund. The bonds would be repaid from several sources including (1) an increase in the surcharge on tipping fees at landfills statewide, (2) a 1% surcharge on disposable goods and products packaged in disposable containers to be collected at the wholesale distributor level, and (3) a $2 surcharge on vehicle batteries.

She reviewed some of the contingencies for authorized expenditures from the fund and stated that the proposal should help to facilitate and stabilize recycling. **Chairman Hutchison** thanked the group for their presentation.

Chairman Hutchison requested that a new agenda item be provided on future agenda's for Commission member reports. The item would specifically include a report from Commissioner Sage regarding the Governor's Watershed Enhancement Board, and from the Chairman regarding the Pacific Northwest Hazardous Waste Advisory Council.

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

12/13/88
mlr

REQUEST FOR EQC ACTION

Meeting Date: 1-20-88
Agenda Item: B
Division: MSD
Section: ADM

SUBJECT:

November 1988 Activity Report

PURPOSE:

Information and Commission Approval of plans and specifications for construction for air contaminant sources.

ACTION REQUESTED:

___ Work Session Discussion
- ___ General Program Background
- ___ Program Strategy
- ___ Proposed Policy
- ___ Potential Rules
- ___ Other: (specify)

__ Authorize Rulemaking Hearing

Proposed Rules (Draft)	Attachment ___
Rulemaking Statements	Attachment ___
Fiscal and Economic Impact Statement	Attachment ___
Draft Public Notice	Attachment ___

__ Adopt Rules

Proposed Rules (Final Recommendation)	Attachment ___
Rulemaking Statements	Attachment ___
Fiscal and Economic Impact Statement	Attachment ___
Public Notice	Attachment ___

__ Issue Contested Case Decision/Order

Proposed Order	Attachment ___

_X_ Other: (specify)

Approve air contaminant source plans and specifications.	Attachment _A_

AUTHORITY/NEED FOR ACTION:

X	Pursuant to Statute: ORS 468.325	Attachment ___
	Enactment Date: _____	
___	Amendment of Existing Rule: _____	Attachment ___
___	Implement Delegated Federal Program: _____	Attachment ___
___	Department Recommendation:	Attachment ___
___	Other:	Attachment ___
___	Time Constraints: (explain)	

DESCRIPTION OF REQUESTED ACTION:

Accept the monthly activity report and approve the plans and specifications for construction of air contaminant sources.

DEVELOPMENTAL BACKGROUND:

X	Department Report (Background/Explanation)	Attachment A
___	Advisory Committee Report/Recommendation	Attachment ___
___	Hearing Officer's Report/Recommendations	Attachment ___
___	Response to Testimony/Comments	Attachment ___
___	Prior EQC Agenda Items: (list)	Attachment ___
___	Other Related Reports/Rules/Statutes:	Attachment ___

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

Yes.

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

None.

PROGRAMMATIC CONSIDERATIONS:

None.

POLICY ISSUES FOR COMMISSION TO RESOLVE:

None.

COMMISSION ALTERNATIVES:

The Commission can approve or disapprove of plans and specifications for construction of air contaminant sources. The Commission can also request different information or additional information in the monthly activity report.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends that the attached information report be accepted and that plans and specifications for construction of air contaminant sources be approved.

INTENDED FOLLOWUP ACTIONS:

None.

Approved:

Section: Roberta Young

Division: Bryan Taylor

Director: Fred Hansen

Contact: Roberta Young

Phone: 229-6408

LRT:dp
MP9999

DEPARTMENT OF ENVIRONMENTAL QUALITY

Monthly Activity Report

November 1988

Table of Contents

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division
Water Quality Division
Hazardous & Solid Waste Division — November 1988
(Reporting Unit) — (Month and Year)

SUMMARY OF PLAN ACTIONS

	Plans Received		Plans Approved		Plans Disapproved		Plans
	Month	FY	Month	FY	Month	FY	Pending
Air							
Direct Sources	5	33	7	46	0	0	11
Small Gasoline Storage Tanks Vapor Controls	-	-	-	-	-	-	-
Total	5	33	7	46	0	0	11
Water							
Municipal	7	60	14	75	1	1	18
Industrial	9	41	4	37	0	0	8
Total	16	101	18	112	1	1	26
Solid Waste							
Gen. Refuse	3	12	5	14	0	2	25
Demolition	-	1	-	-	-	-	2
Industrial	1	4	-	3	-	1	14
Sludge	-	-	-	-	-	-	2
Total	4	17	5	17	0	3	43
GRAND TOTAL	25	151	30	175	1	4	80

MY8061
MAR.2 (1/83)

DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION

MONTHLY ACTIVITY REPORT

DIRECT SOURCES
PLAN ACTIONS COMPLETED

Permit Number	Source Name	County	Date Scheduled	Action Description	Date Achieved
15 0025	TIMBER PRODUCTS COMPANY	JACKSON	10/31/88	COMPLETED-APRVD	11/03/88
18 0013	WEYERHAEUSER COMPANY	KLAMATH	11/04/88	COMPLETED-APRVD	11/23/88
			11/09/88	COMPLETED-APRVD	11/23/88
22 6018	RAINIER WOOD PRODUCTS INC	LINN	11/01/88	COMPLETED-APRVD	11/08/88
26 2050	OREGON HEALTH SCIENCES U.	MULTNOMAH	11/07/88	COMPLETED-APRVD	11/22/88
26 2424	PENNWALT CORPORATION	MULTNOMAH	10/11/88	COMPLETED-APRVD	11/02/88
26 2572	MYERS CONTAINER CORP	MULTNOMAH	09/19/88	COMPLETED-APRVD	11/02/88

TOTAL NUMBER QUICK LOOK REPORT LINES 7

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

SUMMARY OF AIR PERMIT ACTIONS

	Permit Actions Received Month	Permit Actions Received FY	Permit Actions Completed Month	Permit Actions Completed FY	Permit Actions Pending	Sources Under Permits	Sources Reqr'g Permits
Direct Sources							
New	3	11	5	14	9		
Existing	3	4	0	1	10		
Renewals	20	55	9	35	81		
Modifications	5	17	2	11	15		
Trfs./Name Chng.	0	16	1	16	1		
Total	31	103	17	77	116	1398	1422
Indirect Sources							
New	1	5	0	4	3		
Existing	0	0	0	0	0		
Renewals	0	0	0	0	0		
Modifications	0	0	0	0	0		
Total	1	5	0	4	3	290	293
GRAND TOTALS	32	108	17	81	119	1688	1715

Number of Pending Permits	Comments
19	To be reviewed by Northwest Region
13	To be reviewed by Willamette Valley Region
10	To be reviewed by Southwest Region
4	To be reviewed by Central Region
10	To be reviewed by Eastern Region
16	To be reviewed by Program Operations Section
32	Awaiting Public Notice
12	Awaiting end of 30-day Public Notice Period
116	

MAR.5
AA5323 (12/88)

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.
03 2634	JOHNSON CONTROLS, INC.	CLACKAMAS	10/14/86	PERMIT ISSUED	12/07/88	RNW
03 2686	PATHOLOGICAL WASTE DISP.	CLACKAMAS	12/30/87	PERMIT ISSUED	12/07/88	RNW
21 0057	MORSE BROS., INC.	LINCOLN	09/13/88	PERMIT ISSUED	12/07/88	NEW
22 5197	JASPAR SEED CORP	LINN	06/24/88	PERMIT ISSUED	11/29/88	RNW
26 1841	MACADAM ALUMINUM & BRONZE	MULTNOMAH	02/09/88	PERMIT ISSUED	11/17/88	RNW
26 1865	OREGON STEEL MILLS, INC.	MULTNOMAH	08/15/88	PERMIT ISSUED	11/29/88	MOD
26 2000	LOUIS DREYFUS CORP	MULTNOMAH	05/20/88	PERMIT ISSUED	11/18/88	RNW
26 2435	THOMAS INDUSTRIES INC	MULTNOMAH	10/17/88	PERMIT ISSUED	12/07/88	MOD
26 3224	PORT OF PORTLAND	MULTNOMAH	08/09/88	PERMIT ISSUED	11/29/88	RNW
26 3242	LAKESIDE INDUSTRIES	MULTNOMAH	05/31/88	PERMIT ISSUED	11/17/88	NEW
26 3243	CARL DIEBOLD LUMBER CO.	MULTNOMAH	08/19/88	PERMIT ISSUED	11/18/88	NEW
27 0219	DALLAS WAREHOUSE	POLK	10/12/88	PERMIT ISSUED	11/29/88	TRS
34 2749	THERM-TEC DESTRUCTION SVC	WASHINGTON	01/19/88	PERMIT ISSUED	12/07/88	NEW
34 2751	MORSE BROS., INC.	WASHINGTON	07/27/88	PERMIT ISSUED	12/07/88	NEW
36 5377	MARTIN & WRIGHT PAVING	YAMHILL	06/06/88	PERMIT ISSUED	11/16/88	RNW
37 0277	TIDEWATER CONTRACTORS INC	PORT.SOURCE	11/07/88	PERMIT ISSUED	12/07/88	RNW
37 0288	PORTLAND ROAD & DRIVEWAY	PORT.SOURCE	10/18/88	PERMIT ISSUED	11/16/88	RNW

TOTAL NUMBER QUICK LOOK REPORT LINES 17

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

PERMIT ACTIONS COMPLETED

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

Indirect Sources

No final permits issued in November

MAR.6
AD3981

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

PERMIT TRANSFERS & NAME CHANGES

Permit Number	Company Name	Type of Change	Status of Permit
15-0002	LTM, Inc.	Name Change[1]	Being drafted
15-0003	LTM, Inc.	Name Change[1]	Being drafted
03-2632	Mechanics Tools, Inc. dba Stanley-Proto Industrial Tools	Name Change	Ready to be Issued

[1]In conjunction with permit renewal.

[2]In conjunction with permit modification.

MAR.5TC
AD3481 (12/88)

DEPARTMENT OF ENVIRONMENTAL QUALITY
MONTHLY ACTIVITY REPORT

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

PLAN ACTIONS COMPLETED

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
INDUSTRIAL WASTE SOURCES - 4			
Yamhill	Allen Fruit Pretreatment Facility	11-17-88	Approved
Tillamook	Richard DuVall Manure Control Facility	10-25-88	Approved
Tillamook	William Anderson Manure Control Facility	11-15-88	Approved
Tillamook	Todd Holt Manure Control Facility	11-14-88	Approved

WC4227

DEPARTMENT OF ENVIRONMENTAL QUALITY
MONTHLY ACTIVITY REPORT

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

PLAN ACTIONS COMPLETED

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
MUNICIPAL WASTE SOURCES			Page 1 of 2
Deschutes	Mt. Bachelor Pine Martin Lodge Connection	11-10-88	Provisional Approval
Clackamas	Milwaukie Milwaukie Marketplace	12-5-88	Provisional Approval
Curry	Harbor Sanitary District Glazebrook Subdivision (Asbuilt)	12-6-88	Provisional Approval
Tillamook	Bay City Art Edmon, Minor Partition (Block 1, Central Addition)	12-6-88	Provisional Approval
Jackson	BCVSA Jet Drive Sewer	12-7-88	Provisional Approval
Coos	Coos Bay STP #1 Lab Equipment Specs	12-6-88	Provisional Approval
Jackson	Ashland Don Lewis Subdivision	12-6-88	Provisional Approval
Jackson	Jacksonville Daisy Creek Subd	12-6-88	Provisional Approval
Jefferson	Madras Jefferson County Fairgrounds	11-18-88	Provisional Approval
Deschutes	Sunriver The Ridge Sewers	11-18-88	Provisional Approval
Lane	Dexter Sanitary District Sand Filter Reconstruction (Incl. Addenda No. 1 & 2)	11-18-88	Provisional Approval
Douglas	RUSA Loma Vista Ph II Pump Station	12-2-88	Provisonal Approval

WC4227

DEPARTMENT OF ENVIRONMENTAL QUALITY
MONTHLY ACTIVITY REPORT

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

PLAN ACTIONS COMPLETED

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
MUNICIPAL WASTE SOURCES			Page 2 of 2
Columbia	Scappoose Senior Activity Center Sewer	11-25-88	Plans Rejected
Douglas	Green Sanitary District Rolling Hills Subdivision Sewer	11-28-88	Provisional Approval

WC4227

DEPARTMENT OF ENVIRONMENTAL QUALITY
MONTHLY ACTIVITY REPORT

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

PLAN ACTIONS PENDING

County	Name of Source/Project /Site and Type of Same	Date Received	Status
INDUSTRIAL WASTE SOURCES - 8			
Tillamook	Hanna Car Wash Systems Closed Loop Acid Recovery System	10-28-88	Review Completion Projected 12-31-88
Linn	T. Peter Early Manure Control Facility	9-19-88	Review Completion Projected 12-31-88
Linn	Freres Lumber Co Inc. Dip Tank Wood Preserving Containment Facility	11-15-88	Review Completion Projected 12-31-88
Tillamook	Tillamook County Creamery Association Wastewater Treatment Facility Modification	11-17-88	Review Completion Projected 12-31-88
Tillamook	A. Gene Assay Manure Control Facility	11-22-88	Review Completion Projected 12-31-88
Multnomah	McCloskey Corporation of Oregon Automatic Shut-off Valves & Catch Tank	11-18-88	Review Completion Projected 12-31-88
Marion	Siltec Corporation Initial Liquid Effluent Treatment Facility	11-22-88	Review Completion Projected 12-31-88
Umatilla	Pacific Power & Light Co. Oil/Water Separator	11-23-88	Review Completion Projected 12-31-88

WC4227

DEPARTMENT OF ENVIRONMENTAL QUALITY
MONTHLY ACTIVITY REPORT

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

PLAN ACTIONS PENDING

County	Name of Source/Project /Site and Type of Same	Date Received	Status	Reviewer
MUNICIPAL WASTE SOURCES - 18				Page 1 of 2
Umatilla	Larry Greenwalt Shady Rest Mobile Home Court Bottomless Sand Filter	4-21-88	Review Completion Projected 12-31-88	JLV
Lincoln	Coyote Rock RV Park Site Sewers, New Drainfield	8-30-88	Review Completion Projected 12-31-88	JLV
Curry	Brookings Preliminary Plans for outfall	8-22-88	Review Completion Projected 12-31-88	KMV
Clatsop	Glenwood Mobile Park Modification to dual media filter from anoxic tower	10-4-88	Review Completion Projected 12-31-88	JLV
Clackamas	Government Camp Mt. Hood Motel	11-21-88	Review Completion Projected 12-31-88	JLV
Lane	Mapleton Sewerage System	11-28-88	Review Completion Projected 12-31-88	JLV
Coos	North Bend STP Expansion	12-6-88	Review Completion Projected 12-31-88	DSM

WC4227

DEPARTMENT OF ENVIRONMENTAL QUALITY
MONTHLY ACTIVITY REPORT

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

PLAN ACTIONS PENDING

MUNICIPAL WASTE SOURCES

County	Name of Source/Project /Site and Type of Same	Date Received	Status	Reviewer
- - - - - - - - - - - - - -PROJECTS BELOW ARE "ON-HOLD"- - - - - - - - - - - - -				
Baker	Idaho Power Company Copperfield Campground Reconstruction of On-Site System	8-25-88	Awaiting Resubmittal	JLV
Columbia	Scappoose Sewage Treatment Plant Expansion	3-11-87	On Hold, Financing Incomplete	DSM
Deschutes	Romaine Village Recirculating Gravel Filter (Revised)	4-27-87	On Hold For Surety Bond	Not Assigned
Marion	Breitenbush Hot Springs On-Site System	5-27-86	On Hold, Uncertain Financing	JLV
Benton	North Albany County Service District Spring Hill-Crocker Creek Int.	1-21-87	On Hold, Project Inactive	Not Assigned
Curry	Whaleshead Beach Campground Gravel Recirculation Filter (Revised)	5-20-87	Holding for Field Inspection	JLV
Lincoln	Whalers Rest Sewers and Septic Tanks	3-23-88	Holding for New Drainfield Plans	JLV
Multnomah	Troutdale Frontage Road Sewage Pump Station Replacement	4-25-88	Bids Rejected, Being Redesigned	DSM
Curry	Brookings Brookings Meadows Subdivision	4-25-88	Holding for Revisions. Inquiry to Engineer 11-28-88	DSM
Wallowa	Wallowa Lake Co. Service District STEP System Equiment/Materials	6-6-88	Holding for Equipment Submittals	DSM
Deschutes	Bend Bend Millwork Sewer and Pump Station	8-18-88	Awaiting Design Revisions	DSM

WC4227

Summary of Actions Taken
On Water Permit Applications in NOV 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			11	2		3		2	7		3	18	2			
RW	1			2	1					1	1		3	1				
RWO	5			21	9		1			7	8		77	35				
MW				1									2					
MWO		1		2	5					2	3		3	4				
Total	6	2		26	26	2	1	3		12	19		88	58	2	225	200	29
Industrial																		
NEW	2		5	4	5	18		1	2		7	20	6	13	10			
RW				2						2			2					
RWO	1	2		8	12		1	4		9	9		20	24				
MW										1			3					
MWO				4	6	2				4	6			1	1			
Total	3	2	5	18	23	20	1	5	2	16	22	20	31	38	11	155	137	431
Agricultural																		
NEW					2				5			33		2				
RW																		
RWO					3								1	4				
MW																		
MWO					1						2							
Total					6				5		2	33	1	6		2	8	635
Grand Total	9	4	5	44	55	22	2	8	7	28	43	53	120	102	13	382	345	1095

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

It does include applications pending from previous months and those filed after 30-NOV-88.

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

CAT	PERMIT NUMBER	TYPE	SUB-TYPE	OR NUMBER	FACILITY	FACILITY NAME	CITY	COUNTY/REGION	DATE ISSUED	DATE EXPIRES
General: Boiler Blowdown										
IND	500	GEN05	NEW	OR003264-6	104186/A	NORTH POWDER LUMBER CO.	NORTH POWDER	UNION/ER	14-NOV-88	31-JUL-91
General: Confined Animal Feeding										
AGR	800	GEN08	NEW		104147/A	DUYCK, GARY	CORNELIUS	WASHINGTON/NWR	01-NOV-88	31-JUL-92
AGR	800	GEN08	NEW		104149/A	RASMUSSEN, JOHN	ST. PAUL	MARION/WVR	01-NOV-88	31-JUL-92
AGR	800	GEN08	NEW		104151/A	FULLER, TIM	CORVALLIS	BENTON/WVR	01-NOV-88	31-JUL-92
AGR	800	GEN08	NEW		104150/A	VISSER, FRED J. & HELEN A.	CORVALLIS	BENTON/WVR	01-NOV-88	31-JUL-92
AGR	800	GEN08	NEW		104148/A	HAZENBERG, HENRY	ST. PAUL	MARION/WVR	01-NOV-88	31-JUL-92
General: Seafood Processor										
IND	900	GEN09	NEW	OR003003-1	70584/A	ORE-PAC SEAFOODS, INC.	GOLD BEACH	CURRY/SWR	18-NOV-88	31-DEC-91
NPDES										
IND	100537	NPDES	RWO	OR003022-8	52575/A	MAIN ROCK PRODUCTS, INC	NORTH BEND	COOS/SWR	16-NOV-88	31-OCT-93
DOM	100539	NPDES	RWO	OR002048-6	55881/A	MERRILL, CITY OF	MERRILL	KLAMATH/CR	16-NOV-88	31-OCT-93

CAT	PERMIT NUMBER	TYPE	SUB-TYPE	OR NUMBER	FACILITY	FACILITY NAME	CITY	COUNTY/REGION	DATE ISSUED	DATE EXPIRES
WPCF										
IND	100533	WPCF	RWO		84052/A	SPRINGFIELD QUARRY ROCK PRODUCTS, INC.	SPRINGFIELD	LANE/WVR	14-NOV-88	31-OCT-93
IND	100534	WPCF	RWO		97485/A	WILLIAMS, ALBERT	SHERIDAN	YAMHILL/WVR	14-NOV-88	31-OCT-93
IND	100535	WPCF	RWO		62966/A	OCEAN SPRAY CRANBERRIES, INC.	BANDON	COOS/SWR	14-NOV-88	31-AUG-93
DOM	100536	WPCF	NEW		43613/A	CHADSEY, BETTY A., JAXON E. & ROBERT H.; THOMPSON, MARY H. & DOUGLAS C. DBA	ASTORIA	CLATSOP/NWR	16-NOV-88	31-OCT-93
DOM	100538	WPCF	NEW		103845/A	WALKER, GEORGE	NORTH BEND	COOS/SWR	16-NOV-88	31-AUG-93
IND	100540	WPCF	RWO		18702/A	COLUMBIA SUN, INC.	HERMISTON	UMATILLA/ER	18-NOV-88	30-SEP-93
DOM	100541	WPCF	NEW		103958/A	CORREIA, WM. MARK OR ELAINE	WALDPORT	LINCOLN/WVR	18-NOV-88	31-OCT-93
IND	100542	WPCF	NEW		103835/A	DOBBES, JOSEPH F.	MOLALLA	CLACKAMAS/NWR	23-NOV-88	30-SEP-93

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

PLAN ACTIONS COMPLETED

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Marion	Woodburn Landfill As-built plans	11/10/88	Plans approved.
Marion	Woodburn Landfill Operational plan	11/10/88	Plans approved.
Marion	Woodburn Landfill Wastewater Storage Plans	11/18/88	Plans approved.
Deschutes	Alfalfa Transfer Station	11/22/88	Plans approved.
Klamath	Bio-Waste Management Incinerator	11/1/88	Plans approved.

MAR.3 (5/79) ZB8139

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Hazardous and Solid Waste Division (Reporting Unit) — November 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 89
Treatment	0	0	0
Storage	0	0	1
Disposal	0	0	0
Post-Closure	0	0	3

INSPECTIONS

	COMPLETED		PLANNED
	No. This Month	No. FYTD	No. in FY 89
Generator	5	22	14*
TSD	1	5	16*

CLOSURES

	PUBLIC NOTICES			CERTIFICATIONS ACCEPTED		
	No. This Month	FYTD No.	Planned in FY 89	No. This Month	No. FYTD	No. Planned in FY 89
Treatment	0	0	0	0	0	0
Storage	0	0	3	0	0	4
Disposal	0	0	0	0	0	1

* SEA commitment only.

SB5285.A

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

PLAN ACTIONS PENDING - 43

County	Name of Facility	Date Plans Rec'd.	Date of Last Action	Type of Action and Status	Location
Municipal Waste Sources - 25					
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
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
Lane	Short Mountain Landfill	9/16/87	9/16/87	(R) Revised operational plan	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
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

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

County	Name of Facility	Date Plans Rec'd.	Date of Last Action	Type of Action and Status	Location
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
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
Marion	Marion Recycling Center, Inc.	7/20/88	7/20/88	(N) Plans received	HQ
Douglas	Lemolo Transfer	9/1/88	9/1/88	(M) Plans received	HQ
Lane	Franklin Landfill	9/29/88	9/29/88	(R) Groundwater report received	HQ
Umatilla	Athena Landfill	11/15/88	11/15/88	(M) Plans received	
Josephine	Merlin Landfill	11/30/88	11/30/88	(M) Groundwater study received	HQ
<u>Demolition Waste Sources</u> - 2					
Washington	Hillsboro Landfill	1/29/88	1/29/88	(N) Expansion plans received	
Marion	Browns Island Lndf.	6/8/88	6/8/88	(N) Plans received	HQ
<u>Industrial Waste Sources</u> - 14					
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

County	Name of Facility	Date Plans Rec'd.	Date of Last Action	Type of Action and Status	Location
Coos	Rogge Lumber	7/28/86	6/18/87	(C) Additional info. submitted to revise previous application	HQ
Douglas	Roseburg Forest Products Co. (Dixonville)	3/23/87	3/23/87	(R) Operational plan	HQ
Douglas	Louisiana-Pacific Round Prarie	9/30/87	9/30/87	(R) Operational plan	HQ
Clatsop	Nygard Logging	11/17/87	11/17/87	(N) Plan received	HQ
Linn	James River, Lebanon	1/22/88	4/21/88	(C) Additional information requested	HQ
Columbia	Boise Cascade St. Helens	4/6/88	4/6/88	(N) As built plans received.	HQ
Douglas	Sun Studs	6/20/88	6/20/88	(R) Plans received	HQ
Douglas	Sun Studs	7/1/88	7/1/88	(R) Operational/groundwater plans received	HQ
Douglas	IP, Gardiner	8/16/88	8/16/88	(N) Plans received	HQ
Yamhill	Boise Cascade (Willamina)	9/1/88	9/1/88	(N) Plans received	
Grant	Blue Mountain Forest Products	9/7/88	9/7/88	(N) Plans received	HQ
Douglas	Lemolo	11/10/88	11/10/88	(R) Plans received	
<u>Sewage Sludge Sources</u> - 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

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

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

SUMMARY OF SOLID WASTE PERMIT ACTIONS

	Permit Actions Received		Permit Actions Completed		Permit Actions	Sites Under	Sites Reqr'g
	Month	FY	Month	FY	Pending	Permits	Permits
GeneralRefuse							
New	-	3	1	1	7		
Closures	1	2	-	4	3		
Renewals	0	1	-	3	11		
Modifications	-	16	0	17	0		
Total	1	22	1	25	21	180	180
Demolition							
New	-	1	-	-	1		
Closures	-	-	-	-	-		
Renewals	-	-	-	-	1		
Modifications	-	2	-	2	1		
Total	0	3	0	2	3	11	11
Industrial							
New	-	-	-	-	5		
Closures	-	-	-	-	1		
Renewals	-	1	-	6	6		
Modifications	-	8	-	8	-		
Total	0	9	0	14	12	107	107
Sludge Disposal							
New	-	1	-	1	1		
Closures	-	-	-	-	1		
Renewals	-	-	-	-	-		
Modifications	-	1	-	-	-		
Total	0	2	0	1	2	18	18
Total Solid Waste	1	36	1	42	38	315	315

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

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

PERMIT ACTIONS COMPLETED

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Klamath	Biowaste Incinerator	11/1/88	Permit issued

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

PERMIT ACTIONS PENDING - 38

County	Name of Facility	Date Appl. Rec'd.	Date of Last Action	Type of Action and Status	Location
Municipal Waste Sources - 21					
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
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
Lane	Florence Landfill	9/21/87	1/12/88	(R) Draft received	HQ
Morrow	Tidewater Barge Lines (Finley Butte Landfill)	10/15/87	10/15/87	(N) Application filed	HQ
Douglas	Roseburg Landfill	10/21/87	12/21/87	(R) Draft received	
Curry	Port Orford Lndfl.	12/14/87	8/18/88	(R) Applicant review	HQ
Washington	Hillsboro TS	1/15/88	4/12/88	(N) Draft received	HQ
Multnomah	Riedel Composting	5/5/88	5/5/88	(N) Application received	RO/HQ
Coos	Les' Sanitary Service TS	6/30/88	8/19/88	(N) Draft received	HQ
Malheur	Brogan-Jameson	7/1/88	7/1/88	(C) Application received	RO
Malheur	Brogan TS	7/1/88	7/1/88	(N) Application received	RO

SB4968
MAR.7S (5/79)

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

County	Name of Facility	Date Appl. Rec'd.	Date of Last Action	Type of Action and Status	Location
Marion	Marion Recycling Center, Inc.	7/20/88	7/20/88	(N) Application received	HQ
Tillamook	Tillamook Landfill	8/16/88	8/16/88	(N) Applicantion received	RO
Marion	Ogden Martin	10/11/88	10/11/88	(R) Application received	HQ
Gilliam	Arlington Landfill Closure	11/14/88	11/14/88	Closure Application	HQ
Demolition Waste Sources - 3					
Coos	Bracelin/Yeager (Joe Ney)	3/28/86	8/11/88	(R) Public hearing held	HQ
Washington	Hillsboro Lndfl.	1/29/88	1/29/88	(A) Application received	HQ
Marion	Browns Island Demolition	6/8/88	8/18/88	(N) Applicant review	HQ
Industrial Waste Sources - 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
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
Baker	Ash Grove Cement West, Inc.	4/1/87	4/1/87	(N) Application received	RO
Klamath	Modoc Lumber Landfill	5/4/87	5/4/87	(R) Application filed	RO
Clatsop	Nygard Logging	11/17/87	3/3/88	(N) Draft received	HQ
Wallowa	Sequoia Forest Ind.	11/25/87	11/25/87	(N) Application filed	RO

County	Name of Facility	Date Appl. Rec'd.	Date of Last Action	Type of Action and Status	Location
Douglas	Glide Lumber Prod.	3/8/88	9/28/88	(R) Applicant comments received	HQ
Marion	Silverton Forest Products	5/5/88	8/31/88	(C) Applicant review	HQ
Douglas	Hayward Disp. Site	6/7/88	8/18/88	(R) Applicant review	HQ
Yamhill	Boise-Cascade (Willamina)	9/1/88	9/1/88	(N) Application received	HQ
Sewage Sludge Sources - 2					
Coos	Beaver Hill Lagoons	5/30/86	3/10/87	(N) Add'l. info. received (addition of waste oil facility)	HQ
Coos	Hempstead Sludge Lagoons	9/14/87	9/14/87	(C) Application received	HQ/RO

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Hazardous and Solid Waste Division (Reporting Unit)

November 1988 (Month and Year)

SOLID WASTE PERMIT TRANSFERS

Previous Permittee	New Permittee	County	Name of Facility
Gene Dahl	South Lincoln Landfill, Inc.	Lincoln	South Lincoln Landfill

MAR.3 (5/79) SB8139A

CHEM-SECURITY SYSTEMS, INC.
Arlington, Oregon

1988

HAZARDOUS WASTE ORIGINATION SOURCES

MONTHLY QUANTITY OF WASTE DISPOSED (TONS)[1]

Waste Source	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	YTD
Oregon	1,198	1,766	2,845	1,927	1,644	3,602	4,782	5,351	4,690	2,687			30,492
Washington	7,698	8,186	10,696	9,986	9,918	14,952	15,595	16,971	17,961	16,522			128,485
California	19	-	32	-	46	-	12	9	-	-			118
Alaska	-	-	-	267	9	-	-	922	540	249			1,987
Idaho	41	26	146	35	19	2	8	129	171	169			746
CSSI[2,3]	890	262	319	1,000	96,024	90,790	163,965	5,802	222	301			299,575
Other[4]	73	32	111	136	43	103	60	106	69	50			783
TOTALS	9,919	10,272	14,149	13,351	47,703	109,449	184,422	29,290	23,653	19,978			462,186

Footnotes

1 Quantity of waste (both RCRA and non-RCRA) received at the facility.

2 Waste generated on-site by CSSI.

3 Closure of surface impoundments occurred at the facility during the period May - August, 1988. The waste residue from the surface impoundment closures was landfilled, which accounts for the relatively high amount of waste generated by CSSI during this period.

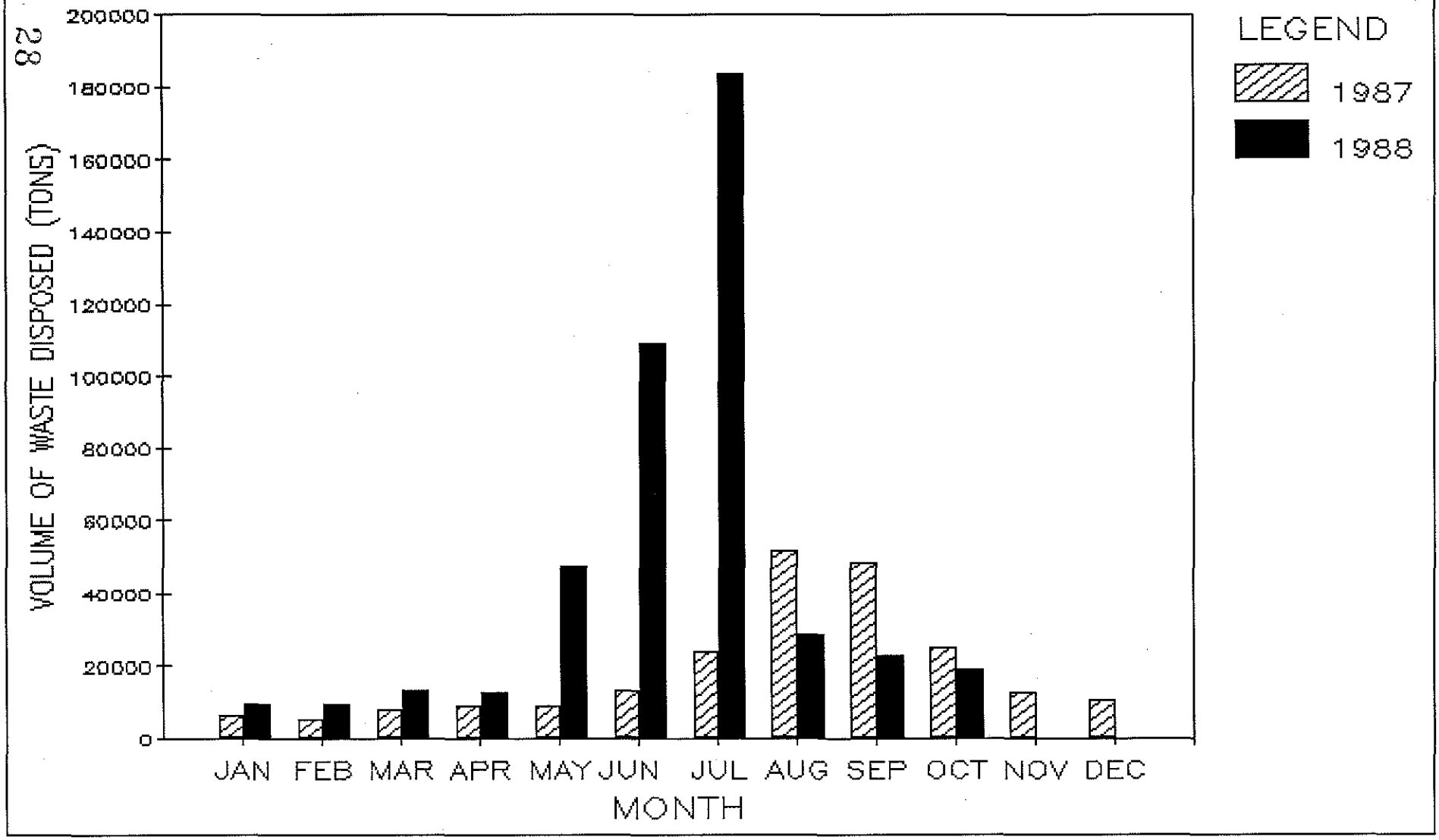
4 Other waste origination sources include Utah, Montana, Hawaii, Wyoming, and British Columbia.

HAZARDOUS WASTE DISPOSAL

CHEM-SECURITY SYSTEMS, INC.

Arlington, Oregon

1987 - 1988 Waste Disposal Volume Comparison



DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

SUMMARY OF NOISE CONTROL ACTIONS

Source Category	New Actions Initiated		Final Actions Completed		Actions Pending	
	Mo	FY	Mo	FY	Mo	Last Mo
Industrial/ Commercial	4	54	23	91	151	170
Airports			2	8	1	0

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

FINAL NOISE CONTROL ACTIONS

County	Name of Source and Location	Date	Action
Clackamas	Arrowhead Timber Co., Clackamas	11/88	In compliance
Clackamas	Brazier Forest Products, Molalla	11/88	In compliance
Clackamas	Brod & McClung-Pace Co., Milwaukie	11/88	In compliance
Clackamas	Consolidated Rock Products, Inc., Clackamas	11/88	In compliance
Clackamas	Fred Meyer, King Road Store, Portland	11/88	In compliance
Clackamas	Kimber Rifle, Colton	11/88	In compliance
Clackamas	Matt's Shop, Portland	11/88	No violation
Clackamas	ModCom, Inc., Canby	11/88	In compliance
Clackamas	Portland General Electric, Bell Substation, Milwaukie	11/88	In compliance
Clackamas	Summit Woodworking, Oregon City	11/88	In compliance
Clackamas	Thorolyte Fiberglass, Portland	11/88	In compliance
Clackamas	Waste Wood Recyclers, Clackamas	11/88	In compliance
Multnomah	Burlington Northern Railroad, NW St. Helens Road, Linnton	11/88	In compliance
Multnomah	Busy Corner Market, Portland	11/88	In compliance
Multnomah	Port of Portland, Term. 2, Portland	11/88	In compliance

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

FINAL NOISE CONTROL ACTIONS

County	Name of Source and Location	Date	Action
Multnomah	Union Pacific Railroad, N. Lombard at Albina & East, Portland	11/88	Referred to US Federal Rail. Admin.
Marion	NORPAC Foods, Inc., Stayton	11/88	In compliance
Marion	Pal Bro, Inc., Silverton	11/88	In compliance
Marion	Santiam Water Control District Hydro Project, Stayton	11/88	In compliance
Marion	WTD Enterprises, formerly Silverton Forest Products, Silverton	11/88	Source closed
Polk	Oregon Turkey Growers, West Salem	11/88	In compliance
Jackson	Custom Automotive & Alignment, Central Point	11/88	Referred to Central Point Police Dept.
Airports			
Josephine	Billiebob Ultralight Strip, Grants Pass	11/88	Boundary approved
Marion	South Hill Heliport, Salem	11/88	Boundary approved

CIVIL PENALTY ASSESSMENTS

DEPARTMENT OF ENVIRONMENTAL QUALITY
1988

CIVIL PENALTIES ASSESSED DURING MONTH OF NOVEMBER, 1988:

Name and Location of Violation	Case No. & Type of Violation	Date Issued	Amount	Status
Pennwalt Corporation Portland, Oregon	Stipulation & Final Order #WQ-NWR-88-36. Stipulated civil penalty for exceeding daily maximum chrome on 10/18/88.	8/30/88	$250	Paid 11/14/88
Consolidated, Inc. Portland, Oregon	AQOB-NWR-88-96 Open burning of land-clearing debris near the Portland Zoo.	11/1/88	$250	Paid 12/12/88.
Larry Killian Hillsboro, Oregon	AQOB-NWR-88-93 Open burning of construction or demolition waste.	11/1/88	$125	Partial payment of $62.50 rec'd. on 12/12/88.
Frank George Clackamas, Oregon	AQOB-NWR-88-95 Open burning of commercial waste; 2 days of violation.	11/1/88	$300	Paid 11/8/88.
Charles B. Harris III dba/CBH Construction Co. Portland, Oregon	AQOB-NWR-88-97 Open burning of construction waste.	11/25/88	$100	Awaiting response to notice.
Enlund Equipment, Inc. Coquille, Oregon	AQOB-SWR-88-100 Open burning of commercial waste including prohibited materials (plastic and rubber).	11/29/88	$500	Awaiting response to notice.

GB8083

December, 1988
DEQ/EQC Contested Case Log

ACTIONS	LAST MONTH	PRESENT
Preliminary Issues	1	1
Discovery	0	0
Settlement Action	3	3
Hearing to be scheduled	1	0
Department reviewing penalty	0	0
Hearing scheduled	7	9
HO's Decision Due	3	2
Briefing	0	0
Inactive	2	2
SUBTOTAL of cases before hearings officer	17	17
HO's Decision Out/Option for EQC Appeal	2	0
Appealed to EQC	0	0
EQC Appeal Complete/Option for Court Review	0	0
Court Review Option Taken	0	0
Case Closed	0	3
TOTAL Cases	19	20

15-AQ-NWR-87-178	15th Hearing Section case in 1987 involving Air Quality Division violation in Northwest Region jurisdiction in 1987; 178th enforcement action in the Department in 1987.
$	Civil Penalty Amount
ACDP	Air Contaminant Discharge Permit
AG1	Attorney General 1
AQ	Air Quality Division
AQOB	Air Quality, Open Burning
CR	Central Region
DEC Date	Date of either a proposed decision of hearings officer or a decision by Commission
ER	Eastern Region
FB	Field Burning
HW	Hazardous Waste
HSW	Hazardous and Solid Waste Division
Hrng Rfrl	Date when Enforcement Section requests Hearing Section schedule a hearing
Hrngs	Hearings Section
NP	Noise Pollution
NPDES	National Pollutant Discharge Elimination System wastewater discharge permit
NWR	Northwest Region
OSS	On-Site Sewage Section
P	Litigation over permit or its conditions
Prtys	All parties involved
Rem Order	Remedial Action Order
Resp Code	Source of next expected activity in case
SS	Subsurface Sewage (now OSS)
SW	Solid Waste Division
SWR	Southwest Region
T	Litigation over tax credit matter
Transcr	Transcript being made of case
Underlining	New status or new case since last month's contested case log
WQ	Water Quality Division
WVR	Willamette Valley Region

CONTES.B

December, 1988
DEQ/EQC Contested Case Log

Pet/Resp Name	Hrng Rqst	Hrng Rfrrl	Hrng Date	Resp Code	Case Type & No.	Case Status
WAH CHANG	04/78	04/78		Prtys	16-P-WQ-WVR-78-2849-J NPDES Permit Modification	New permit under negotiation. May resolve contested issues.
WAH CHANG	04/78	04/78		Prtys	03-P-WQ-WVR-78-2012-J NPDES Permit Modification	New permit under negotiation. May resolve contested issues.
DANT & RUSSELL, INC.	05/31/85	05/31/85	03/21/86		15-HW-NWR-85-60 Hazardous waste disposal Civil Penalty of $2,500	Settlement agreement submitted to Bankruptcy Court for approval.
BRAZIER FOREST PRODUCTS	11/22/85	12/12/85	02/10/86	DEQ	23-HSW-85-60 Declaratory Ruling	Tentative settlement reached. Order to be prepared for EQC consideration.
CITY OF KLAMATH FALLS SALT CAVES II)			05/03/88	Ptys	1-P-WQ-88 (FERC #10199)	Motion to dismiss appeal filed by Conservation Parties.
ZELMER, dba RIVERGATE AUTO	3/2/88	3/3/88	07/12/88	Prtys	AQOB-NWR-88-03 $1,000 Civil Penalty	Hearings Officer reduced penalty to $700. No appeal. Case closed.
CSSI	3/31/88	4/19/88		Prtys	Permit 089-452-353	A stipulated order resolving certain disputed terms will be submitted to EQC for approval; others will be adjudicated.
NEU-GLO CANDLES	6/9/88		07/25/88	Dept	AQAB-NWR-88-33 Asbestos $1,000 Civil Penalty	Hearings Officer dismissed penalty. No appeal. Case closed.

December, 1988
DEQ/EQC Contested Case Log

Pet/Resp Name	Hrng Rqst	Hrng Rfrrl	Hrng Date	Resp Code	Case Type & No.	Case Status
GUARANTEE CONSTRUCTION			10/4/88	Hrgs	AQAB-NWR-88-31 $2,000 Civil Penalty	DEQ post-hearing brief filed 11/21/88.
GEORGE FOX COLLEGE			9/7/88	DEQ	AQAB-WVR-88-38 $3,750 Civil Penalty	Hearings Officer dismissed penalty.
ELLIOTT-JOCHIMSEN			9/7/88	Hrgs	AQAB-WVR-88-50 $7,000 Civil Penalty	Decision due.
CLAUDE ST. JEAN	9/15/88		1/10/89	Prtys	OS-SWR-88-68 $500 Civil Penalty	Hearing rescheduled.
GLENEDEN BRICK & TILE WORKS	9/15/88		1/18/89	Prtys	AQ-WS-88-70 $1,500 Civil Penalty	Hearing scheduled.
JOHN BOWERS	9/19/88		1/11/89	Prtys	AQOB-CR-88-58 $1,500 Civil Penalty	Hearing rescheduled.
CITY OF SALEM	9/26/88		1/31/89	Prtys	Department Order	Hearing rescheduled.
DAVIS dba TRI-COUNTY STOVE AND CHIMNEY SERVICE	9/27/88		12/1/88	Prtys	AQ-WS-88-69 $1,500 Civil Penalty	Record closed 12/15/88.
IRVING HERMENS	9/27/88		1/24/89	Prtys	WQ-WVR-88-61A $2,500 Civil Penalty and-62B, Department Order	Hearing rescheduled.

December, 1988
DEQ/EQC Contested Case Log

Pet/Resp Name	Hrng Rqst	Hrng Rfrrl	Hrng Date	Resp Code	Case Type & No.	Case Status
ARIE JONGANEEL dba A.J. Dairy	10/3/88		1/20/89	Prtys	WQ-WVR-88-73A $2,500 Civil Penalty and -73B, Department Order	Hearing rescheduled. Cooperative resolution proposed by Respondent.
JOHN VOLBEDA	11/15/88	11/17/88	1/27/89	Prtys	WQ-WVR-88-81	Hearing scheduled.
HARBOR OIL			2/03/89	Prtys	Permit 1300-J Permit Revocation	Hearing scheduled.
ENVIRONMENTAL PACIFIC CORP.			1/30/89	Prtys	Compliance Order	HW-WVR-88-88Hearing scheduled.
ENGLUND MARINE					OB-SWR-88-100 $500 Civil Penalty	Penalty Notice Withdrawn. Case Closed.

REQUEST FOR EQC ACTION

Meeting Date: 1-20-89
Agenda Item: D
Division: MSD
Section: ADM

SUBJECT:

Pollution Control Tax Credits

PURPOSE:

Approve Pollution Control Tax Credit Applications and Revoke and Reissue an Existing Tax Credit.

ACTION REQUESTED:

___ Work Session Discussion
- ___ General Program Background
- ___ Program Strategy
- ___ Proposed Policy
- ___ Potential Rules
- ___ Other: (specify)

___ Authorize Rulemaking Hearing

Proposed Rules (Draft)	Attachment ___
Rulemaking Statements	Attachment ___
Fiscal and Economic Impact Statement	Attachment ___
Draft Public Notice	Attachment ___

___ Adopt Rules

Proposed Rules (Final Recommendation)	Attachment ___
Rulemaking Statements	Attachment ___
Fiscal and Economic Impact Statement	Attachment ___
Public Notice	Attachment ___

___ Issue Contested Case Decision/Order

Proposed Order	Attachment ___

_X_ Other: (specify)

Approve Pollution Control Tax Credits listed in the attached report.	Attachment A

AUTHORITY/NEED FOR ACTION:

X	Pursuant to Statute: ORS 468.150-468.190 Enactment Date: 1968	Attachment ____
___	Amendment of Existing Rule: _____	Attachment ____
___	Implement Delegated Federal Program: _____	Attachment ____
___	Department Recommendation:	Attachment ____
___	Other:	Attachment ____
___	Time Constraints: (explain)	

DESCRIPTION OF REQUESTED ACTION:

Issue tax credit certificates for pollution control facilities listed in the attachment. Revoke and reissue the tax credit listed in the attached report as a result of change in ownership.

DEVELOPMENTAL BACKGROUND:

___	Department Report (Background/Explanation)	Attachment ____
___	Advisory Committee Report/Recommendation	Attachment ____
___	Hearing Officer's Report/Recommendations	Attachment ____
___	Response to Testimony/Comments	Attachment ____
___	Prior EQC Agenda Items: (list)	Attachment ____
___	Other Related Reports/Rules/Statutes:	Attachment ____
X	Note:	

The pollution control tax credit program has been in effect since 1968 to provide credits for installation of pollution control equipment. The statute requires Commission approval of the amount certified for pollution control.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

Yes.

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

None.

PROGRAMMATIC CONSIDERATIONS:

None.

POLICY ISSUES FOR COMMISSION TO RESOLVE:

None.

COMMISSION ALTERNATIVES:

Issue the pollution control tax credits and revoke and reissue the tax credit for change in ownership. Tax credits could also be denied or action delayed if additional information is needed for a decision.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends that the attached tax credits be approved.

INTENDED FOLLOWUP ACTIONS:

None

Approved:

Section: Roberta Young

Division: Lydia Taylor

Director: Jill Hanson

Contact: Roberta Young

Phone: 229-6408

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item D, January 20, 1989, EQC Meeting

TAX CREDIT APPLICATIONS

1. Issue tax credit certificates for pollution control facilities:

T-2093	Pacific Power & Light Co.	Oil spill containment system
T-2203	Pacific Power & Light Co.	Oil spill containment system
T-2313	Gerben Atsma	Manure control facility
T-2473, 2519 & 2520	Steve Glaser Farm, Inc.	Straw storage shed, basket rake, straw stacker, propane flamer, tractor
T-2535	Chauncey M. Hubbard, Jr.	Straw Storage Shed

2. Revoke Pollution Control Facility Certificates 858, 945 and 1764 held by Champion International and reissue same certificates to Dee Forest Products, Inc.

Proposed January 20, 1989 Totals:

Air Quality	$ 227,723
Water Quality	131,982
Hazardous/Solid Waste	-0-
Noise	-0-
	$ 359,705

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

Air Quality	$ 8,659,564
Water Quality	2,064,551
Hazardous/Solid Waste	472,118
Noise	-0-
	$11,196,233

Fred Hansen

C. Nuttall:y
(503) 229-6484
December 19, 1988
MY8053

Application No.T-2093

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

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

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

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

2. Description of Facility

The facility is an oil spill containment system consisting of a rock filled trench with an oil resistant liner and an oil stop valve.

Claimed Facility Cost: $16,670.51

3. Procedural Requirements

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

The facility met all statutory deadlines in that:

a. The request for preliminary certification was filed May 7, 1986, more than 30 days before construction commenced on July 1, 1986.

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

c. Construction of the facility was substantially completed on October 10, 1986 and the application for final certification was found to be complete on March 9, 1988, within 2 years of substantial completion of the facility.

4. Evaluation of Application

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

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

The Ponderosa Substation is a new electrical substation located on Highway 126 east of Powell Butte, Oregon. A drainage ditch runs along the substation and eventually discharges into the Dry River. Had the substation constructed without the oil spill containment system, oil could flow out of the substation and into the ditch along the entrance road in the event of a significant spill. To comply with the federal requirements, the applicant installed an oil spill containment facility. A 5 foot deep trench was dug around the transformer pad and lined with an oil resistant membrane. The trench was filled with crushed rock to grade. Any runoff collected in the trench, including oil, is routed through an oil stop valve located in the a concrete vault and discharges into the drainage ditch. If oil enters the vault the valve closes and contains the oil within the vault and the trench. The system was designed to contain the entire oil capacity of the largest piece of electrical equipment in the substation.

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.

Earth berm along the east side of the substation and a vault with an oil stop valve were considered. However, this system is not reliable and it is more expensive.

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

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

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

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

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 federal Environmental Protection Agency to prevent water pollution and accomplishes this purpose by the containment of industrial waste as defined in ORS 468.700.

c. The facility complies with DEQ statutes and rules.

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

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $16,670.51 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-2093.

RCDulay:crw
WC4080
(503) 229-5876
November 9, 1988

Application No.T-2203

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

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

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

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

2. Description of Facility

The facility is an oil spill containment system consisting of a sump with an oil stop valve, catch basin, earthen berm and concrete gutters.

Claimed Facility Cost: $30,049.05
(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 15, 1986, more than 30 days before construction commenced on November 30, 1986.

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

c. Construction of the facility was substantially completed on January 30, 1987 and the application for final certification was found to be complete on March 9, 1988, within 2 years of substantial completion of the facility.

4. Evaluation of Application

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

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

The North Bend Steam Plant substation is located adjacent to Coos Bay in North Bend. Prior to installation of the claimed facility, there were no means to contain oil spills. To comply with the federal requirements, the applicant installed an oil spill containment facility. A 3 inch concrete curb and 1 foot high earthen berm were constructed along the 3 sides of the substation paved yard. The side without curbing is upgradient. The curbed area forms a collection basin for any spilled oil. Any runoff from this basin, including oil, is routed through an oil stop valve located in the sump which is connected to the city storm drain. With this system in place, all drainage from the substation is controlled prior to entering Coos Bay.

b. Eligible Cost Findings

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

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

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

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

There is no return on investment from this facility.

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

Concrete gutter down the middle of the substation with sump and oil stop valve was considered. However, this is not reliable and it is more expensive.

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

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

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

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

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 federal Environmental Protection Agency to prevent water pollution and accomplishes this purpose by the containment of industrial waste as defined in ORS 468.700.

c. The facility complies with DEQ statutes and rules.

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

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $30,049.05 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-2203.

RCDulay:crw
WC4069
(503) 229-5876
November 9, 1988

Application No.T-2313

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Gerben Atsma
10695 Meridian Road
Mt. Angel, OR 97362

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

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

2. Description of Facility

The facility is a manure control facility consisting of 9 acre foot earthen storage reservoir, 12,000 square foot concrete solids storage area, a hydrosieve separator, and associated piping system.

Claimed Facility Cost: $85,262.62
(Accountant's Certification was provided).

The Accountant certified a facility cost of $85,262.62. The U.S. Department of Agriculture Stabilization and Conservation Service reimbursed the applicant $20,094.00.

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 15, 1987, more than 30 days before construction commenced on August 17, 1987.

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

c. Construction of the facility was substantially completed on September 21, 1987 and the application for final certification was found to be complete on March 31, 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 water pollution. This control is accomplished by elimination of industrial waste as defined in ORS 468.700.

Prior to installation of the control facility, manure was collected in 40,000 gallon tank and then spread at the pastureland. Due to the increasing size of herd the existing facility was found inadequate to handle animal wastes and the pastureland had to be irrigated more often. Soil became saturated which resulted to runoff problems to a nearby creek.

The new earthen reservoir allows for storage of animal manure during wet weather conditions. The application of manure to land during the drier summer months has greatly reduced contamination of field runoff. The hydrosieve separator has also increased the holding capacity of the reservoir by the removal of solids from the wastewater prior to discharging into the reservoir.

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 for this facility. Prior to the installation of the facility the collected manure was spread on land. The timing of the land application can now be better controlled to minimize contamination of runoff.

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

The method chosen is the accepted method for control of manure. This method is the least cost and most effective method of controlling contaminated runoff.

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 $12,500.00 annually.

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

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

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

5. Summation

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

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

c. The facility complies with DEQ statutes and rules.

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

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $85,262.62 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-2313.

RCDulay:crw
WC4065
(503) 229-5876
November 8, 1988

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Steve Glaser Farm, Inc.
PO Box 257
Tangent, OR 97389

The applicant owns and operates a grass seed farm operation in Tangent, Oregon.

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

2. Description of Claimed Facility and Equipment

The facility and equipment described in this application is a straw storage shed, an Allen Basket Rake, a Rear's straw stacker, a propane flamer, and an associated tractor located at 34455 Plainview Drive, Shedd, OR 97377. The land, building, and equipment are owned by Steve Glaser Farm, Inc..

Claimed facility and equipment cost: $176,342.41
(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 and equipment has met all statutory deadlines in that:

a. The request for preliminary certifications were filed less than 30 days before construction commenced.

However, according to the process provided in OAR 340-16-015(1)(b), the application was received by DEQ staff and the applicant was notified that the application was complete, and construction and purchase could commence.

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

c. Construction of the facility was substantially completed on August 28, 1988 and purchase of equipment completed on August 1, 1988, and the application for final certification was found to be complete on November 22, 1988, within two years of substantial completion of the facility and purchase of the equipment.

4. Evaluation of Application

a. The facility and equipment are eligible because the principal purpose of the facility and equipment is to reduce a substantial quantity of air pollution.

This reduction is accomplished by reduction of air contaminants, defined in ORS 468.275, and the facility's qualification as a "pollution control facility", defined in OAR 340-16-025(1). The facility also meets the definition provided in OAR 340-16-025 (2)(f)(A): "Equipment, facilities, and land for gathering, densifying, processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning."

b. Eligible Cost Findings

In determining the percent of the pollution control facility and equipment 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 and equipment are used to recover and convert waste products into a salable or usable commodity, and reduce air pollution.

   The facility and equipment promote the reduction of air pollution by removing straw from fields which would otherwise be open burned.

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

   Using Table 1 of OAR 340-16-030 for a life of 10 years, the annual percent return on investment is 0%.

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

   The method chosen is the accepted method for reduction of air pollution. The method is the least costly most effective method of reducing air contaminants.

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

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

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

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

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

5. Summation

a. The facility was constructed, and the equipment purchased, in accordance with all regulatory deadlines.

b. The facility and equipment are eligible for final tax credit certification in that the sole purpose of the facility and equipment is to reduce a substantial quantity of air pollution and accomplishes this purpose by the reduction of air contaminants, as defined in ORS 468.275.

c. The facility and equipment comply with DEQ statutes and rules.

d. The portion of the facility and equipment 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 $176,342.41, with 100% allocated to pollution control, be issued for the facility and equipment claimed in Tax Credit Application Numbers TC-2473, -2519, and -2520.

B Finneran:ka
(503) 686-7837
November 29, 1988

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Chauncey M. Hubbard, Jr.
C. M. Hubbard & Son
27511 W. Ingram Island Road
Monroe, OR 97456

The applicant owns and operates a grass seed farm operation in Monroe, Oregon.

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

2. Description of Claimed Facility

The facility described in this application is a straw storage shed 106' x 144' x 23' metal clad pole building located east on West Ingram Island Road from Hwy 99W just south of Monroe. Building is approximately one mile from intersection on north side of road. The building will provide cover for up to 1,500 tons of straw per year. The straw is exported to Japan for feed. The land and building are owned by C. M. Hubbard & Son, a partnership.

Claimed facility cost: $51,381.02
(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 has met all statutory deadlines in that:

a. The request for preliminary certification was filed June 23, 1988, less than 30 days before construction commenced on July 12, 1988.

However, according to the process provided in OAR 340-16-015(1)(b), the application was received by DEQ staff and the applicant was notified that the application was complete, and construction could commence.

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

c. Construction of the facility was substantially completed on August 20, 1988, and the application for final certification was found to be complete on October 11, 1988, within two 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 reduce a substantial quantity of air pollution.

This reduction is accomplished by reduction of air contaminants, defined in ORS 468.275, and the facility's qualification as a "pollution control facility", defined in OAR 340-16-025(1). The facility also meets the definition provided in OAR 340-16-025 (2)(f)(A): "Equipment, facilities, and land for gathering, densifying, processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning."

b. 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 promotes the conversion of a waste product (straw) into a salable commodity by providing straw storage.

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

   Using Table 1 of OAR 340-16-030 for a life of 20 years, the annual percent return on investment is 0%.

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

   The method chosen is the accepted method for reduction of air pollution. The method is the least costly most effective method of reducing air contaminants.

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

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

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

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

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

5. Summation

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

b. The facility is eligible for final tax credit certification in that the sole purpose of the facility is to reduce a substantial quantity of air pollution and accomplishes this purpose by the reduction of air contaminants, as defined in ORS 468.275.

c. The facility complies with DEQ statutes and rules.

d. The portion of the facility 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 $51,381.02, with 100 % allocated to pollution control, be issued for the facility claimed in Tax Credit Application Number TC-2535.

B Finneran:ka
(503) 686-7837
November 17, 1988

State of Oregon

Department of Environmental Quality

REISSUANCE OF POLLUTION CONTROL FACILITY CERTIFICATION

1. Certificate issued to :

Champion International Corp.
Champion Building Products
P.O. Box 10228
Eugene, Oregon 97401

The certificates were issued for:

1. Waste treatment plant; biological reduction BOD-solids removal-December 16, 1977.
2. Hog fuel boiler and related equipment-November 17,1978.
3. Wastewater treatment system-November 2, 1984.

2. Summation:

The EQC issued the above pollution control facility certificates 858, 945, and 1764 to Champion International Corporation. Champion sold to Dee Forest Products, Inc. on July 1, 1987 and requests that the certificates be reassigned to Dee Forest Products.

3. Director's Recommendation:

It is recommended that Certificate Numbers 858, 945, and 1764 be revoked and reissued to Dee Forest Products; the certificates to be valid only for the time remaining from the date of the first issuance.

R. Young
229-6408
December 8, 1988

Dee Forest Products, Inc.
4780 Dee Highway
Hood River, OR 97031
(503) 354-1711

Fax (503) 354-2770

November 17, 1988

State of Oregon
Dept. of Environmental Quality
Attn: Christy Huttle
811 S.W. Sixth Avenue
Portland, OR 97204

Dear Christy:

On July 1, 1987 Dee Forest Products, Inc. purchased the assets of the hardboard manufacturing plant at Hood River, Oregon including the Oregon Pollution Control Facility Certificates, from Champion International.

We successfully restarted the plant on November 1, 1987 and have been in production ever since. Champion had stopped production during March of 1985 and closed the plant during April of 1985.

At this time I would like to request a reissuance of certificate #858; #945: and #1764 in the name of Dee Forest Products, Inc. Also in consideration of the 2-1/2 year plant closure I would like to request an extension of the period in which the credit can be taken.

Thank you for your time and consideration in regards to this matter.

Sincerely,

R A Cable

Richard A. Cable
Chief Financial Officer

enc.

RAC/scf

Western Manufacturing
P.O. Box 8
Milltown, Montana 59851
406 258-5511

Champion
Champion International Corporation

October 17, 1988

Mr. Dick Cable
Dee Forest Products
4780 Dee Highway
Hood River, OR 97031

Dear Mr. Cable:

Copies of the three pollution control facility certificates approved for the Dee mill are enclosed. The following summary shows the amount available. I hope you will be able to use the credit remaining on these certificates.

	#858	#945	#1764
Cost of Facility	$174,159	$1,343,960	$677,902
Total Credit Available	87,080	671,980	338,951
Total Credit Used by Champion	69,664	470,386	33,895
Remaining Credit	17,416	201,594	305,056
Annual Credit	8,708	67,198	33,895

Very truly yours,

M. F. Rapp

MARVIN F. RAPP
Senior Analyst

MFR:bhl

Enclosures

cc: Rod Bradley
Don Mizner

Western Manufacturing
P.O. Box 8
Milltown, Montana 59851
406 258-5511

Champion
Champion International Corporation

November 22, 1988

Oregon Department of
Environmental Quality
Attn: Christy Nuttle
811 S.W. 6th
Portland, OR 97204

Gentlemen:

Champion International Corporation sold its mill located at Dee, Oregon, to Dee Forest Products on July 1, 1987. At the time Champion permanently closed the mill in March 1985, there were three pollution control facility certificates in effect. We request that the following certificates be transferred to Dee Forest Products:

Certificate No.	Application No.	Description
858	T- 933	Water Treatment Plant
945	T-1028	Solid Waste-Hog Fuel Boiler
1764	T-1701	Water Treatment Plant

Very truly yours,

M. F. Rapp

MARVIN F. RAPP
Senior Analyst

MFR:bhl

cc: Dick Cable
Dee Forest Products
4780 Dee Highway
Hood River, OR 97031

State of Oregon
Department of Environmental Quality
P. O. Box 1760
Portland, Oregon 97207

NOTICE OF ELECTION

As provided by ORS 468.170(5), a person receiving a Pollution Control Facility Certificate shall make an irrevocable election to take the tax credit relief under ORS 316.097 (personal income tax), or ORS 317.072 (corporation excise tax), or the ad valorem tax relief under ORS 307.405, and shall notify the Department of Environmental Quality, within 60 days after the receipt of such certificate, of his election. This election shall apply to the facility or facilities certified and shall bind all subsequent transferees. Failure to make a timely notification shall make the certificate ineffective for any tax relief under ORS 307.405, 316.097 and 317.072.

Certificate Issued To: Champion International Corp., Champion Building Products

Certificate Number: 945 Application Number: T-1028 Date Issued: 11/17/78

As the official representative of the above named certificate holder, I hereby notify the Department of Environmental Quality that I have on this day made the irrevocable election to take the (check one)

_____ Tax Credit Relief Under ORS 316.097

__X__ Tax Credit Relief Under ORS 317.072

_____ Ad Valorem Tax Relief Under ORS 307.405

Signed by: Charles M. Walters
Charles M. Walters

Title: *Assistant Secretary*

Date: *January 3, 1978*

DEQ/TC-9-1/78

Certificate No. 945

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Date of Issue 11/17/78

Application No. T-1028

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To: Champion International Corp. Champion Building Products P. O. Box 10228 Eugene, Oregon 97440	Location of Pollution Control Facility: Dee Hood River County, Oregon
As: ☐ Lessee ☒ Owner	
Description of Pollution Control Facility: Hog fuel boiler and related equipment	
Type of Pollution Control Facility: ☐ Air ☐ Noise ☐ Water ☒ Solid Waste	
Date Pollution Control Facility was completed: July 1977	Placed into operation: August 1977
Actual Cost of Pollution Control Facility: $ 1,343,960.00	
Percent of actual cost properly allocable to pollution control: 100%	

In accordance with the provisions of ORS 468.155 et seq., it is hereby certified that the facility described herein and in the application referenced above is a "Pollution Control Facility" within the definition of ORS 468.155 and that the air or water facility was constructed on or after January 1, 1967, the solid waste facility was under construction on or after January 1, 1973, or the noise facility was constructed on or after January 1, 1977, and the facility is designed for, and is being operated or will operate to a substantial extent for the purpose of preventing, controlling or reducing air, water, noise or solid waste pollution, and that the facility is necessary to satisfy the intents and purposes of ORS Chapter 459, 467 or 468 and the regulations adopted thereunder.

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

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

Signed _____

Title Joe B. Richards, Chairman

Approved by the Environmental Quality Commission on the 17th day of November, 1978

DEQ/TC-6 10/77

SP*54311-340

State of Oregon
Department of Environmental Quality
Technical Programs Coordination
1234 S. W. Morrison Street
Portland, Oregon 97205

NOTICE OF ELECTION

As provided by ORS 468.170(5), a person receiving a Pollution Control Facility Certificate shall make an irrevocable election to take the tax credit relief under ORS 316.097 (personal income tax) or ORS 317.072 (corporation excise tax) or the ad valorem tax relief under ORS 307.405 and shall notify the Department of Environmental Quality, within 60 days after the receipt of such certificate, of his election. This election shall apply to the facility or facilities certified and shall bind all subsequent transferees. Failure to make a timely notification shall make the certificate ineffective for any tax relief under ORS 307.405, 316.097 and 317.072.

Certificate issued to: Champion International Corp., Champion Building Products

Certificate Number: 858 (T-933) Date Issued: 12/16/77

Date Certificate Received: *December 27, 1977*

As the official representative of the above named certificate holder, I hereby notify the Department of Environmental Quality that I have on this day made the irrevocable election to take the (check one)

____ tax credit relief under ORS 316.097.

X tax credit relief under ORS 317.072.

____ ad valorem tax relief under ORS 307.405.

Signed by: *Charles M. Walters*
Charles M. Walters
Title: *Assistant Secretary*

Date: *January 5, 1978*

DEQ/TC - 9 - 1/76

Certificate No. 858

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Date of Issue 12/16/77

Application No. T-933

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To: Champion International Corp. Champion Building Products P. O. Box 10228 Eugene, Oregon 97401	Location of Pollution Control Facility: Hardboard Plant Dee, Oregon
As: ☐ Lessee ☒ Owner	
Description of Pollution Control Facility: Waste treatment plant; biological reduction BOD-solids removal	
Type of Pollution Control Facility: ☐ Air ☐ Noise ☒ Water ☐ Solid Waste	
Date Pollution Control Facility was completed: 3/31/70	Placed into operation: 4/1/70
Actual Cost of Pollution Control Facility: $ 174,159.00	
Percent of actual cost properly allocable to pollution control: 80% or more	

In accordance with the provisions of ORS 468.155 et seq., it is hereby certified that the facility described herein and in the application referenced above is a "Pollution Control Facility" within the definition of ORS 468.155 and that the air or water facility was constructed on or after January 1, 1967, the solid waste facility was under construction on or after January 1, 1973, or the noise facility was constructed on or after January 1, 1977, and the facility is designed for, and is being operated or will operate to a substantial extent for the purpose of preventing, controlling or reducing air, water, noise or solid waste pollution, and that the facility is necessary to satisfy the intents and purposes of ORS Chapter 459, 467 or 468 and the regulations adopted thereunder.

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

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

Signed _____

Title Joe B. Richards, Chairman

Approved by the Environmental Quality Commission on the 16th day of December, 19 77

Certificate No. 1764

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Date of Issue 11/2/84

Application No. T-1701

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To:	Location of Pollution Control Facility:
Champion International Corporation Champion Building Products-Dee P.O. Box 10228 Eugene, OR 97440	4780 Dee Hwy Hood River, OR
As: ☐ Lessee ☒ Owner	

Description of Pollution Control Facility:

see below

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

Date Pollution Control Facility was completed: May 1980 Placed into operation: December 1980

Actual Cost of Pollution Control Facility: $ 677,902.00

Percent of actual cost properly allocable to pollution control:
80 percent or more

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

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

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

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

The facility is a wastewater treatment system consisting of:

a. A 42'x 90' building enclosure
b. A Tenco-Hydro dissolved air flotation unit
c. Chemical feed and mixing tanks
d. A Tait-Andritz sludge dewatering press
e. Pumps, piping, associated equipment and instrumenttation

Signed [signature]

Title James E. Petersen, Chairman

Approved by the Environmental Quality Commission on the 2nd day of November, 19 84.

VICTOR ATIYEH
Governor

Department of Environmental Quality

622 S.W. FIFTH AVENUE, BOX 1760, PORTLAND, OREGON 97207 PHONE: (503) 229-5696

November 7, 1984

CERTIFIED MAIL/RETURN RECEIPT REQUESTED

Champion International Corporation
Champion Building Products-Dee
P.O. Box 10228
Eugene, OR 97440

Re: Tax Relief Application No. T-1701
Certificate No. 1764

At its meeting on November 2, 1984, the Environmental Quality Commission (EQC) took action to issue the enclosed Pollution Control Facility Certificate which certifies your facility in accordance with Oregon Revised Statutes (ORS) Chapter 468.

A copy of this certificate has also been sent to the Oregon Department of Revenue.

Sincerely,

Sherry Chew
Tax Credit Program

SC:y
MY10
Enclosure
cc + enc: Oregon Department of Revenue

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Champion International Corporation
Champion Building Products - Dee
P.O. Box 10228
Eugene, OR 97440

The applicant owns and operates a wet process hardboard manufacturing facility at Dee.

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

2. Description of Claimed Facility

The facility described in this application is a waste water treatment system consisting of:

a) A 42' x 90' building enclosure.
b) A Tenco-Hydro dissolved air flotation unit.
c) Chemical feed and mixing tanks.
d) A Tait-Andritz sludge dewatering press.
e) Pumps, piping, associated equipment, and instrumentation.

Request for Preliminary Certification for Tax Credit was made July 13, 1978, and approved August 22, 1978. Construction was initiated on the claimed facility June 1979, completed May 1980, and the facility was placed into operation December 1980.

Facility Cost: $677,902 (Accountant's Certification was provided).

3. Evaluation of Application

Prior to December 1976, waste waters from the hardboard process received secondary biological treatment followed by settling in an earthen pond to remove the biological solids. A flood in December destroyed the final settling pond and a solids drying pond. Since land was not available to rebuild this system, Champion decided to install the dissolved air flotation unit to comply with the NPDES permit requirements. After biological treatment, the dissolved air flotation unit removes about 60 percent and 70 percent of the remaining BOD and suspended solids, respectively. Waste water from the system is discharged to the Hood River in compliance with the NPDES permit. Solids are dewatered in a sludge press and landfilled. There is no return on investment from this facility.

4. Summation

a. Facility was constructed in accordance with the requirements of ORS 468.175, regarding preliminary certification.

b. Facility was constructed on or after January 1, 1967, as required by ORS 468.165(1)(a).

c. Facility is designed for and is being operated to a substantial extent for the purpose of preventing, controlling, or reducing water pollution.

d. The facility is necessary to satisfy the intents and purposes of ORS Chapter 468 and the rules adopted under that chapter.

e. The portion of the facility cost that is properly allocable to pollution control is 80 percent or more.

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $677,902 with 80 percent or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1701.

LDP:t
WT251
(503) 229-5374
August 29, 1984

REQUEST FOR EQC ACTION

Meeting Date: January 20, 1989
Agenda Item: E
Division: HSW
Section: Administration

SUBJECT:

Update on the activities of the Pacific Northwest Hazardous Waste Advisory Council

PURPOSE:

Inform the Commission of the workplans of the Council's two committees, and of a resolution recently adopted by the Council

ACTION REQUESTED:

___ Work Session Discussion
- ___ General Program Background
- ___ Program Strategy
- ___ Proposed Policy
- ___ Potential Rules
- ___ Other: (specify)

___ Authorize Rulemaking Hearing

Proposed Rules (Draft)	Attachment ___
Rulemaking Statements	Attachment ___
Fiscal and Economic Impact Statement	Attachment ___
Draft Public Notice	Attachment ___

___ Adopt Rules

Proposed Rules (Final Recommendation)	Attachment ___
Rulemaking Statements	Attachment ___
Fiscal and Economic Impact Statement	Attachment ___
Public Notice	Attachment ___

___ Issue Contested Case Decision/Order

Proposed Order	Attachment ___

_X_ Other: (specify)
Comments from the Commission on Attachments A through D.

AUTHORITY/NEED FOR ACTION:

___	Pursuant to Statute: _____ Enactment Date: _____	Attachment ___
___	Amendment of Existing Rule: _____	Attachment ___
___	Implement Delegated Federal Program: _____	Attachment ___
___	Department Recommendation:	Attachment ___
___	Other:	Attachment ___
___	Time Constraints: (explain)	

DESCRIPTION OF REQUESTED ACTION:

The Department is actively involved in assisting the Council. The Department plans to periodically update the Commission on the activities of the Council and accept comments from the Commission on these activities.

DEVELOPMENTAL BACKGROUND:

X	Department Report (Background/Explanation)	Attachment A
___	Advisory Committee Report/Recommendation	Attachment ___
___	Hearing Officer's Report/Recommendations	Attachment ___
___	Response to Testimony/Comments	Attachment ___
___	Prior EQC Agenda Items: (list)	Attachment ___
X	Other Related Reports/Rules/Statutes: Background on the Pacific Northwest Hazardous Waste Advisory Council	Attachment B
	The Council's Oregon Membership	Attachment C
	The Council's Resolution #1	Attachment D

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

None

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

None

PROGRAMMATIC CONSIDERATIONS:

None

POLICY ISSUES FOR COMMISSION TO RESOLVE:

None

COMMISSION ALTERNATIVES:

None

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department requests that the Commission review Attachments A-D and provide any comments on the Council.

INTENDED FOLLOWUP ACTIONS:

The Department will continue its work with the Council and report back periodically to the Commission.

Approved:

Section: Robert Danko

Division: Stephanie Hallock

Director: Lydia Taylor

Contact: Bob Danko

Phone: 229-6266

BD:m
SM1901A
1/5/89

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY

INTEROFFICE MEMORANDUM

DATE: January 20, 1989

TO: Environmental Quality Commission

FROM: Bob Danko, Hazardous and Solid Waste Division

SUBJECT: Update on the Pacific Northwest Hazardous Waste Advisory Council

The purpose of this memo is to update the Commission on the activities of the Council and the specific workplans of its two primary committees. Attachment B describes the membership and purpose of the Council and Attachment C lists the five Council members from Oregon.

The Council met three times in 1988 -- August in Seattle; October in Boise; and December in Portland. The first two meetings were organizational and focused primarily on providing the Council with the information it will need to address the issues surrounding hazardous waste management in the region. At the third meeting the Council discussed and approved ambitious workplans for its two committees and a resolution affirming the regional approach to hazardous waste management.

The resolution (presented as Attachment D) sets forth the Council's desire to advise the states of Washington, Oregon, Idaho and Alaska, and EPA Region 10, as each state works to complete its federally mandated hazardous waste capacity assurance plan by October 1989. The resolution is the first step in a six step workplan of the Council's Treatment, Storage and Disposal (TSD) Capacity Committee. This committee will analyze the hazardous waste streams and current management practices in the region and endorse waste management hierarchies for these waste streams. Then, the committee will look at the factors that must be weighed when determining the TSD capacity needed within the region and what capacity may be provided from outside the region. Finally, the committee will make recommendations to assist the states in assuring appropriate TSD capacity.

At its December meeting, the Council put its TSD Capacity Committee on a fast track so that its work can be utilized as the states prepare for their October 1989 capacity assurance submittals to EPA. It is generally recognized the Council's recommendations will be important as each northwest state addresses any TSD facility proposals. For example, Washington already has one active proposal for a hazardous waste incinerator and landfill to be located near Moses Lake, and expects to receive a second proposal for a facility to be located at an as yet, unspecified location. Meanwhile, the operator of the hazardous landfill near Arlington Oregon is investigating the feasibility of adding a hazardous waste and PCB incinerator.

While the Council's TSD Capacity Committee begins to address the difficult issues surrounding the need for additional hazardous waste management capacity in the region, the Council adopted a ten step workplan for its Hazardous Waste Reduction Committee. From its beginning, the Council has recognized that hazardous waste reduction is the best solution for the management of hazardous waste in the region. Each step of the ten step workplan is designed to be implemented independently so that no time is lost in pushing the region towards a greater reliance on reduction as the most important waste management tool.

The workplan of the Council's Waste Reduction Committee addresses college curricula, an awards program, the economic aspects of waste reduction, a regional waste exchange, regulatory barriers to waste reduction, and programs to divert small quantities of household and business hazardous waste now going to solid waste landfills.

The Council's deliberations and recommendations already have attracted widespread interest. More than eighty people attended the recent Council meeting in Portland. As the Council delves more deeply into hazardous waste reduction and capacity issues, this interest will surely grow.

The Council's impact on the state of Oregon and this Department could be significant. The Council's waste reduction recommendations should compliment the Department's desire to emphasize this area. How the Council handles the capacity question will likely influence if and where new hazardous waste management facilities, such as an incinerator, are located. Industrial, environmental and legislative interests in the region will be looking to the Council for leadership on these hazardous waste issues. Thus, the importance of the Council cannot be overstated.

BD:m
SM1915

PACIFIC NORTHWEST HAZARDOUS WASTE ADVISORY COUNCIL

What is the Council?

The Pacific Northwest Hazardous Waste Advisory Council was formed by EPA and the states of Washington, Oregon, Alaska and Idaho as an advisory body to provide them with a broad and diverse regional perspective on the hazardous waste management issues facing the Pacific Northwest.

Why was it formed?

Hazardous waste knows no political boundary. Choices about appropriate treatment, storage and disposal (TSD) options for hazardous waste in the Northwest, and where these options are located, are economic decisions made by the private sector, within the regulatory framework. Each of the four Northwest states exports hazardous waste to sites within and outside the region. Each state, except Alaska, also imports wastes generated from within and outside the region. Indeed, almost 40 percent of the waste generated in the Northwest is stored, treated or disposed of in another Northwest state.

Two years ago, recognizing the regional nature of the hazardous waste management challenge, these four states and EPA began to work together to understand the region's hazardous waste streams and to discuss the potential for a regional response to the challenge of reducing the volume of hazardous waste and managing the remainder safely. It seemed then, as it does today, that a consistent and coordinated regional response would not only be appropriate, but desirable.

In 1987, a four-state steering committee was created by EPA and the states' environmental agency directors to organize two symposia which laid the groundwork for understanding the flows of various types of hazardous waste through the region and for identifying the issues this waste flow raises for policymakers.

One of the recommendations emerging from these symposia was the creation of a council, oriented toward advising on appropriate regional approaches to these regional concerns. Thus, the Pacific Northwest Hazardous Waste Advisory Council was formed; it held its first organizational meeting in Seattle in August, followed by one in Boise in October. Its next meeting is in Portland on December 16th. All meetings are public.

Who sits on the Council?

There are 22 members:

- 4 each appointed by the governors of Idaho and Alaska,
- 5 each appointed by the governors of Oregon and Washington, and
- 4 appointed by the EPA Region 10 Administrator.

The Council is co-chaired by Dr. Ron Kendall (Washington) and Bill Hutchison (Oregon). Mr. Hutchison is an attorney who also chairs the Oregon Environmental Quality Commission. Dr. Kendall is a professor of

Environmental Toxicology at Western Washington University and a member of the Science Advisory Board of the Washington Department of Ecology.

The membership represents diverse geographic, economic and political interests:

- 4 Council members represent key regional industries - aerospace, high technology products, agriculture and oil production.

- 8 members are elected or appointed state and local officials, including key members of the 4 states' legislative environmental committees.

- The Province of British Columbia, the U.S. Dept. of Defense, the U.S. Dept. of Energy, Indian tribes and environmental groups with interest and expertise in hazardous waste are also represented on the Council.

What is the Council involved in?

The Council is considering activities in two areas - waste reduction and the region's need for TSD capacity, in addition to taking an active role in working with the states on the federal Superfund Amendments and Reauthorization Act (SARA) Capacity Assurance Compliance requirement.

Recognizing that prevention is the best solution, the Council is committed to facilitating and supporting greater reliance on waste reduction. For example, it will review regional regulatory barriers to waste reduction activities; promote the development of college curricula in this area; and, develop a regional waste management hierarchy, including a statement of waste reduction principles.

The Council will also address whether it would be appropriate for the states to rely on out-of-region TSD capacity or to insure that the appropriate range of management options is available in the region for the various waste streams generated here. Analyzing the issue on a regional basis allows for the possibility of economies of scale in TSD facilities and the sharing of the risks associated with transporting hazardous waste and the siting of TSD facilities.

EPA SARA 104 (k) Requirements - The Council's Role

Paralleling the Council's activities, each state is in the process of developing, by October 1989, a Capacity Assurance Plan (CAP) for EPA in which the state demonstrates that it has sufficient capacity, or has access to capacity in another state, to treat, store or dispose of its hazardous wastes properly. Failure to demonstrate this capacity could jeopardize a state's federal Superfund money. This federal requirement is designed to insure that new Superfund sites are not just being created while the process of cleaning up existing sites has just begun.

The Council will have access to the data and analysis that is generated by each state and will review and analyze this information to assess the regional implications of the state CAPs. It will make recommendations to the states and EPA accordingly.

NEIL GOLDSCHMIDT
GOVERNOR

Department of Environmental Quality

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

PACIFIC NORTHWEST HAZARDOUS WASTE ADVISORY COUNCIL

Oregon's Members

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Honorable Ron Cease
Oregon State Representative
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(503) 282-7931

Frank Deaver
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Tektronix
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(Mail Delivery Station 40-000)
Beaverton, OR 97077
(503) 627-2678

Judge Laura Pryor
Gilliam County Judge
P.O. Box 427
Condon, OR 97823
(503) 384-6351

C 1

adopted

PACIFIC NORTHWEST HAZARDOUS WASTE ADVISORY COUNCIL

Resolution #1: Affirming a Regional Approach to Hazardous Waste Management in the Pacific Northwest

- -

Whereas, households, businesses and governmental operations in Alaska, Idaho, Oregon and Washington (EPA Region 10), in the course of their daily activities, generate hazardous waste which may pose a risk to public health and the environment if managed improperly;

Whereas, decisions regarding both the disposition of these wastes and the location of treatment, storage, and disposal (TSD) facilities are made by the private and public sector within the regulatory context;

Whereas, these waste management decisions know no political boundary, and as a result, approximately 40 percent of these wastes are being managed in another state in this region and other wastes are shipped to facilities located outside the region;

Whereas, the economies of the region are similar, and as a result, the states, tribes, federal agencies and the region's industries have an interest in meeting the challenge of reducing the generation of hazardous waste together;

Whereas, each state has developed its own approach to the definition and management of hazardous waste; to the clean-up of past hazardous waste problems; and, to the development of waste reduction programs;

Whereas, significant opportunities exist for regional solutions and coordination between the states within the region and British Columbia and for economies of scale in hazardous waste management, including the development of treatment, storage and disposal capacity and waste reduction programs;

Now therefore be it resolved that we, the Pacific Northwest Hazardous Waste Advisory Council, do affirm our commitment to developing recommendations for a coordinated regional approach to hazardous waste management, based on: a regional analysis of the waste streams; a regional assessment of existing and needed TSD facilities; and, regional coordination of programs relating to the management and reduction of hazardous waste.

Be it further resolved, that these recommendations are to be presented to the States and EPA, Region 10 on a periodic and timely basis in order to be helpful to the States' completion of the SARA 104 K Capacity Assurance Plans due to EPA by October 17, 1989.

January 19, 1989

To: Environmental Quality Commission

From: Genevieve Pisarski Sage

Re: Governor's Watershed Enhancement Board

Attached, for your files, are copies of:

1. Statutes relating to the Watershed Enhancement Board (ORS 541.350 to 541.395)

2. Administrative Rules for the Board

3. Rosters of the Board, its Technical Advisory Committee, and its Educational Advisory Committee

You'll find a statement of the Board's mission in ORS 541.355 (Policy).

In its first biennium, 1987-89, the Board had a budget of $500,000 and concentrated on providing technical assistance and grant funds (ranging from $1,404 to $60,000) to nine projects for improving the riparian and upland areas of watersheds. The Board's budget request for the next biennium is approximately $1,000,000.

The Governor's Watershed Enhancement Board offers this Commission an opportunity to further our policy of cooperative and coordinated natural resources management. Here are some issues on which this Commission can take a position and advocate that position to the Board:

1. Should GWEB take a more active role toward watershed enhancement, as opposed to its current approach of reacting to proposals for projects?

   (For example, GWEB might become the State body that receives and allocates any grant or loan funds that target watershed enhancement.)

2. Should GWEB assure that it focuses resources on

watersheds having the greatest potential for improvement rather than choosing among proposals?

the provisions of that Act, across any and all lands belonging to the State of Oregon and not under contract of sale, is granted.

APPROPRIATION OF WATER BY THE UNITED STATES

541.210 [Repealed by 1953 c.328 §2]

541.220 Survey of stream system; delivery of data to Attorney General; suits for determination of water rights. In any stream system where construction is contemplated by the United States under the Act of Congress approved June 17, 1902, 32 Stat. 388 to 390, and known as the Reclamation Act, the Water Resources Commission shall make a hydrographic survey of the stream system, and shall deliver an abstract thereof together with an abstract of all data necessary for the determination of all rights for the use of the waters of such system, to the Attorney General. The Attorney General, together with the district attorneys of the districts affected by the stream system shall, at the request of the Secretary of the Interior, enter suit on behalf of the State of Oregon, in the name of the state, for the determination of all rights for the use of the water, and shall diligently prosecute the same to a final adjudication. [Amended by 1985 c.673 §101]

541.230 State lands within irrigated area; restrictions on sale; conveyance of lands needed by United States. No lands belonging to the state, within the areas to be irrigated from work constructed or controlled by the United States or its authorized agents, shall be sold except in conformity with the classification of farm units by the United States. The title of such land shall not pass from the state until the applicant therefor has fully complied with the provisions of the laws of the United States and the regulations thereunder concerning the acquisition of the right to use water from such works, and shall produce the evidence thereof duly issued. After the withdrawal of lands by the United States for any irrigation project, no application for the purchase of state lands within the limits of such withdrawal shall be accepted, except under the conditions prescribed in this section. Any state lands needed by the United States for irrigation works may, in the discretion of the Division of State Lands, be conveyed to it without charge. [Amended by 1967 c.79 §1]

541.240 Right of way for ditches, etc.; reservation in conveyances. There is granted over all the unimproved lands now or hereafter belonging to the state the necessary right of way for ditches, canals, and reservoir sites for irrigation purposes constructed by authority of the United States or otherwise. All conveyances of state land made after May 18, 1905, shall contain a reservation of such right of way and reservoir sites.

541.250 Cession to United States not rescinded. Nothing in ORS 541.220 to 541.240 shall be construed as rescinding the cession by the state to the United States of lands, as provided in chapter 5, Oregon Laws 1905.

SUITS FOR DETERMINATION OF WATER RIGHTS UNDER 1905 ACT

541.310 Suits for determination of rights; parties; survey of stream; disbursements. In any suit wherein the state is a party, for determination of a right to the use of the waters of any stream system, all who claim the right to use the waters shall be made parties. When any such suit has been filed the court shall call upon the Water Resources Commission to make or furnish a complete hydrographic survey of the stream system as provided in ORS 541.220, in order to obtain all data necessary to the determination of the rights involved. The disbursements made in litigating the rights involved in the suit shall be taxed by the court as in other equity suits. [Amended by 1985 c.673 §102]

541.320 Decrees adjudicating rights; filing; statement as to matters adjudicated. Upon the adjudication of the rights to the use of the water of a stream system, a certified copy of the decree shall be prepared by the clerk of the court, without charge, and filed in the Water Resources Department. The decree shall declare, as to the water right adjudged to each party, whether riparian or by appropriation, the extent, the priority, amount, purpose, place of use, and, as to water used for irrigation, the specific tracts of land to which it shall be appurtenant, together with such other conditions as may be necessary to define the right and its priority. [Amended by 1985 c.673 §103]

WATERSHED ENHANCEMENT

541.350 Definitions for ORS 541.350 to 541.395. As used in ORS 541.350 to 541.395:

(1) "Associated uplands" includes those lands of a watershed that are critical to the functioning and protection of the riparian area.

(2) "Board" means the Governor's Watershed Enhancement Board created under ORS 541.360.

(3) "Division" means the Soil and Water Conservation Division created under ORS 561.400.

(4) "Riparian area" means a zone of transition from an aquatic ecosystem to a terrestrial ecosystem, dependent upon surface or subsurface water, that reveals through the zone's existing or potential soil-vegetation complex, the influence of such surface or subsurface water. A riparian area may be located adjacent to a lake, reservoir, estuary, pothole, spring, bog, wet meadow, muskeg or ephemeral, intermittent or perennial stream.

(5) "Watershed" means the entire land area drained by a stream or system of connected streams such that all stream flow originating in the area is discharged through a single outlet. [1987 c.734 §1]

541.355 Policy. (1) The Legislative Assembly finds that:

(a) Each watershed in Oregon is unique and each requires different management techniques and programs.

(b) The initiative and implementation of riparian area restoration and management programs should be planned and implemented at the local level by persons or agencies that perceive the need and have the management responsibility for achieving the best solution for local watershed enhancement and improved land and water management.

(c) It is in the best interest of the state to restore and maintain and enhance its watersheds in order to protect the economic and social well-being of the state and its citizens.

(2) Therefore, the Legislative Assembly declares that:

(a) A goal of the people of the State of Oregon is to:

(A) Enhance Oregon's waters through the management of riparian and associated upland areas of watersheds in order to improve water quality and quantity for all beneficial purposes as set forth in ORS 536.310.

(B) Restore, maintain and enhance the biological, chemical and physical integrity of the riparian zones and associated uplands of the state's rivers, lakes and estuaries systems.

(C) Restore and enhance the ground water storage potential associated with healthy riparian area ecosystems.

(D) Improve the filtering capability of riparian areas to reduce nonpoint source runoff and improve water quality.

(b) In order to achieve this goal in the most cost-effective manner, the State of Oregon shall:

(A) Maximize the use of individuals and groups wishing to volunteer time and effort to watershed enhancement projects;

(B) Encourage private individuals and organizations and local, state and federal agencies to work jointly to conduct watershed enhancement programs; and

(C) Enforce statutes, rules and regulations that require federal land management agencies to exercise their management and trustee responsibilities to restore, maintain and enhance the riparian areas of the state. [1987 c.734 §2]

541.360 Watershed Enhancement Board; voting and nonvoting members; staff. (1) The Governor's Watershed Enhancement Board is created. The board shall consist of 10 members as set forth in subsection (2) of this section. The board shall elect one member of the board as chairperson. The chairperson shall have such powers and duties as are provided by the rules of the board.

(2)(a) The five voting members of the board shall be the chairperson of each of the following boards or commissions, or a member of the board or commission designated by the commission to serve on the Governor's Watershed Enhancement Board in lieu of the chairperson:

(A) The Environmental Quality Commission;

(B) The State Fish and Wildlife Commission;

(C) The State Board of Forestry;

(D) The State Soil and Water Conservation Commission; and

(E) The Water Resources Commission.

(b) In addition to the voting members, the following persons shall serve as nonvoting members of the board and shall participate as needed in the activities of the board:

(A) The director of the agricultural extension service of Oregon State University, or designee; and

(B) The Director of Agriculture, or designee.

(c) In addition to the voting and nonvoting members designated in paragraphs (a) and (b) of this subsection, representatives of the following federal agencies shall be invited to serve as additional nonvoting members of the board:

(A) A representative of the United States Forest Service.

(B) A representative of the United States Bureau of Land Management.

(C) A representative of the soil conservation service of the United States Department of Agriculture.

(3) The board shall use state agency employes with relevant expertise to provide staff support necessary for the board to carry out its duties and responsibilities under ORS 541.350 to 541.395. [1987 c.734 §3]

541.365 Board to conduct watershed enhancement program. A watershed enhancement program shall be conducted by the Governor's Watershed Enhancement Board to benefit all users of the waters of this state. The program shall be conducted in a manner that provides the greatest possible opportunity for volunteer participation to achieve the goals of the program. [1987 c.734 §5]

541.370 Duties of board; advisory committees. (1) In carrying out the watershed enhancement program, the Governor's Watershed Enhancement Board shall:

(a) Coordinate the implementation of enhancement projects approved by the board with the activities of the Soil and Water Conservation Division staff and other agencies, especially those agencies working together through a system of coordinated resource management planning.

(b) Use the expertise of the appropriate state agency according to the type of enhancement project.

(c) Provide educational and informational materials to promote public awareness and involvement in the watershed and enhancement program.

(d) Coordinate the activities of persons, agencies or political subdivisions developing local watershed enhancement projects approved by the board.

(e) Grant funds for the implementation of approved watershed enhancement projects from such moneys as may be available to the board therefor.

(f) Develop and maintain a centralized repository for information about the effects of watershed enhancement projects.

(g) Give priority to proposed watershed enhancement projects receiving federal funding or assistance from federal agencies.

(h) Identify gaps in research or available information about watershed enhancement.

(i) Cooperate with appropriate federal entities to identify the needs and interests of the State of Oregon so that federal plans and project schedules relating to watershed enhancement incorporate the state's intent to the fullest extent practicable.

(j) Encourage the use of nonstructural methods to enhance the riparian areas and associated uplands of Oregon's watersheds.

(2) To aid and advise the board in the performance of the functions of the board, the board may establish such advisory and technical committees as the board considers necessary. These committees may be continuing or temporary. The board shall determine the representation, membership, terms and organization of the committees and shall appoint their members. The chairperson is ex officio a member of each committee. [1987 c.734 §6]

541.375 Watershed enhancement projects; application for funds or assistance; criteria for approval. (1) Any person, state agency, federal agency or political subdivision of this state may submit a request for funding for or for advice and assistance in developing a watershed enhancement project under the program established by the Governor's Watershed Enhancement Board under ORS 541.365.

(2) The request under subsection (1) of this section shall be filed in the manner, be in the form and contain the information required by the board. The requester may submit the request to the board or to a local soil and water conservation district organized under ORS 568.210 to 568.805.

(3) Based upon criteria established by rule by the board, within 90 days after a district receives a request under subsection (1) of this section, the district shall either:

(a) Approve the proposal and provide the requested advice, assistance or funding for the project; or

(b) Forward the proposal to the board for approval or disapproval.

(4) A watershed enhancement project may use mechanical, vegetative or structural methods including, but not limited to, management techniques, erosion control, streambank stabilization, forest, range or crop land treatment and site specific in-stream structures.

(5) A watershed enhancement project proposal submitted to a district under this section shall not be subject to review and approval by the Soil and Water Conservation Division under ORS 561.400.

(6) The Governor's Watershed Enhancement Board shall approve for implementation only those enhancement projects that:

(a) Are based on sound principles of watershed management;

(b) Use enhancement methods most adapted to the project locale; and

(c) Meet the criteria established by the board under ORS 541.390.

(7) The Governor's Watershed Enhancement Board may fund a project for the restoration of a riparian area or associated upland that is carried out in conjunction with a storage structure. However, the board shall not approve funding for any proposed project that consists solely of construction of a storage structure for out-of-stream use.

(8) If the Governor's Watershed Enhancement Board approves a project under this section that requires the applicant to obtain a permit or license from a local, state or federal agency or governing body, the board shall not disburse any funds to the applicant until the applicant presents evidence that the agency has granted the permit or license. [1987 c.734 §7]

541.380 Rules. (1) In accordance with the applicable provisions of ORS 183.310 to 183.550, the Governor's Watershed Enhancement Board shall adopt rules and standards to carry out the watershed enhancement program.

(2) The rules and standards adopted by the board under subsection (1) of this section shall include, but need not be limited to:

(a) Criteria for selecting projects to receive assistance or funding from the board.

(b) Conditions for approval by the board for implementation of a project including but not limited to:

(A) Provisions satisfactory to the board for inspection and evaluation of the implementation of a project including all necessary agreements to allow the board and employes of any cooperating agency providing staff services for the board access to the project area;

(B) Provisions satisfactory to the board for controlling the expenditure of and accounting for any funds granted by the board for implementation of the project;

(C) An agreement that those initiating the project will submit all pertinent information and research gained from the project to the board for inclusion in the centralized repository established by the board; and

(D) Provisions for the continued maintenance of the portion of the riparian area or associated uplands enhanced by the project.

(c) The amount of funding that a local soil and water conservation district organized under ORS 568.210 to 568.805 can provide directly for a watershed enhancement project without prior approval of the board. [1987 c.734 §8]

541.385 Water Resources Department to provide staff for board. The Water Resources Department shall provide staff for project oversight and the day-to-day operation of the Governor's Watershed Enhancement Board, including scheduling meetings, providing public notice of meetings and other board activities and keeping records of board activities. [1987 c.734 §4]

541.390 Duties of Soil and Water Conservation Division. In addition to the duties conferred on the Soil and Water Conservation Division under ORS 561.400 and 568.210 to 568.805, the division shall:

(1) In cooperation with the Governor's Watershed Enhancement Board, provide appropriate personnel who, under the direction of the board, shall:

(a) Serve as community advisors to cooperatively develop watershed enhancement projects with volunteers; and

(b) Cooperatively evaluate watershed enhancement projects with those responsible for project implementation.

(2) Provide technical assistance to individuals responsible for implementation of a watershed enhancement project.

(3) Work with the Governor's Watershed Enhancement Board to coordinate the implementation of enhancement projects with the activities of other agencies, including but not limited to, those state and federal agencies participating in coordinated resource management planning. [1987 c.734 §9]

541.395 State agency reports to be provided to board. In order to assist the Governor's Watershed Enhancement Board in developing and maintaining a centralized repository under ORS 541.370, the following agencies shall provide the board with a copy of any report produced by the agency that is related to enhancement or restoration of riparian areas or associated uplands:

(1) The Department of Environmental Quality.

(2) The State Department of Fish and Wildlife.

(3) The Water Resources Department.

(4) The State Forestry Department.

(5) The State Department of Agriculture.

(6) The agricultural extension service of Oregon State University. [1987 c.734 §10]

USE OF WATER TO OPERATE WATER-RAISING MACHINERY

541.410 Wheels, pumps, engines, etc.; use by riparian owner to raise water; prior

DIVISION 1

PROCEDURAL RULES

Notice Rule

695-01-000 Prior to adoption, amendment or repeal of any rule, the Governor's Watershed Enhancement Board shall give notice of the intended action:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 15 days before the effective date of the intended action;

(2) By mailing a copy of the notice to persons on the Governor's Watershed Enhancement Board's mailing list established pursuant to ORS 183.335(7) at least 15 days prior to the effective date;

(3) By mailing or furnishing a copy of the notice at least 15 days prior to the effective date to:

(a) Organizations:
(A) Oregon Environmental Council;
(B) Isaak Walton League;
(C) Audubon Society;
(D) 1000 Friends of Oregon;
(E) National Wildlife Federation;
(F) Oregon Natural Resources Council;
(G) Northwest Forestry Association;
(H) Associated Oregon Loggers;
(I) Oregon Cattlemen's Association;
(J) Western Oregon Livestock Association;
(K) Oregon State Grange;
(L) Oregon Farm Bureau Federation;
(M) Soil Conservation Districts;
(N) Association of Oregon Counties;
(O) Oregon Sheep Growers Association;
(P) Oregon Wheat League;
(Q) Oregon Water Resources Congress;
(R) Associated Oregon Industries;
(S) Oregon Forest Industries Council;
(T) Citizens Interested in Bull Run, Inc.;
(U) Bull Run Coalition.

(b) State Agencies:
(A) Agriculture, Department of;
(B) Environmental Quality, Department of;
(C) Fish and Wildlife, Department of;
(D) Forestry, Department of;
(E) Geology and Mineral Industries, Department of;
(F) Governor's Office, Assistant for Natural Resources;
(G) Health Division, Department of Human Resources;
(H) Land Conservation and Development;
(I) Parks and Recreation Division, Department of Transportation;
(J) State Lands, Division of.

(c) Federal Agencies:
(A) Bureau of Land Management;
(B) Corps of Engineers;
(C) Bureau of Reclamation;
(D) Forest Service;
(E) Department of Agriculture;
(F) Soil Conservation Service.

(d) News Media:
(A) The United Press International;
(B) The Associated Press;
(C) Capitol Press Room;
(D) Portland - The Oregonian;
(E) Salem - Capitol Press;
(F) Salem - Statesman-Journal;
(G) Bend - The Bulletin;
(H) Coos Bay - The World;
(I) Eugene - Register-Guard;
(J) John Day - Blue Mountain Eagle
(K) Klamath Falls - Herald and News;
(L) La Grande - Observer;
(M) Roseburg - News-Review;
(N) Pendleton - East Oregonian;
(O) Medford - Mail Tribune;
(P) Union - Country Journal.

Stat. Auth.: ORS Ch. 183
Hist.: Gweb 2-1987(Temp), f. & ef. 8-27-87; GWEB 4-1987, f. & ef. 10-20-87

Model Rules of Procedure

695-01-005 Pursuant to ORS 183.341, the Governor's Watershed Enhancement Board hereby adopts the Attorney General's Model Rules of Procedure, effective January 27, 1986.

Stat. Auth.: ORS Ch. 183
Hist.: GWEB 1-1987, f. & ef. 8-27-87

DIVISION 20

APPLICATIONS AND PROCEDURES

Purpose

695-20-010 These rules guide the Governor's Watershed Enhancement Board in accepting applications and considering watershed enhancement proposals for funding under the provisions of ORS 541.350, et. seq.

Stat. Auth.: ORS Ch. 541
Hist.: GWEB 3-1987(Temp), f. & ef. 9-25-87; GWEB 1-1988, f. & cert. ef. 3-31-88

[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.]

Definitions

695-20-020 (1) "Board" means Governor's Watershed Enhancement Board.

(2) "Cost Effective" means that money granted by the Board results in the substantial accomplishment of watershed enhancement goals of the Board.

(3) "Grant Agreement" is the legally binding contract between the Board and the grant recipient. It consists of the conditions specified in OAR 695-20-080, the notice of grant award, special conditions to the agreement, a certification to comply with applicable state and federal regulations, the project budget and the approved application for funding the project.

(4) "Non-structural methods" are those which rely on strategies other than the creation and installation of structures to meet the project goals.

(5) "Technical Advisory Committee" is a continuous committee of the Board comprised of designated personnel from the Oregon Departments of Forestry, Fish and Wildlife, Water Resources, Environmental Quality, Agriculture and the University Extension Service; US Forest Service, Bureau of Land Management; and the Soil Conservation Service.

Stat. Auth.: ORS Ch. 541
Hist.: GWEB 3-1987(Temp), f. & ef. 9-25-87; GWEB 1-1988, f. & cert. ef. 3-31-88

[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.]

Application Requirements

695-20-030 (1) Applications must be submitted on the form prescribed by the Board. The information contained in the application shall include:

(a) Name, address and telephone number of the applicant;

(b) Name and address of landowner(s);

(c) The nature, purpose and location of the proposed enhancement project. The location shall be described in reference to the public land survey and stream mile;

(d) Description of the problem and project benefits;

(e) Estimated total cost of the project and the amount of funding requested;

(f) A statement of whether any federal or other funds are available or secured for the project and if any conditions have been placed on the funds;

(g) Evidence of appropriate authorization for access to the location to perform project work, maintenance and monitoring; and to allow the Board to inspect and evaluate the project;

(h) A statement from the appropriate jurisdiction that the proposed project is in compliance with local comprehensive land use plans and other permits or licenses required by state or local government can be obtained;

(i) A project schedule including time of completion;

(j) An agreement with a state, federal or local agency to monitor and inspect the proposed work;

(k) A plan to monitor and evaluate project results including identification of responsible parties;

(l) A financial plan describing costs of project design, construction, monitoring and maintenance including sources and amounts of revenues;

(m) The projected life of the project and the basis for that projection;

(n) A plan for operation and maintenance of the project for the projected life including identification of the responsible parties;

(o) Additional information that will aid the Board in evaluating the project under OAR 695-20-050 and 695-20-070; and

(p) Identification of volunteers and what they will do.

(2) The Board may require additional information to aid in evaluating and considering the proposed watershed project.

Stat. Auth.: ORS Ch. 541
Hist.: GWEB 3-1987(Temp), f. & ef. 9-25-87; GWEB 1-1988, f. & cert. ef. 3-31-88

[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.]

Application Processing

695-20-040 (1) The Board will announce periods for submitting applications as funding is available.

(2) Applications not funded may be resubmitted by the applicant during application submission periods prescribed by the Board.

(3) Applications forwarded to the Board by Soil and Water Conservation Districts pursuant to the provision of OAR 695-20-100 will be reviewed in the manner of other applications for funding during times prescribed by the Board. If no money remains to be distributed, the applications may be held until such time as funding becomes available.

Stat. Auth.: ORS Ch. 541
Hist.: GWEB 3-1987(Temp), f. & ef. 9-25-87; GWEB 1-1988, f. & cert. ef. 3-31-88

[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.]

Evaluation of Projects Submitted for Board Funding

695-20-050 (1) Grant applications must meet the following criteria to be considered for funding by the Board:

(a) The project demonstrates sound principles of watershed management;

(b) The project uses methods adapted to the project locale; and

(c) The project complies with state land use planning goals and local acknowledged land use plans.

(2) Projects meeting the criteria established by section (1) of this rule will be further evaluated on the basis of the extent to which the project:

(a) Enhances Oregon's waters through the management of riparian and associated upland areas of watersheds in order to improve water quality and quantity for all beneficial uses as defined by ORS 536.310;

(b) Restores, maintains, and enhances the biological, chemical and physical integrity of the riparian zones and associated uplands of the state's rivers, lakes and estuary systems;

(c) Restores and enhances the groundwater storage potential associated with a healthy riparian ecosystem;

(d) Improves the filtering capability of riparian areas to reduce non-point source runoff and improve water quality;

(e) Generates educationally valuable materials suitable to maintenance in the Board's repository;

(f) Visibly demonstrates to, and educates the public regarding the effects of sound watershed management;

(g) Is cost effective;

(h) Relies on the use of non-structural methods to enhance riparian areas and associated uplands;

(i) Generates matching funds from other sources and/or relies on intergovernmental cooperation;

(j) Maximizes participation of volunteers.

(3) The Board shall not fund a project:

(a) That consists solely of construction of a storage structure for out-of-stream use; or

(b) Constructed solely to comply with a state or federal agency directive.

Stat. Auth.: ORS Ch. 541
Hist.: GWEB 3-1987(Temp), f. & ef. 9-25-87; GWEB 1-1988, f. & cert. ef. 3-31-88

[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.]

Recommendations of the Technical Advisory Committee

695-20-060 In evaluating applications under OAR 695-20-050, recommendations of the Technical Advisory Committee and other appropriate agencies shall be solicited and considered to determine whether the proposal meets the considerations in OAR 695-20-050.

Stat. Auth.: ORS Ch. 541
Hist.: GWEB 3-1987(Temp), f. & ef. 9-25-87; GWEB 1-1988, f. & cert. ef. 3-31-88

[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.]

Funding a Project

695-20-070 The Board may fund a project in whole or in part.

Stat. Auth.: ORS Ch. 541
Hist.: GWEB 3-1987(Temp), f. & ef. 9-25-87; GWEB 1-1988, f. & cert. ef. 3-31-88

[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.]

Grant Agreement Conditions

695-20-080 (1) The Grantee must submit a project report at the completion of construction describing the work done.

(2) The Grantee shall monitor the long-term effectiveness of, and continue to maintain the project and submit periodic reports to the Board on a schedule set by the Board. All reports will be filed in the centralized repository established by the Board.

(3) The Grantee must agree to complete the project as approved by the Board and within the time-frame specified, unless a time extension is granted by the Board. Upon notice to the Grantee by certified or registered mail to the last known address, the Board may terminate funding for projects not completed in the prescribed time and manner. The money allocated to the project but not used will be available for reallocation by the Board.

(4) The Grantee shall allow Board members or designated representatives access to the project area to monitor and evaluate the project.

(5) The Grantee shall account for funds distributed by the Board, using standard accounting practices suitable to the Board.

(6) The Grantee shall obtain the necessary permits and licenses from local, state or federal agencies or governing bodies.

(7) The Board may place additional conditions in the Grant Agreement as necessary to carry out the purpose of the watershed enhancement program. Such conditions may include:

(a) Requirements for easements or a commitment for continued access for monitoring the project after completion.

(b) A commitment by the Grantee to maintain the project for a period of time as deemed appropriate by the Board.

(c) A commitment to supply future reports on the project.

(d) Such other conditions as the Board deems appropriate to the particular circumstances of the project.

Stat. Auth.: ORS Ch. 541
Hist.: GWEB 3-1987(Temp), f. & ef. 9-25-87; GWEB 1-1988, f. & cert. ef. 3-31-88

[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.]

Distribution of Funds

695-20-090 (1) Funds awarded by the Board shall be distributed on the basis of the Grantee meeting criteria as set forth in the Grant Agreement. Funding may be based on the presentation of paid receipts or invoices for materials or contracted labor, or upon receipt of inspection reports.

(2) Funds can not be disbursed until the Board receives satisfactory evidence that necessary permits and licenses have been granted.

(3) Except as provided in section (4) of this rule, the Board shall retain 10 percent of project funds until the final

construction report as required in OAR 695-20-080(1) has been submitted and the project has been evaluated for compliance with the Grant Agreement.

(4) Grants of less that $2,000 will be funded in one payment when the Grantee provides evidence required by section (2) of this rule without reservation of 10 percent of the grant funds as otherwise required by section (3) of this rule.

Stat. Auth.: ORS Ch. 541
Hist.: GWEB 3-1987(Temp), f. & ef. 9-25-87; GWEB 1-1988, f. & cert. ef. 3-31-88

[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.]

Funding of Watershed Enhancement Projects

695-20-100 A local Soil and Water Conservation District may provide from Governor's Watershed Enhancement Board funds a maximum of $1000 per biennium for watershed enhancement projects without prior approval of the Board.

(1) Providing funds according to the provisions of this rule shall in no way limit participation by local Soil and Water Conservation Districts in the full Governor's Watershed Enhancement program as detailed in OAR 695-20-010 through 695-20-090.

(2) The Board may establish a fund of $46,000 with the Soil and Water Conservation Division of the Oregon Department of Agriculture, for distribution to local Soil and Water Conservation Districts under this rule:

(a) The Division shall enter into an agreement with the Board for receipt and administration of said funds.

(b) The Division shall be responsibile for distribution of these funds to local Soil and Water Conservation Districts, accounting as to the distribution of these funds to the Board, and reporting to the Board as to use of said funds.

(c) Any monies remaining in the fund created under this rule on March 1, 1989, will revert to the Governor's Watershed Enhancement Board.

(3) Districts may provide funding under this rule for watershed enhancement projects that:

(a) Require no more than a $1000 contribution of Governor's Watershed Enhancement Board funds;

(b) Are generally consistent with the watershed enhancement criteria set by Board in OAR 695-20-050 and 695-20-070;

(c) Are based on sound principles of watershed management.

(4) Up to $1000 is available per district for funding watershed enhancement projects under this rule, through February 28, 1989. Districts may fund one or more projects provided the $1000 limit per district is not exceeded.

(5) Interested parties may apply to districts for funding under this rule by completing a one page, short form application prepared by the Soil and Water Conservation Division of the Oregon Department of Agriculture.

(a) The Soil and Water Conservation Division will supply an appropriate number of copies of the above referenced application to local Soil and Water Conservation Districts and the Governor's Watershed Enhancement Board.

(b) This application shall include the following information:

(A) A description of the proposed project for which funds are requested;

(B) Identification of the proposed project location, and names and addresses of affected landowners;

(C) Identification of all groups, volunteer and otherwise, participating in the project;

(D) Description of expected watershed benefits to accrue from project implementation;

(E) Identification of specific uses for which requested funds are intended;

(F) Name and addresses of responsible parties;

(G) Total project budget and total Governor's Watershed Enhancement Board funds requested;

(H) Evidence of appropriate authorization for access to the location to perform project work.

(6) Local Soil and Water Conservation Districts shall report to the Soil and Water Conservation Division on a form provided by the Division as to the use of all funds expended under this rule.

Stat. Auth.: ORS Ch. 183 & 734
Hist.: GWEB 5-1987, f. & ef. 12-9-87

DIVISION 30

TECHNICAL AND EDUCATIONAL ADVISORY COMMITTEES RULES

Purpose

695-30-010 The purpose of these rules is to describe the organizations, terms of office, duties and responsibilities of the committees of the Governor's Watershed Enhancement Board.

Stat. Auth.: ORS Ch. 541
Hist.: GWEB 2-1988, f. & cert. ef. 5-17-88

Technical Advisory Committee

695-30-020 (1) This continuing Committee shall consist of a person designated by each of the agencies or natural resource boards and commissions represented on the Board, and such other persons as designated by the Board. The Chairperson of the Board is ex-officio a member of the Committee.

(2) The term of each member of the Committee will be established by the Board member representing the agency, board or commission.

(3) The Committee shall elect one member to serve as chairperson of the Committee.

(4) The Committee members shall serve without compensation from the Board for travel or per diem.

(5) The Committee is responsible for:

(a) Evaluating grant applications based upon the goals and objectives in ORS 541.350 et seq. and OAR 695-20-010 through 695-20-090 for watershed enhancement projects; and submitting recommendations for funding of the projects to the Board;

(b) Supplying on-going advice to the Board and to project grantees in areas of each Committee member's expertise;

(c) Referring grant applications of an additional nature to the Educational Advisory Committee for evaluation; and

(d) Such other activities as requested by the Board.

Stat. Auth.: ORS Ch. 541
Hist.: GWEB 2-1988, f. & cert. ef. 5-17-88

Educational Advisory Committee

695-30-030 (1) This continuing Committee shall be comprised of one person designated by each of the agencies and natural resource boards or commissions represented on the Board and other persons designated by the Board with the intent to balance representation among groups with differing interests. Total membership shall be no more than 15. The Board Chair is ex-officio a member of the Committee.

(2) The term of each member of the Committee will be established by the Board member appointed by each agency, board or commission or by the Board chairperson.

(3) The Board Chair shall select a chairperson for the Committee.

(4) Committee members shall serve without compensation from the Board for travel or per diem.

(5) The Committee shall formulate and recommend to the Board for approval an educational policy and a program for increasing public awareness of watershed enhancement benefits. As part of the Board's educational program, the Committee shall:

(a) Formulate rules in accordance with the educational policy approved by the Board in section 5 of this rule, for evaluating applications for grant funds for proposals of an educational nature and make funding recommendations to the Board;

(b) Establish and maintain a centralized repository of educational and information materials;

(c) Formulate a long-range plan to publicize the Board's watershed enhancement program and to make available the information the Board collects from funded projects. Such a plan may include, among other items, creating video and slide/tape programs, brochures and other publications for promoting watershed enhancement concepts to the public;

(d) Identify gaps in research or available information on watershed enhancement; and

(e) Make available to projects applicants and to the public a list of other sources of watershed enhancement project assistance, funding and volunteer labor for enhancement projects.

Stat. Auth.: ORS Ch. 541
Hist.: GWEB 2-1988, f. & cert. ef. 5-17-88

GOVERNOR'S WATERSHED ENHANCEMENT BOARD

TECHNICAL AND EDUCATIONAL ADVISORY COMMITTEES RULES

695-30-010 PURPOSE

The purpose of these rules is to describe the organization, terms of office, duties and responsibilities of the committees of the Governor's Watershed Enhancement Board.

695-30-020 TECHNICAL ADVISORY COMMITTEE

1) This continuing Committee shall consist of a person designated by each of the agencies or natural resource boards and commissions represented on the Board, and such other persons as designated by the Board. The Chairperson of the Board is ex-officio a member of the Committee.

2) The term of each member of the Committee will be established by the Board member representing the agency, board or commission.

3) The Committee shall elect one member to serve as chairperson of the Committee.

4) The Committee members shall serve without compensation from the Board for travel or per diem.

5) The Committee is responsible for:

   a) Evaluating grant applications based upon the goals and objectives in ORS 541.350 et seq. and OAR 695-20-010 through 695-20-090 for watershed enhancement projects; and submitting recommendations for funding of the projects to the Board;

   b) Supplying on-going advice to the Board and to project grantees in areas of each Committee member's expertise;

   c) Referring grant applications of an educational nature to the Educational Advisory Committee for evaluation; and

   d) Such other activities as requested by the Board.

695-30-030 EDUCATIONAL ADVISORY COMMITTEE

1) This continuing Committee shall be comprised of one person designated by each of the agencies and natural resource boards or commissions represented on the Board and other persons designated by the Board with the intent to balance representation among groups with differing interests. Total membership shall be no more than 15. The Board Chair is ex-officio a member of the Committee.

2) The term of each member of the Committee will be established by the Board member appointed by each agency, board or commission or by the Board chairperson.

3) The Board Chair shall select a chairperson for the Committee.

4) Committee members shall serve without compensation from the Board for travel or per diem.

5) The Committee shall formulate and recommend to the Board for approval an educational policy and a program for increasing public awareness of watershed enhancement benefits. As part of the Board's educational program, the Committee shall:

   a) Formulate rules in accordance with the educational policy approved by the Board in section 5 of this rule, for evaluating applications for grant funds for proposals of an educational nature and make funding recommendations to the Board;

   b) Establish and maintain a centralized repository of educational and informational materials;

   c) Formulate a long-range plan to publicize the Board's watershed enhancement program and to make available the information the Board collects from funded projects. Such a plan may include, among other items, creating video and slide/tape programs, brochures and other publications for promoting watershed enhancement concepts to the public;

   d) Identify gaps in research or available information on watershed enhancement; and

   e) Make available to project applicants and to the public a list of other sources of watershed enhancement project assistance, funding and volunteer labor for enhancement projects.

NEIL GOLDSCHMIDT
GOVERNOR

Governor's Watershed Enhancement Board

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0348s
8/30/88

1/19/89

Strategic Planning - Status Report

The strategic planning process which EQC and DEQ have been discussing over the past months is now underway.

Objective:

- The objective is to develop a strategic plan that lays out the overall, long-range directions for DEQ through the year 2000. (The plan in evolutionary in the sense that it will change as the goals and circumstances of the agency change in significant ways.)

- Once formulated, the plan will serve as he basis for decisions and processes for DEQ (e.g., budget decisions, structure of the organization, personnel decisions, generation and use of data, and programmatic decisions).

Status of planning process:

- DEQ has hired a management consultant - Jim Marshall - to help facilitate the planning process. Marshall recently helped Oregon's Health 2000 Project and the City of Portland Bureau of General Services develop strategic planning documents.

- DEQ management personnel and Marshall met in mid-December to outline a process for DEQ, as described below:

    - A group of 25 DEQ staff representing all Divisions, management, and non-management personnel, and 2 EQC representatives will develop a draft plan for DEQ.

    - The plan will be developed during 4 or 5 one-day long meetings, scheduled as follows:

        1/26 2/3 2/28 3/10 3/21

    - During these meetings the group will:

        - define the agency's basic values and goals;

        - develop a consensus on what the future "environment" or scenarios for the agency will look like;

        - answer the question "How can we reach these goals in that environment, with these resources?" to develop the strategic plan; and

- develop an action plan to move the agency forward in the top priority directions established.

- To prepare for this planning, DEQ staff are presently compiling the management data and information presently used within DEQ to evaluate "what is going on" in DEQ and to plan future actions. (Compilation for 2/3 meeting.)

REQUEST FOR EQC ACTION

Meeting Date: 1/20/89
Agenda Item: F
Division: HSW
Section: SW/WTP

SUBJECT:

Methodology to determine when it is economically feasible to recycle waste tires. Procedure to establish "block passes" in tire carrier program. Housekeeping changes in waste tire storage site and carrier permitting rules.

PURPOSE:

The purpose of the economic feasibility methodology is to encourage recycling of waste tires rather than landfilling them, while allowing landfilling of whole tires where reuse is not economically feasible. The purpose of the "block pass" procedure is to add flexibility to the tire carrier program, offering better backhaul rates for tire processors and regulatory relief for infrequent private carriers.

ACTION REQUESTED:

___ Work Session Discussion
- ___ General Program Background
- ___ Program Strategy
- ___ Proposed Policy
- ___ Potential Rules
- ___ Other: (specify)

_X_ Authorize Rulemaking Hearing

Proposed Rules (Draft)	Attachment A
Rulemaking Statements	Attachment D
Fiscal and Economic Impact Statement	Attachment E
Draft Public Notice	Attachment F

___ Adopt Rules

Proposed Rules (Final Recommendation)	Attachment ___
Rulemaking Statements	Attachment ___
Fiscal and Economic Impact Statement	Attachment ___
Public Notice	Attachment ___

___ Issue Contested Case Decision/Order

Proposed Order	Attachment ___

___ Other: (specify)

AUTHORITY/NEED FOR ACTION:

X	Pursuant to Statute: ORS 459.705-.790 Enactment Date: 1987 (HB 2022)	Attachment B
X	Amendment of Existing Rule: 340-62	Attachment A
___	Implement Delegated Federal Program: _____	Attachment ___
___	Department Recommendation:	Attachment ___
___	Other:	Attachment ___

X Time Constraints:
Needs to be in place before the prohibition on landfilling whole tires goes into effect (7/1/89).

DESCRIPTION OF REQUESTED ACTION:

ORS 459.710(2) provides four exceptions to the chipping requirement for landfill of tires in solid waste disposal sites which goes into effect on July 1, 1989. One of the exceptions would allow burial of whole tires if recycling of waste tires is not economically feasible. The proposed new rule determines that tire recycling is economically feasible if it costs less than:

- The cost to most Oregonians of landfill disposal of waste tires (as determined by a Department survey); or
- Cost of tire disposal in the local landfill, if local costs are more than the above. (Page A - 13)

The statute defines a tire carrier as "any person engaged in picking up or transporting waste tires for the purpose of storage or disposal." It makes two exceptions, for garbage haulers hauling fewer than 10 tires, and private persons hauling fewer than 5 tires. The draft rule proposes a procedure and fee structure to allow persons holding combination carrier/storage site permits to use unpermitted common and private carriers to haul waste tires. (Page A - 18)

Other revisions to existing rules contain the following elements:

- Proposed permit modification and renewal fees for waste tire storage sites and carriers. (Pages A - 6 and A - 21)
- Provision for Commission to grant variances to storage standards. (Page A - 11)
- Various housekeeping measures.

DEVELOPMENTAL BACKGROUND:

X	Department Report (Background/Explanation)	Attachment C
X	Advisory Committee Report/Recommendation	Attachment C
___	Hearing Officer's Report/Recommendations	Attachment ___
___	Response to Testimony/Comments	Attachment ___
X	Prior EQC Agenda Items: Agenda Item G, 7/8/88 EQC Meeting -- Permitting Requirement for Waste Tire Storage Sites and Waste Tire Carriers (Attachments not included)	Attachment G
___	Other Related Reports/Rules/Statutes:	Attachment ___

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The rule would establish a methodology for statutory exception to whole tire disposal ban at solid waste disposal sites if recycling is not "economically feasible." The draft rule gives recycling of passenger tires a 10 percent cost advantage over landfilling of whole tires, and thus is consistent with the Solid Waste hierarchy.

The "block pass" procedure would allow permitted carriers to use unpermitted common and private carriers to haul waste tires under certain conditions. This should contribute to the Department's goal of keeping down the costs of transportation (and thus reuse) of waste tires. It would also offer regulatory relief to some infrequent private carriers, by affording them a means of hauling their own waste tires to a permitted storage site without paying the $200 annual permit fee and presenting a $5,000 bond.

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

The Waste Tire Task Force supports the new rule on economic feasibility of tire recycling. Some landfill operators may object to using a statewide standard which is higher than what they charge for tire disposal. Members of the public in communities served by such landfills may also object, as the local landfill will likely stop accepting waste tires rather than comply with the chipping requirement for burial. Although not changed by the proposed rule, the Department's chipping standard for landfill disposal of tires may also receive negative comments; some landfill operators believe

splitting (cutting the tire in two) is sufficient for proper landfill disposal.

The Task Force also supported the "block pass" provision for waste tire carriers to use unpermitted common carriers. The auto wrecker representative on the Task Force wanted, in addition, to extend this provision to use unpermitted private carriers. Other members of the Task Force do not support including private carriers, as they think it may open the door to abuses.

PROGRAMMATIC CONSIDERATIONS:

New tasks established by the proposed new rule and rule revisions can be handled by existing staff. Tasks include a statewide survey at least once every biennium of landfill charges for accepting tires, processing requests for exemption to the tire chipping requirement, and producing, selling and tracking "block passes" to tire carriers. It is not expected that block passes will be used extensively.

POLICY ISSUES FOR COMMISSION TO RESOLVE:

The structure of the proposed new economic feasibility rule is based on statewide landfill charges for tire disposal. It assumes that for waste tire recycling to be "economically feasible" does not mean that it must be "economically advantageous" for the person disposing of the tire. Tire recycling in a given community might cost more than the charge for tire disposal at the local landfill, and still be "economically feasible" under the proposed rule. Is this statewide perspective the proper one?

COMMISSION ALTERNATIVES:

1. Authorize public hearings to take public testimony on the draft rules as proposed in Attachment A.

2. Modify the draft rule as proposed in Attachment A to determine that waste tire recycling is economically feasible if it costs less than the local landfill charges for tire disposal. The Department does not believe that this meets the intent of the legislation to encourage reuse of waste tires over landfilling.

3. Modify the draft rule to use the definition of "recyclable material" (OAR 340-60-010(19)) to determine when recycling of waste tires is economically feasible. This is based on the "net cost" of recycling compared to the "cost of collection

and disposal." This is a more complicated calculation than the one in the draft rule, and would be difficult to substantiate. This rule has never been used in practice. The Department prefers the simpler process in the draft rule.

4. Modify the draft rule as proposed in Attachment A to exclude private carriers from the "block pass" procedure. The Department does not believe that either including or excluding private carriers will have much of an impact on use of this procedure. However, the Department would like to open this alternative to private carriers, who may find it advantageous if they can find a permitted carrier willing to extend the umbrella of his permit to them under the "block pass."

5. Remove the "block pass" option from the draft rule. Continue to require any waste tire carrier not exempted by the statute or existing rule to obtain his or her own waste tire carrier permit. This would be easier to administer. But it would mean that most common carriers would not haul waste tires; inexpensive backhauls would thus not be available to tire processors.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends that the Commission adopt Alternative 1.

The proposed economic feasibility rule has the support of the Task Force. It takes the Solid Waste hierarchy into account by giving a slight advantage to reuse over landfilling whole. Proceeding now would allow the rule on economic feasibility to be in place in time for solid waste site operators to request an exemption before the effective date of the chipping requirement (July 1, 1989). Setting up a "block pass" procedure will offer economic advantages for backhauling waste tires; and will afford infrequent private haulers some relief from a permitting requirement many of them find burdensome. Other housekeeping changes will improve administration of the waste tire permitting program.

INTENDED FOLLOWUP ACTIONS:

Actions on draft rule:

File Hearing Notice with the Secretary of State.

Notify solid waste disposal site operators, identified waste tire haulers and waste tire site operators, county officials, and other interested persons of their chance to comment on the draft rules.

Hold public hearings on February 15, 16 and 17, 1989 in Ontario, Grants Pass and Eugene on the draft rule.

Return to April 14, 1989 Commission meeting for final rule adoption.

Other tire program actions:

The draft rule reflects changes identified as desirable by the Department in implementing the permitting part of the waste tire program. As implementation of the cleanup and reimbursement part of the program proceeds, the Department may return to the Commission with rule revisions relating to that part. For instance, the Department is now in the process of developing guidelines to determine how "financial hardship" will affect the amount of cleanup funds a tire site owner may receive.

Approved:

Section: Greenwood

Division: Stephanie Hallock

Director: Lydia Taylor

Contact: Deanna Mueller-Crispin

Phone: 229-5808

dmc
eqcrulrp
1/3/89

Attachment A

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY
ADMINISTRATIVE RULES
DIVISION 62 - WASTE TIRES

WASTE TIRE STORAGE SITE AND WASTE TIRE CARRIER PERMITS

Proposed Amendments
January 4, 1989

New material underlined.
Deletions in [brackets].

Definitions

340-62-010 As used in these rules unless otherwise specified:

(1) "Buffings" -- a product of mechanically scarifying a tire surface, removing all trace of the surface tread, to prepare the casing to be retreaded.

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

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

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

(5) "Dispose" -- to deposit, dump, spill or place any waste tire on any land or into any water as defined by ORS 468.700.

(6) "End user":

(a) For energy recovery: the person who utilizes the heat content or other forms of energy from the incineration or pyrolysis of waste tires, chips or similar materials.

(b) For other eligible uses of waste tires: the last person who uses the tires, chips, or similar materials to make a product with economic value. If the waste tire is processed by more than one person in becoming a product, the "end user" is the last person to use the tire as a tire, as tire chips, or as similar materials. A person who produces tire chips or similar materials and gives or sells them to another person to use is not an end user.

(7) "Energy recovery" -- recovery in which all or a part of the waste tire is processed to utilize the heat content, or other forms of energy, of or from the waste tire.

(8) "Financial assurance" -- a performance bond, letter of credit, cash deposit, insurance policy or other instrument acceptable to the Department.

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

(10) "Oversize waste tire" -- a waste tire exceeding a 24.5-inch bead diameter. [n 18-inch rim diameter, or a 35-inch outside diameter.]

(11) "Passenger tire" -- a tire with less than an 18-inch bead diameter.

(12) [(11)] "Person" -- the United States, the state or a public or private corporation, local government unit, public agency, individual, partnership, association, firm, trust, estate or any other legal entity.

(13) [(12)] "Private carrier" -- any person who operates a motor vehicle over the public highways of this state for the purpose of transporting persons or property when the transportation is incidental to a primary business enterprise, other than transportation, in which such person is engaged.

(14) [(13)] "PUC" -- the Public Utility Commission of Oregon.

(15) [(14)] "Retreader" -- a person engaged in the business of recapping tire casings to produce recapped tires for sale to the public.

(16) [(15)] "Rick" -- to horizontally stack tires securely by overlapping so that the center of a tire fits over the edge of the tire below it.

(17) [(16)] "Store" or "storage" -- the placing of waste tires in a manner that does not constitute disposal of the waste tires.

(18) [(17)] "Tire" -- a continuous solid or pneumatic rubber covering encircling the wheel of a vehicle in which a person or property is transported, or by which they may be drawn, on a highway. This does not include tires on the following:

(a) A device moved only by human power.

(b) A device used only upon fixed rails or tracks.

(c) A motorcycle.

(d) An all-terrain vehicle, including but not limited to, three-wheel and four-wheel ATVs, dune buggies and other similar vehicles. All-terrain vehicles do not include jeeps, pick-ups and other four-wheel drive vehicles that may be registered, licensed and driven on public roads in Oregon.

(e) A device used only for farming, except a farm truck.

(19) [(18)] "Tire carrier" -- a person who picks up or transports waste tires for the purpose of storage or disposal. This does not include the following:

(a) Solid waste collectors operating under a license or franchise from a local government unit and who transport fewer than 10 tires at a time.

(b) Persons who transport fewer than five tires with their own solid waste for disposal.

(20) [(19)] "Tire processor" -- a person engaged in the processing of waste tires.

(21) [(20)] "Tire retailer" -- a person in the business of selling new replacement tires at retail, whose local business license or permit (if required) specifically allows such sale.

(22) [(21)] "Tire derived products" -- tire chips or other usable materials produced from the physical processing of a waste tire.

(23) "Truck tire" -- a tire with a bead diameter of between 18 and 24.5 inches.

(24) [(22)] "Waste tire" -- a tire that is no longer suitable for its original intended purpose because of wear, damage or defect, and is fit only for:

(a) Remanufacture into something else, including a recapped tire; or

(b) Some other use which differs substantially from its original use.

(23) "Waste Tires Generated in Oregon" -- Oregon is the place at which the tire first becomes a waste tire. A tire casing imported into Oregon for potential recapping, but which proves unusable for that purpose, is not a waste tire generated in Oregon. Examples of waste tires generated in Oregon include but are not limited to:

(a) Tires accepted by an Oregon tire retailer in exchange for new replacement tires.

(b) Tires removed from a junked auto at an auto wrecking yard in Oregon.

Waste Tire Storage Permit Required

340-62-015 (1) After July 1, 1988, a person who stores more than 100 waste tires [at a site] in this state is required to have a waste tire storage permit [for that site] from the Department. The following are exempt from the permit requirement:

(a) A tire retailer who stores [with] not more than 1,500 waste tires [in storage] for each retail business location.

(b) A tire retreader who stores [with] not more than 3,000 waste tires [stored outside.] outside for each individual retread operation.

(2) Piles of tire derived products are not subject to regulation as waste tire storage sites if they have an economic value.

(3) If tire derived products have been stored for over six months, the Department shall assume they have no economic value, and the site operator must either:

(a) Apply for a waste tire storage site permit and comply with storage standards and other requirements of OAR 340-62-005 through 340-62-045; or

(b) Demonstrate to the Department's satisfaction that the tire derived products do have an economic value by presenting receipts, orders, or other documentation acceptable to the Department [etc.] for the tire derived products.

(4) After July 1, 1988, a permitted solid waste disposal site which stores more than 100 waste tires, is required to have a permit modification addressing the storage of tires from the Department.

(5) The Department may issue a waste tire storage permit in two stages to persons required to have such a permit by July 1, 1988. The two stages are a "first-stage" or limited duration permit, and a "second-stage" or regular permit.

(6) Owners or operators of existing sites not exempt from the waste tire storage site permit requirement shall apply to the Department by June 1, 1988 for a "first-stage" permit to store waste tires. A person who wants to establish a new waste tire storage site shall apply to the Department at least 90 days before the planned date of facility construction. A person applying for a waste tire storage site permit on or after September 1, 1988 shall apply for a "second-stage" or regular permit.

(7) The Department may grant an exemption to the requirement to obtain a waste tire storage site permit for whole waste tires if the applicant can demonstrate to the Department's satisfaction that:

(a) The applicant is using the tires for a permanent useful purpose with a documented economic value; and

(b) The waste tires used in this way will meet state and local government requirements for vector control, health, fire control, safety and other environmental concerns; and

(c) The use otherwise is not in conflict with local ordinances and state and Federal laws and administrative rules.

(8) Failure to conduct storage of waste tires according to the conditions, limitations, or terms of a permit or these rules, or failure to obtain a permit, is a violation of these rules and shall be subject to civil penalties as provided in OAR Chapter 340, Division 12 or to any other enforcement action provided by law. Each day that a violation occurs is a separate violation and may be the subject of separate penalties.

"Second-Stage" or Regular Permit

340-62-020 (1) An application for a "second-stage" or regular waste tire storage site permit shall:

(a) Include such information as shall be required by the Department, including but not limited to:

(A) A description of the need for the waste tire storage site;

(B) The zoning designation of the site, and a written statement of compatibility of the proposed waste tire storage site with the acknowledged local comprehensive plan and zoning requirements from the local government unit(s) having jurisdiction.

(C) A description of the land uses within a one-quarter mile radius of the facility, identifying any buildings and surface waters.

(D) A management program for operation of the site, which includes but is not limited to:

(i) Anticipated maximum number of tires to be stored at the site for any given one year period.

(ii) Present and proposed method of disposal, and timetable.

(iii) How the facility will meet the technical tire storage standards in OAR 340-62-035 for both tires currently stored on the site, and tires to be accepted.

(iv) How the applicant proposes to control mosquitoes and rodents, considering the likelihood of the site becoming a public nuisance or health hazard, proximity to residential areas, etc.

(E) A proposed contingency plan to minimize damage from fire or other accidental or intentional emergencies at the site. It shall include but not be limited to procedures to be followed by facility personnel, including measures to be taken to minimize the occurrence or spread of fires and explosions.

(F) The following maps:

(i) A site location map showing section, township, range and site boundaries.

(ii) A site layout drawing, showing size and location of all pertinent man-made and natural features of the site (including roads, fire lanes, ditches, berms, waste tire storage areas, structures, wetlands, floodways and surface waters).

(iii) A topographic map using a scale of no less than one inch equals 200 feet, with 40 foot intervals on 7.5 minute series.

(b) Submit proof that the applicant holds financial assurance acceptable to the Department in an amount determined by the Department to be necessary for waste tire removal processing, fire suppression or other measures to protect the environment and the health, safety and welfare, pursuant to OAR 340-62-025 and 340-62-035.

(c) Submit an application fee of $250. Fifty dollars ($50) of the application fee shall be non-refundable. The rest of the application fee may be refunded in whole or in part when submitted with an application if either of the following conditions exists:

(A) The Department determines that no permit will be required;

(B) The applicant withdraws the application before the Department has granted or denied the application.

(2) A "second-stage" permit may be issued for up to five years. [Permits] "Second-stage storage site permits and combined tire carrier/storage site permits shall expire on January 1.

(3) The Department may waive any of the requirements in subsections (1)(a)(E) (contingency plan), (1)(a)(F) (maps) or (1)(b) (financial assurance) of this section for a waste tire storage site in existence on or before January 1, 1988, if it is determined by the Department that the site is not likely to create a public nuisance, health hazard, air or water pollution or other environmental problem. This waiver shall be considered for storage sites which are no longer receiving additional tires, and are under a closure schedule approved by the Department. The site must still meet operational standards in OAR 340-62-035.

(4) A permittee who wants to renew his/her "second-stage" storage permit or combined tire carrier/storage site permit shall apply to the Department for permit renewal at least 90 days before the permit expiration date. The renewal shall include such information as required by the Department. It shall include a permit renewal fee of $125.

(5) A permittee may request from the Department a permit modification to modify its operations as allowed in an unexpired permit. A permit modification initiated by the permittee shall include a permit modification fee of $25.

Financial Assurance

340-62-022 (1) The Department shall determine for each applicant the amount of financial assurance required under ORS 459.720(c) and OAR 340-62-020 (1)(b). The Department shall base the amount on the estimated cost of cleanup for the maximum number of waste tires allowed by the permit to be stored at the storage site.

(2) The Department will accept as financial assurance only those

instruments listed in and complying with requirements in OAR 340-61-034(3)(c)(A) through (G) or OAR 340-71-600(5)(a) through (c).

(3) The financial assurance shall be filed with the Department.

(4) The Department shall make any claim on the financial assurance within one year of any notice of proposed cancellation of the financial assurance.

Permittee Obligations

340-62-025 (1) Each person who is required by ORS 459.715 and 459.725, and OAR 340-62-015 and 340-62-055, to obtain a permit shall:

(a) Comply with these rules and any other pertinent Department requirements.

(b) Inform the Department in writing within 30 days of company changes that affect the permit, such as business name change, change from individual to partnership and change in ownership.

(c) Allow to the Department, after reasonable notice, necessary access to the site and to its records, including those required by other public agencies, in order for the monitoring, inspection and surveillance program developed by the Department to operate.

(2) Each person who is required by ORS 459.715 and OAR 340-62-015 to obtain a permit shall submit to the Department by February 1 of each year an annual compliance fee for the coming calendar year in the amount of $250, effective February 1, 1989. The permittee shall submit evidence of required financial assurance when the annual compliance fee is submitted.

(3) Each waste tire storage site permittee whose site accepts waste tires after the effective date of these rules shall also do the following as a condition to holding the permit:

(a) Maintain records on approximate numbers of waste tires received and shipped, and tire carriers transporting the tires so as to be able to fulfill the reporting requirements in subsection (3)(b) of this rule. The permittee shall issue written receipts upon receiving loads of waste tires. Quantities may be measured by aggregate loads or cubic yards, if the permittee documents the approximate number of tires included in each. These records shall be maintained for a period of three years, and shall be available for inspection by the Department after reasonable notice.

(b) Submit a report containing the following information annually by February 1 of 1990 and each year thereafter:

(A) Number of waste tires received at the site during the year covered by the report;

(B) Number of waste tires shipped from the site during the year covered by the report;

(C) The name (and tire carrier permit number, if applicable) of the tire carriers delivering waste tires to the site and shipping waste tires from the site, together with the quantity of waste tires shipped with those carriers.

(D) The number of waste tires located at the site at the time of the report.

(c) Notify the Department within 24 hours of the name of any unpermitted tire carrier (who is not exempt under OAR 340-62-055(3)) who delivers waste tires to the site after January 1, 1989.

(d) If required by the Department, prepare for approval by the Department and then implement:

(A) A plan to remove some or all of the waste tires stored at the site. The plan shall follow standards for site closure pursuant to OAR 340-62-045. The plan may be phased in, with Department approval.

(B) A plan to process some or all of the waste tires stored at the site. The plan shall comply with ORS 459.705 through 459.790 and OAR 340-62-035.

(e) Maintain the financial assurance required under OAR 340-62-020(1)(b) and 340-62-022.

(f) Maintain any other plans and exhibits pertaining to the site and its operation as determined by the Department to be reasonably necessary to protect the public health, welfare or safety or the environment.

(4) The Department may waive any of the requirements of subsections (3)(a) through (3)(b)(D) of this section for a waste tire storage site in existence on or before January 1, 1988. This waiver shall be considered for storage sites which are no longer receiving additional tires and are under a closure schedule approved by the Department.

Department Review of Applications for Waste Tire Storage Sites

340-62-030 (1) Applications for waste tire storage permits shall be processed in accordance with the Procedures for Issuance, Denial, Modification and Revocation of Permits as set forth in OAR Chapter 340, Division 14, except as otherwise provided in OAR Chapter 340, Division 62.

(2) Applications for permits shall be complete only if they:

(a) Are submitted on forms provided by the Department, accompanied by all required exhibits, and the forms are completed in full and are signed by the applicant and the property owner or person in control of the premises;

(b) Include plans and specifications as required by OAR 340-62-018 and 340-62-020;

(c) Include the appropriate application fee pursuant to OAR 340-62-020(1)(c).

(3) An application may be accepted as complete for processing if all required materials have been received with the exception of the financial assurance required under OAR 340-62-020(1)(b) and 340-62-022, and the written statement of compatibility of the proposed site with the acknowledged local comprehensive plan and zoning requirements from the local government unit(s) having jurisdiction. However, the Department shall not issue a Stage II waste tire storage site permit unless required financial assurance and land use compatibility have been received.

(4) [(3)] Following the submittal of a complete waste tire storage site permit application, the Director shall cause notice to be given in the county where the proposed site is located in a manner reasonably calculated to notify interested and affected persons of the permit application.

(5) [(4)] The notice shall contain information regarding the location of the site and the type and amount of waste tires intended for storage at the site. In addition, the notice shall give any person substantially affected by the proposed site an opportunity to comment on the permit application.

(6) [(5)] The Department may conduct a public hearing in the county where a proposed waste tire storage site is located.

(7) [(6)] Upon receipt of a completed application, the Department may deny the permit if:

(a) The application contains false information.

(b) The application was wrongfully accepted by the Department.

(c) The proposed waste tire storage site would not comply with these rules or other applicable rules of the Department.

[(d) The proposed site does not have a written statement of compatibility with acknowledged local comprehensive land and zoning requirements from the local government unit(s) having jurisdiction; or]

(d) [(e)] There is no clearly demonstrated need for the proposed new, modified or expanded waste tire storage site.

(8) [(7)] Based on the Department's review of the waste tire storage site application, and any public comments received by the Department, the director shall issue or deny the permit. The director's decision shall be subject to appeal to the Commission and judicial review under ORS 183.310 to 183.550.

Standards for Waste Tire Storage Sites

340-62-035 (1) All permitted waste tire storage sites must comply with the technical and operational standards in this part.

(2) The holder of a "first-stage" waste tire storage permit shall comply with the technical and operational standards in this part if the site receives any waste tires after the effective date of these rules.

(3) A waste tire storage site shall not be constructed or operated in a wetland, waterway, floodway, 25-year floodplain, or any area where it may be subjected to submersion in water.

(4) Operation. A waste tire storage site shall be operated in compliance with the following standards:

(a) An outdoor waste tire pile shall have no greater than the following maximum dimensions:

(A) Width: 50 feet.

(B) Area: 15,000 square feet.

(C) Height: 6 feet.

(b) A 50-foot fire lane shall be placed around the perimeter of each waste tire pile. Access to the fire lane for emergency vehicles must be unobstructed at all times.

(c) Waste tires to be stored for one month or longer shall be ricked, unless the Department waives this requirement.

(d) The permittee shall operate and maintain the site in a manner which controls mosquitoes and rodents if the site is likely to become a public nuisance or health hazard and is close to residential areas.

(e) A sign shall be posted at the entrance of the storage site stating operating hours, cost of disposal and site rules if the site receives tires from persons other than the operator of the site.

(f) No operations involving the use of open flames or blow torches shall be conducted within 25 feet of a waste tire pile.

(g) An approach and access road to the waste tire storage site shall be maintained passable for any vehicle at all times. Access to the site shall be controlled through the use of fences, gates, or other means of controlling access.

(h) If required by the Department, the site shall be screened from public view.

(i) An attendant shall be present at all times the waste tire storage

site is open for business, if the site receives tires from persons other than the operator of the site.

(j) The site shall be bermed or given other adequate protection if necessary to keep any liquid runoff from potential tire fires from entering waterways.

(k) If pyrolytic oil is released at the waste tire storage site, the permittee shall remove contaminated soil in accordance with applicable rules governing the removal, transportation and disposal of the material.

(5) Waste tires stored indoors shall be stored under conditions that meet those in The Standard for Storage of Rubber Tires, NFPA 231D-1986 edition, adopted by the National Fire Protection Association, San Diego, California.

(6) The Department may approve exceptions to the preceding technical and operational standards for a company processing waste tires if:

(a) The average time of storage for a waste tire on that site is one month or less; and

(b) The Department and the local fire authority are satisfied that the permittee has sufficient fire suppression equipment and/or materials on site to extinguish any potential tire fire within an acceptable length of time.

(7) Tire-derived products subject to regulation under OAR 340-62-015 (3)(a) shall be subject to standards in this rule except that piles of such products may be up to 12 feet high if approved by local fire officials.

(8) A permittee may petition the Commission to grant a variance to the technical and operational standards in this part for a waste tire storage site in existence on or before January 1, 1988. The Commission may by specific written variance waive certain requirements of these technical and operational standards when circumstances of the waste tire storage site location, operating procedures, and fire control protection indicate that the purpose and intent of these rules can be achieved without strict adherence to all of the requirements.

Closure Procedures

340-62-045 (1) In closing the storage site, the permittee shall:

(a) Close public access to the waste tire storage site for tire storage;

(b) Post a notice indicating to the public that the site is closed and, if the site had accepted waste tires from the public, indicating the nearest site where waste tires can be deposited;

(c) Notify the Department and local government of the closing of the site;

(d) Remove all waste tires and tire-derived products to a waste tire storage site, solid waste disposal site authorized to accept waste tires, or other facility approved by the Department;

(e) Remove any solid waste to a permitted solid waste disposal site; and

(f) Notify the Department when the closure activities are completed.

(2) After receiving notification that site closure is complete, the Department may inspect the storage site. If all procedures have been correctly completed, the Department shall approve the closure in writing. Any financial assurance not needed for the closure or for other purposes under OAR 340-62-020((1)(b) shall be released to the permittee.

Chipping Standards for Solid Waste Disposal Sites

340-62-052 (1) After July 1, 1989, a person may not dispose of waste tires in a land disposal site permitted by the Department unless:

(a) The waste tires are processed in accordance with the standards in subsection (2) of this rule, and written notification has been submitted to the Department verifying that alternatives to disposal have been investigated and are not economically feasible; or

(b) The waste tires were located for disposal at that site before July 1, 1989; or

(c) The Commission finds that the reuse or recycling of waste tires is not economically feasible pursuant to OAR 340-62-053; or

(d) The waste tires are received from a person exempt from the requirement to obtain a waste tire carrier permit under OAR 340-62-055 (3)(a) and (b).

(2) To be landfilled under subsection (1)(a) of this rule, waste tires must be processed to meet the following criteria:

(a) The bulk of 100 unprepared randomly selected tires in one continuous test period must be reduced by at least 65 percent of the original bulk. No single void space greater than 125 cubic inches may remain in the randomly placed processed tires; or

(b) The tires shall be reduced to an average chip size of no greater than 64 square inches in any randomly selected sample of 10 tires or more. No more than 40 percent of the chips may exceed 64 square inches.

(3) The test to comply with (2)(a) shall be as follows:

(a) Unprocessed tire bulk shall be calculated by multiplying the circular area, with a diameter equal to the outside diameter of the tire, by the maximum perpendicular width of the tire. The total test bulk shall be the sum of the individual, unprocessed tire bulks;

(b) Processed tire bulk shall be determined by randomly placing the processed tire test quantity in a rectangular container and leveling the surface. It shall be calculated by multiplying the depth of processed tires by the bottom area of the container.

[(4) Reuse or recycling of oversize waste tires is not now economically feasible, and they are thus exempt from the chipping requirement under subsection (2) of this rule until such time as their reuse becomes economically feasible.]

Economic Feasibility of Reuse or Recycling Waste Tires

340-62-053

(1) Reuse or recycling of oversize waste tires is not economically feasible, and they are thus exempt from the chipping requirement under OAR 340-62-052 (2).

(2) The standard for "economic feasibility" of tire reuse or recycling shall be based on the following:

(a) The Department shall conduct a survey at least once every biennium of the charges for accepting waste passenger and truck tires at each solid waste disposal site in the state.

(b) The Department shall use the survey results to determine the mean and modal charges for passenger and truck tire disposal in the state.

(c) Either the mean or the modal charge, whichever is greater, shall be used as the base for the standard.

(d) The standard for passenger tires shall be the base plus ten percent.

(e) The standard for truck tires shall be the base plus 25 percent.

(3) Reuse or recycling of a waste tire shall be deemed economically feasible if the cost to reuse or recycle the tire is not more than the standard.

(4) If the charge for waste tire disposal at the local solid waste site is more than the standard:

(a) The local per tire disposal charge shall be the standard used to determine whether the cost of reuse or recycling is economically feasible; and

(b) Reuse or recycling shall be deemed economically feasible if the cost to reuse or recycle the passenger or truck tire is equal to or less than the charge for tire disposal at the local solid waste disposal site.

(5) The director shall determine whether it is economically feasible to reuse or recycle waste tires in the service area of a solid waste disposal site permittee.

(6) A solid waste disposal site permittee may apply to the director to make that determination after the effective date of this rule.

(7) The applicant shall submit written documentation such as bids from contractors of the cost of at least two of the best available options to reuse or recycle waste tires in quantities which could reasonably be expected to be generated in the permittee's service area. Cost shall be determined for waste tires collected at the permittee's site. The permittee may also submit documentation for costs of reuse or recycling from one or more other locations within its service area where quantities of waste tires are generated.

(8) Reuse or recycling options whose costs should be considered include transporting the waste tires to:

(a) The nearest permitted waste tire storage site accepting waste tires.

(b) A waste tire processing site.

(9) If the Department knows of a reasonable alternative for reuse or recycling of waste tires that the applicant did not consider, it may require the applicant to document costs of that option.

(10) The Department may require any additional information necessary to act upon the application.

(11) If the Department requires additional information, the application shall not be considered complete until such information is received.

(12) The director shall approve or deny a complete application within 30 days of its receipt.

(13) The Department may review biennually whether any exemption granted under this part should continue in force.

Waste Tire Carrier Permit Required

340-62-055 (1) After January 1, 1989, any person engaged in picking

up or transporting waste tires for the purpose of storage or disposal is required to obtain a waste tire carrier permit from the Department.

(2) After January 1, 1989, no person shall haul waste tires or advertise or represent himself/herself as being in the business of a waste tire carrier without first obtaining a waste tire carrier permit from the Department.

(3) [(2)] After January 1, 1989, any person who contracts or arranges with another person to transport waste tires for storage or disposal shall only deal with a person holding a waste tire carrier permit from the Department, unless the person is exempted by (4) [(3)](a) or (b).

(4) [(3)] The following persons are exempt from the requirement to obtain a waste tire carrier permit:

(a) Solid waste collectors operating under a license or franchise from any local government unit and who transport fewer than 10 tires at any one time.

(b) Persons transporting fewer than five tires.

(c) Persons transporting tire-derived products to a market.

(d) Persons who use company-owned vehicles to transport tire casings for the purposes of retreading between company-owned or company-franchised retail tire outlets and company-owned or company-franchised retread facilities.

(e) Tire retailers or retreaders who transport used tires back to their retail tire outlet or retread operation after taking them from customers in exchange for other tires, or for repair or retreading.

(f) The United States, the State of Oregon, any county, city, town or municipality in this state, or any department of any of them except when vehicles they own or operate are used as a waste tire carrier for hire.

(5) [(4)] Persons exempt from the waste tire carrier permit requirement under subsection [(3)] (4)(d) of this section shall nevertheless notify the Department of this practice on a form provided by the Department.

(6) [(5)] A combined tire carrier/storage site permit may be applied for by tire carriers:

(a) Who are subject to the carrier permit requirement; and

(b) Whose business includes a site which is subject to the waste tire storage permit requirement.

(7) [(6)] The Department shall supply a combined tire carrier/storage site application to such persons. Persons applying for the combined tire carrier/storage site permit shall comply with all other regulations concerning storage sites and tire carriers established in these rules.

(8) [(7)] Persons who transport waste tires for the purpose of storage or disposal must apply to the Department for a waste tire carrier permit within 90 days of the effective date of this rule. Persons who want to begin transporting waste tires for the purpose of storage or disposal must apply to the Department for a waste tire carrier permit at least 90 days before beginning to transport the tires.

(9) [(8)] Applications shall be made on a form provided by the Department. The application shall include such information as required by the Department. It shall include but not be limited to:

(a) A description, license number and registered vehicle owner for each truck used for transporting waste tires.

(b) The PUC authority number under which each truck is registered.

(c) Where the waste tires will be stored or disposed of.

(d) Any additional information required by the Department.

(10) [(9)] A corporation which has more than one separate business location may submit one waste tire carrier permit application which includes all the locations. All the information required in subsection [(8)] (9) of this section shall be supplied by location for each individual location. The corporation shall be responsible for amending the corporate application whenever any of the required information changes at any of the covered locations.

(11) [(10)] An application for a tire carrier permit shall include a $25 non-refundable application fee.

(12) [(11)] An application for a combined tire carrier/storage site permit shall include a $250 application fee, $50 of which shall be non-refundable. The rest of the application fee may be refunded in whole or in part when submitted with an application if either of the following conditions exists:

(a) The Department determines that no permit will be required;

(b) The applicant withdraws the application before the Department has granted or denied the application.

(13) [(12)] The application for a waste tire carrier permit shall also include a bond in the sum of $5,000 in favor of the State of Oregon. In lieu of the bond, the applicant may submit financial assurance acceptable to the Department. The Department will accept as financial assurance only those instruments listed in and complying with requirements in OAR 340-61-034(3)(c)(A) through (G) and OAR 340-71-600(5)(a) through (c).

(14) [(13)] The bond or other financial assurance shall be filed with the Department and shall provide that:

(a) In performing services as a waste tire carrier, the applicant shall comply with the provisions of ORS 459.705 through 459.790 and of this rule; and

(b) Any person injured by the failure of the applicant to comply with the provisions of ORS 459.705 through 459.790 or this rule shall have a right of action on the bond or other financial assurance in the name of the person. Such right of action shall be made to the principal or the surety company within two years after the injury.

(15) [(14)] A waste tire carrier permit or combined tire carrier/storage site permit shall be valid for up to three years. Waste tire carrier permits shall expire on March 1. Permittees who want to renew their permit must apply to the Department for permit renewal by February 1 of the year the permit expires. The application for renewal shall include all information required by the Department, and a permit renewal fee.

(16) [(15)] A waste tire carrier permittee may add another vehicle to its permitted waste tire carrier fleet if it does the following before using the vehicle to transport waste tires:

(a) Submits to the Department:

(A) The information required in OAR 340-62-055 (9) [(8)]; and

(B) A fee of $25 for each vehicle added.

(b) Displays on each additional vehicle [a] decals from the Department pursuant to OAR 340-62-063 (1)(b).

(17) [(16)] A waste tire carrier permittee may lease additional vehicles to use under its waste tire carrier permit without adding that vehicle to its fleet pursuant to subsection (16) [(15)] of this section, under the following conditions:

[(a) The leased vehicle is not operating under the provisions of ORS 767.145 or exempted under the provisions of ORS 767.005(17) and 767.425(7).]

(a) [(b)] The vehicle may not transport waste tires when under lease for a period of time exceeding 30 days ("short-term leased vehicles"). If the lease is for a longer period of time, the vehicle must be added to the permittee's permanent fleet pursuant to subsection (16) [(15)] of this section.

(b) [(c)] The permittee must give previous written notice to the Department that it will use short-term leased vehicles.

(c) [(d)] The permittee shall pay a $25 annual compliance fee in advance to allow use of short-term leased vehicles, in addition to any other fees required by OAR 340-62-055 [(10), (11) and (15)] (11), (12) and (16), and 340-62-063 (7) and (9).

(e) Every permittee shall keep a daily record of all vehicles leased on short term, with beginning and ending dates used, license numbers, PUC authority, PUC temporary pass or PUC plate/marker, and person from whom the vehicles were leased. The daily record must be kept current at all times, subject to verification by the Department. The daily record shall be maintained at the principal Oregon office of the permittee. The daily record shall be submitted to the Department each year as part of the permittee's annual report required by OAR 340-62-063(5).

(f) The permittee's bond or other financial assurance required under OAR 340-62-055 (13) [(12)] must have specific language ensuring that the bond will cover all actions committed by any vehicle leased by the permittee while operating under the permittee's waste tire carrier permit.

(g) The permittee is responsible for ensuring that a leased vehicle complies with OAR 340-62-055 through 340-62-063, except that the leased vehicle does not have to obtain a separate waste tire carrier permit pursuant to OAR 340-62-055 (1) while operating under lease to the permittee.

(18) A holder of a combined tire carrier/storage site permit may purchase special block passes from the Department. The block passes will allow the permittee to hire a common carrier or private carrier which does not have a waste tire carrier permit. Use of a block pass will allow the unpermitted common carrier or private carrier to haul waste tires under the permittee's waste tire carrier permit.

(a) The permittee's bond or other financial assurance required under OAR 340-62-055(12) must have specific language ensuring that the bond will cover all actions committed by any common carrier or private carrier using a block pass to operate as a waste tire carrier under the permittee's waste tire carrier permit.

(b) The permittee is responsible for ensuring that a common carrier or private carrier operating under a block pass from the permittee complies with OAR 340-62-055 through 340-62-063, except that the common carrier or private carrier does not have to obtain a separate waste tire carrier permit pursuant to OAR 340-62-055(1) which operating under the permittee's block pass.

(c) A block pass may be valid for a maximum of ten days and may only be used to haul waste tires between the origin and destination(s) listed on the block pass.

(d) A separate block pass shall be used for each trip hauling waste tires made by the unpermitted common carrier or private carrier under the permittee's waste tire carrier permit. (A "trip" begins when waste tires are picked up at an origin, and ends when they are delivered to a proper disposal site(s) pursuant to OAR 340-62-063(4).)

(e) The permittee shall fill in all information required on the block pass, including name of the common carrier or private carrier, license number, PUC authority if applicable, PUC temporary pass or PUC plate/marker if applicable, beginning and ending dates of the trip, address of where the

waste tires are to be picked up and where they are to be delivered, and approximate numbers of waste tires to be transported.

(f) Each block pass shall be in triplicate. The permittee shall send the original to the Department within five days of the pass's beginning date, one copy to the common carrier or private carrier which shall keep it in the cab during the trip, and shall keep one copy.

(g) The permittee shall be responsible for ensuring that any common carrier or private carrier hauling waste tires under the permittee's waste tire carrier permit has a properly completed block pass.

(e) While transporting waste tires, the common carrier or private carrier shall keep a block pass properly filled out for the current trip in the cab of the vehicle.

(i) Special block passes shall be available in sets of five, for a fee of $25 per set. Only a holder of a combined tire carrier/storage site permit may purchase block passes. Any unused block passes shall be returned to the Department when the permittee's waste tire permit expires or is revoked.

(j) An unpermitted common carrier or private carrier may operate as a waste tire carrier using a block pass no more than three times in any calendar quarter. Before a common carrier or private carrier may operate as a waste tire carrier more than three times a quarter, he or she must first apply for and obtain a waste tire carrier permit from the Department.

(19) [(17)] For the purposes of ORS 459.995(1), the transportation of waste tires under OAR 340-62-055 through 340-62-063 is deemed to be collection of solid waste, and violations of these rules are subject to a civil penalty under the Solid Waste Management Schedule of Civil Penalties, OAR 340-12-065.

Waste Tire Carrier Permittee Obligations

340-62-063 (1) Each person required to obtain a waste tire carrier permit shall:

(a) Comply with OAR 340-62-025(1).

(b) Display [a] current decals with their waste tire carrier identification number issued by the Department when transporting waste tires. The decals shall be displayed on the sides of the front doors of each truck used to transport tires.

(c) Maintain the financial assurance required under ORS 459.730(2)(d).

(2) When a waste tire carrier permit expires or is revoked, the applicant shall immediately remove all waste tire permit decals from its vehicles.

(3) Leasing, loaning or renting of permits is prohibited. No permit holder shall engage in any conduct which falsely tends to create the appearance that services are being furnished by the holder when in fact they are not.

(4) A waste tire carrier shall leave waste tires for storage or dispose of them only in a permitted waste tire storage site, at a solid waste disposal site permitted by the Department, or at another site approved by the Department.

(5) Waste tire carrier permittees shall record and maintain for three years the following information regarding their activities for each month of operation:

(a) The approximate quantity of waste tires collected. Quantities may be measured by aggregate loads or cubic yards, if the carrier documents the approximate number included in each load;

(b) Where or from whom the waste tires were collected;

(c) Where the waste tires were deposited. The waste tire carrier shall keep receipts or other written materials documenting where all tires were stored or disposed of.

(6) Waste tire carrier permittees shall submit to the Department an annual report that summarizes the information collected under subsection (5) of this section. The information shall be broken down by quarters. This report shall be submitted to the Department annually as a condition of holding a permit together with the annual compliance fee or permit renewal application.

(7) A holder of a waste tire carrier permit shall pay to the Department an annual fee in the following amount:

Annual compliance fee (per company or corporation)	$175
Plus annual fee per vehicle used for hauling waste tires	25

(8) (a) A holder of a waste tire carrier permit who is a private carrier meeting requirements of subsection (8)(b) of this section shall, instead of the fees under subsection (7) of this section, pay to the Department an annual fee in the following amount:

Annual compliance fee	$25

(b) To qualify for the fee structure under subsection (8)(a) of this section, a private carrier must:

(A) Use a vehicle with a combined weight not exceeding 8,000 lbs;

(B) Transport only such waste tires as are generated incidentally to his business; and

(C) Use the vehicle to transport the waste tires to a proper disposal site.

(c) If a vehicle owned or operated by a private carrier is used for hire in hauling waste tires, the annual fee structure under subsection (7) of this section shall apply.

(9) A holder of a combined tire carrier/storage site permit shall pay to the Department an annual fee in the following amount:

Annual compliance fee (per company or corporation)	$250
Plus annual fee per vehicle used for hauling waste tires	$ 25

(10) The annual compliance fee for the coming year (March 1 through February 28) as required by subsections (7) through (9) of this rule shall be paid by February 15 of each year. The permittee shall provide evidence of required financial assurance when the annual compliance fee is submitted.

(11) The fee is $10 for a decal to replace one that was lost or destroyed.

(12) The fee for a waste tire carrier permit renewal is $25.

(13) The fee for a permit modification of an unexpired waste tire carrier permit, initiated by the permittee, is $15. Adding a vehicle to the permittee's fleet pursuant to OAR 340-63-055 (16) does not constitute a permit modification.

(14) A waste tire carrier permittee should check with the PUC to ensure that they comply with all PUC regulations.

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459.619 Fees imposed in lieu of all other state or local fees on sale of new tires. (1) The fees imposed by ORS 459.509 are in addition to all other state, county or municipal fees on the sale of new tires.

(2) Any new tire with respect to which a fee has once been imposed under ORS 459.509 shall not be subject upon a subsequent sale to the fees imposed by ORS 459.509. [1987 c.706 §43]

Note: See note under 459.504.

459.620 [1971 c.699 §16; 1973 c.835 §155; renumbered 466.170]

459.625 [1975 c.483 §3; 1977 c.796 §3; renumbered 469.375]

459.630 [1975 c.483 §2; 1977 c.796 §4; renumbered 469.525]

459.635 [1975 c.483 §4; 1985 c.670 §40; renumbered 466.175]

459.640 [1981 c.709 §22; 1985 c.670 §41; renumbered 466.180]

459.650 [1971 c.699 §13a; 1977 c.867 §16; 1979 c.132 §16; 1981 c.709 §14; 1983 c.703 §13; renumbered 466.185]

459.660 [1971 c.699 §14; 1973 c.835 §156; 1977 c.867 §17; 1979 c.132 §17; 1981 c.709 §15; 1983 c.703 §14; renumbered 466.190]

459.670 [1971 c.699 §13; 1977 c.867 §18; 1979 c.132 §18; 1981 c.709 §16; 1983 c.90 §2; renumbered 466.195]

459.680 [1971 c.699 §15a; 1977 c.867 §19; 1979 c.132 §19; 1981 c.709 §16a; 1983 c.703 §15; renumbered 466.200]

459.685 [1973 c.778 §§8, 9, 10, 11, 12, 13; 1977 c.867 §20; 1985 c.685 §3; renumbered 466.205]

459.690 [1971 c.699 §15; 1973 c.835 §157; 1979 c.284 §150; renumbered 466.210]

459.695 [1983 c.703 §3; renumbered 466.215]

(Waste Tire Disposal)

459.705 Definitions for ORS 459.705 to 459.790. As used in ORS 459.705 to 459.790:

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

(2) "Consumer" means a person who purchases a new tire to satisfy a direct need, rather than for resale.

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

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

(5) "Dispose" means to deposit, dump, spill or place any waste tire on any land or into any waters of the state as defined by ORS 468.700.

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

(7) "Store" or "storage" means the placing of waste tires in a manner that does not constitute disposal of the waste tires.

(8) "Tire" means a continuous solid or pneumatic rubber covering encircling the wheel of a vehicle in which a person or property is or may be transported in or drawn by upon a highway.

(9) "Tire carrier" means any person engaged in picking up or transporting waste tires for the purpose of storage or disposal. This does not include solid waste collectors operating under a license or franchise from any local government unit and who transport fewer than 10 tires at any one time or persons transporting fewer than five tires with their own solid waste for disposal.

(10) "Tire retailer" means any person engaged in the business of selling new replacement tires.

(11) "Waste tire" means a tire that is no longer suitable for its original intended purpose because of wear, damage or defect. [1987 c.706 §1]

Note: 459.705 to 459.790 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 459 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

459.710 Disposal in land disposal site prohibited; exceptions. (1) Except as provided in subsection (2) of this section, after July 1, 1989, no person shall dispose of waste tires in a land disposal site, as defined in ORS 459.005.

(2) After July 1, 1989, a person may dispose of waste tires in a land disposal site permitted by the department if:

(a) The waste tires are chipped in accordance with standards established by the Environmental Quality Commission;

(b) The waste tires were located for disposal before July 1, 1989, at a land disposal site permitted by the department;

(c) The commission finds that the reuse or recycling of waste tires is not economically feasible;

(d) The waste tires are received from a solid waste collector, operating under a license or franchise from any local government unit, who transports fewer than 10 tires at any one time; or

(e) The waste tires are received from a person transporting fewer than five tires in combination with the person's own solid waste for disposal. [1987 c.706 §2]

Note: See note under 459.705.

459.715 Storage prohibited; exceptions. (1) After July 1, 1988, no person shall store more than 100 waste tires anywhere in this state except at a waste tire storage site operated under a permit issued under ORS 459.715 to 459.760.

(2) Subsection (1) of this section shall not apply to:

(a) A solid waste disposal site permitted by the department if the permit has been modified by the department to authorize the storage of tires;

(b) A tire retailer with not more than 1,500 waste tires in storage; or

(c) A tire retreader with not more than 3,000 waste tires stored outside. [1987 c.706 §3]

Note: See note under 459.705.

459.720 Conditions for storage site permit. (1) Each waste tire storage site permittee shall be required to do the following as a condition to holding the permit:

(a) Report periodically to the department on numbers of waste tires received and the manner of disposition.

(b) Maintain current contingency plans to minimize damage from fire or other accidental or intentional event.

(c) Maintain financial assurance acceptable to the department and in such amounts as determined by the department to be reasonably necessary for waste tire removal processing, fire suppression or other measures to protect the environment and the health, safety and welfare of the people of this state.

(d) Maintain other plans and exhibits pertaining to the site and its operation as determined by the department to be reasonably necessary to protect the public health, welfare or safety or the environment.

(2) The department may waive any of the requirements of subsection (1) of this section for a waste tire storage site in existence on or before January 1, 1988. [1987 c.706 §4]

Note: See note under 459.705.

459.725 Application for storage site operator or carrier. (1) The department shall furnish an application form to anyone who wishes to operate a waste tire storage site or to be a waste tire carrier.

(2) In addition to information requested on the application form, the department also shall require the submission of such information relating to the construction, development or establishment of a proposed waste tire storage site and facilities to be operated in conjunction therewith and such additional information, data and reports as it considers necessary to make a decision granting or denying a permit. [1987 c.706 §5]

Note: See note under 459.705.

459.730 Information in application for storage site permit; carrier permit; bond. (1) Permit applications submitted to the department for operating a waste tire storage site shall contain the following:

(a) The management program for the operation of the site, including the person to be responsible for the operation of the site, the proposed method of disposal and the proposed emergency measures to be provided at the site.

(b) A description of the size and type of facilities to be constructed upon the site, including the height and type of fencing to be used, the size and construction of structures or buildings, warning signs, notices and alarms to be used.

(c) The exact location and place where the applicant proposes to operate and maintain the site, including the legal description of the lands included within the site.

(d) An application fee, as determined by the commission to be adequate to pay for the department's costs in investigating and processing the application.

(e) Any additional information requested by the department.

(2) A permit application submitted to the department for operating as a waste tire carrier shall include the following:

(a) The name and place of business of the applicant.

(b) A description and license number of each truck used for transporting waste tires.

(c) The locations of the sites at which waste tires will be stored or disposed.

(d) A bond in the sum of $5,000 in favor of the State of Oregon. In lieu of the bond, the applicant may submit financial assurance acceptable to the department.

(e) An application fee, as determined by the commission to be adequate to pay for the department's costs in investigating and processing the application.

(f) Any additional information requested by the department.

(3) The bond required under subsection (2) of this section shall be executed by the applicant as principal and by a surety company authorized to

transact a surety business within the State of Oregon. The bond shall be filed with the department and shall provide that:

(a) In performing services as a waste tire carrier, the applicant shall comply with the provisions of ORS 459.705 to 459.790 and rules adopted by the commission regarding tire carriers; and

(b) Any person injured by the failure of the applicant to comply with the provisions of ORS 459.705 to 459.790 or the rules adopted by the commission regarding waste tire carriers shall have a right of action on the bond in the name of the person, provided that written claim of such right of action shall be made to the principal or the surety company within two years after the injury. [1987 c.706 §6]

Note: See note under 459.705.

459.735 Notification of permit application in county of proposed disposal site. (1) Following the submittal of a waste tire storage site permit application, the director shall cause notice to be given in the county where the proposed site is located in a manner reasonably calculated to notify interested and affected persons of the permit application.

(2) The notice shall contain information regarding the location of the site and the type and amount of waste tires intended for storage at the site, and may fix a time and place for a public hearing. In addition, the notice shall give any person substantially affected by the proposed site an opportunity to comment on the permit application. [1987 c.706 §7]

Note: See note under 459.705.

459.740 Hearing on site permit application. The department may conduct a public hearing in the county where a proposed waste tire storage site is located and may conduct hearings at other places as the department considers suitable. At the hearing the applicant may present the application and the public may appear or be represented in support of or in opposition to the application. [1987 c.706 §8]

Note: See note under 459.705.

459.745 Department action on application; appeal. Based upon the department's review of the waste tire storage site or waste tire carrier permit application, and any public comments received by the department, the director shall issue or deny the permit. The director's decision shall be subject to appeal to the commission and judicial review under ORS 183.310 to 183.550. [1987 c.706 §9]

Note: See note under 459.705.

459.750 Storage site and carrier permit fees. A fee may be required of every permittee under ORS 459.715 to 459.760. The fee shall be in an amount determined by the commission to be adequate, less any federal funds budgeted therefor by legislative action, to carry on the monitoring, inspection and surveillance program established under ORS 459.760 and to cover related administrative costs. [1987 c.706 §10]

Note: See note under 459.705.

459.755 Revocation of storage site or carrier permit. The director may revoke any permit issued under ORS 459.715 to 459.760 upon a finding that the permittee has violated any provision of ORS 459.715 to 459.760 or rules adopted pursuant thereto or any material condition of the permit, subject to appeal to the commission and judicial review under ORS 183.310 to 183.550. [1987 c.706 §11]

Note: See note under 459.705.

459.760 Monitoring and inspection of storage site; access to site and records. The department shall establish and operate a monitoring, inspection and surveillance program over all waste tire storage sites and all waste tire carriers or may contract with any qualified public or private agency to do so. After reasonable notice, owners and operators of these facilities must allow necessary access to the site of waste tire storage and to its records, including those required by other public agencies, for the monitoring, inspection and surveillance program to operate. [1987 c.706 §12]

Note: See note under 459.705.

459.765 Department use of fees. Fees received by the department pursuant to ORS 459.730 and 459.750 shall be deposited in the State Treasury and credited to the department and are continuously appropriated to carry out the provisions of ORS 459.720 to 459.760. [1987 c.706 §12a]

Note: See note under 459.705.

459.770 Partial reimbursement for purchase or use of tire chips; rules. (1) Any person who purchases waste tires generated in Oregon or tire chips or similar materials from waste tires generated in Oregon and who uses the tires or chips or similar material for energy recovery or other appropriate uses may apply for partial reimbursement of the cost of purchasing the tires or chips or similar materials.

(2) Any person who uses, but does not purchase, waste tires or chips or similar materials, for energy recovery or another appropriate use,

may apply for a reimbursement of part of the cost of such use.

(3) Any costs reimbursed under this section shall not exceed the amount in the Waste Tire Recycling Account. If applications for reimbursement during a period specified by the commission exceed the amount in the account, the commission shall prorate the amount of all reimbursements.

(4) The intent of the partial reimbursement of costs under this section is to promote the use of waste tires by enhancing markets for waste tires or chips or similar materials. The commission shall limit or eliminate reimbursements if the commission finds they are not necessary to promote the use of waste tires.

(5) The commission shall adopt rules to carry out the provisions of this section. The rules shall:

(a) Govern the types of energy recovery or other appropriate uses eligible for reimbursement including but not limited to recycling other than retreading, or use for artificial fishing reefs;

(b) Establish the procedure for applying for a reimbursement; and

(c) Establish the amount of reimbursement. [1987 c.706 §13]

Note: See note under 459.705.

459.775 Waste tire recycling account; use of funds. The Waste Tire Recycling Account is established in the State Treasury, separate and distinct from the General Fund. All moneys received by the Department of Revenue under ORS 459.504 to 459.619 shall be deposited to the credit of the account. Moneys in the account are appropriated continuously to the Department of Environmental Quality to be used:

(1) For expenses in cleaning up waste tire piles as provided in ORS 459.780;

(2) To reimburse persons for the costs of using waste tires or chips or similar materials; and

(3) For expenses incurred by the Department of Environmental Quality in carrying out the provisions of sections ORS 459.710, 459.715 and 459.770 to 459.790. [1987 c.706 §14]

Note: See note under 459.705.

459.780 Tire removal or processing plan; financial assistance; department abatement. (1) The department, as a condition of a waste tire storage site permit issued under ORS 459.715 to 459.760, may require the permittee to remove or process the waste tires according to a plan approved by the department.

(2) The department may use moneys from the Waste Tire Recycling Account to assist a permittee in removing or processing the waste tires. Moneys may be used only after the commission finds that:

(a) Special circumstances make such assistance appropriate; or

(b) Strict compliance with the provisions of ORS 459.705 to 459.790 would result in substantial curtailment or closing of the permittee's business or operation or the bankruptcy of the permittee.

(3) The department may use subsections (4) to (7) of this section if:

(a) A person fails to apply for or obtain a waste tire storage site permit under ORS 459.715 to 459.760; or

(b) A permittee fails to meet the conditions of such permit.

(4) The department may abate any danger or nuisance created by waste tires by removing or processing the tires. Before taking any action to abate the danger or nuisance, the department shall give any persons having the care, custody or control of the waste tires, or owning the property upon which the tires are located, notice of the department's intentions and order the person to abate the danger or nuisance in a manner approved by the department. Any order issued by the department under this subsection shall be subject to appeal to the commission and judicial review of a final order under the applicable provisions of ORS 183.310 to 183.550.

(5) If a person fails to take action as required under subsection (4) of this section within the time specified the director may abate the danger or nuisance. The order issued under subsection (4) of this section may include entering the property where the danger or nuisance is located, taking the tires into public custody and providing for their processing or removal.

(6) The department may request the Attorney General to bring an action to recover any reasonable and necessary expenses incurred by the department for abatement costs, including administrative and legal expenses. The department's certification of expenses shall be prima facie evidence that the expenses are reasonable and necessary.

(7) Nothing in ORS 459.705 to 459.790 shall affect the right of any person or local government unit to abate a danger or nuisance or to recover for damages to real property or personal injury related to the transportation, storage or disposal of waste tires. The department may reimburse a

person or local government unit for the cost of abatement. [1987 c.706 §15]

Note: See note under 459.705.

459.785 Commission authority to adopt rules. In accordance with the applicable provisions of ORS 183.310 to 183.550, the commission shall adopt rules necessary to carry out the provisions of ORS 459.705 to 459.790. [1987 c.706 §16]

Note: See note under 459.705.

459.790 Exceptions to ORS 459.705 to 459.785. The provisions of ORS 459.705 to 459.785 do not apply to tires from:

(1) Any device moved exclusively by human power.

(2) Any device used exclusively upon stationary rails or tracks.

(3) A motorcycle.

(4) An all-terrain vehicle.

(5) Any device used exclusively for farming purposes, except a farm truck. [1987 c.706 §18]

Note: See note under 459.705.

ESTABLISHMENT OF SOLID WASTE DISPOSAL SITE WITHIN CLACKAMAS, MULTNOMAH AND WASHINGTON COUNTIES

Note: Sections 1 to 10, chapter 679, Oregon Laws 1985, provide:

Sec. 1. Sections 2 to 9 of this Act are added to and made a part of ORS 459.005 to 459.385. [1985 c.679 §1]

Sec. 2. (1) The Legislative Assembly finds that the siting and establishment of a disposal site for the disposal of solid waste within or for Clackamas, Multnomah and Washington Counties is necessary to protect the health, safety and welfare of the residents of those counties.

(2) It is the intent of the Legislative Assembly that the Environmental Quality Commission and Department of Environmental Quality, in locating and establishing a disposal site within Clackamas, Multnomah and Washington Counties give due consideration to:

(a) Except as provided in subsections (3) and (4) of section 5 of this 1985 Act, the state-wide planning goals adopted under ORS 197.005 to 197.430 and the acknowledged comprehensive plans and land use regulations of affected counties.

(b) Information received during consultation with local governments.

(c) Information received from public comment and hearings.

(d) Any other factors the commission or department considers relevant. [1985 c.679 §2]

Sec. 3. (1) The Department of Environmental Quality shall conduct a study, including a survey of possible and appropriate sites, to determine the preferred and appropriate disposal sites for disposal of solid waste within or for Clackamas, Multnomah and Washington Counties.

(2) The study required under this section shall be completed not later than July 1, 1986. Upon completion of the study, the department shall recommend to the commission preferred locations for disposal sites within or for Clackamas, Multnomah and Washington Counties. The department may recommend a location for a disposal site that is outside those three counties, but only if the city or county that has jurisdiction over the site approves the site and the method of solid waste disposal recommended for the site. The recommendation of preferred locations for disposal sites under this subsection shall be made not later than January 1, 1987.

(3) The department shall investigate, evaluate, review and process any permit application for landfills and associated transfer stations proposed to receive solid waste from Multnomah, Clackamas and Washington Counties. [1985 c.679 §3; 1987 c.876 §19]

Note: Section 3, chapter 679, Oregon Laws 1985, is repealed July 1, 1989. See section 22, chapter 876, Oregon Laws 1987.

Sec. 4. (1) Subject to subsections (3) and (4) of section 5 of this 1985 Act, the Environmental Quality Commission may locate and order the establishment of a disposal site under this 1985 Act in any area, including an area of forest land designated for protection under the state-wide planning goals, in which the commission finds that the following conditions exist:

(a) The disposal site will comply with applicable state statutes, rules of the commission and applicable federal regulations;

(b) The size of the disposal site is sufficiently large to allow buffering for mitigation of any adverse effects by natural or artificial barriers;

(c) Projected traffic will not significantly contribute to dangerous intersections or traffic congestion, considering road design capacities, existing and projected traffic counts, speed limits and number of turning points;

(d) Facilities necessary to serve the disposal site can be available or planned for the area; and

(e) The proposed disposal site is designed and operated to the extent practicable so as to mitigate conflicts with surrounding uses. Such conflicts with surrounding uses may include, but are not limited to:

(A) Visual appearance, including lighting and surrounding property.

(B) Site screening.

(C) Odors.

(D) Safety and security risks.

(E) Noise levels.

(F) Dust and other air pollution.

(G) Bird and vector problems.

(H) Damage to fish and wildlife habitats.

(2) When appropriate, the conditions listed in this section may be satisfied by a written agreement between the Department of Environmental Quality and the appropriate government agency under which the agency agrees to provide

Attachment C

STAFF REPORT

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item F, 1/20/89, EQC Meeting, EQC Meeting

Request for Authorization to Conduct Public Hearings on Proposed Rule OAR 340-62-053, "Economic Feasibility of Reuse or Recycling Waste Tires", and Revisions to Existing Rules OAR 340-62-010, 340-62-015, 340-62-020, 340-62-022, 340-62-025, 340-62-030, 340-62-035, 340-62-045, 340-62-055, and 340-62-063, Permit Procedures and Standards for Waste Tire Storage Sites and Waste Tire Carriers.

BACKGROUND

The 1987 Legislature passed HB 2022 (ORS 459.705 through 459.790) to address the waste tire disposal problem. The law included the following requirements:

1. Persons storing over 100 waste tires after July 1, 1988 must have a waste tire storage site permit from the Department.

2. Persons hauling waste tires after January 1, 1989 must obtain a waste tire carrier permit.

3. Waste tires may not be disposed of in solid waste disposal sites after July 1, 1989 unless they are chipped.

The statute allows the following four exceptions to the chipping requirement for landfill burial of waste tires (ORS 459.710 (2)):

1. If the tires were located for disposal before July 1, 1989, at the permitted landfill;

2. If "the Commission finds that the reuse or recycling of waste tires is not economically feasible."

3. If the "tires are received from a solid waste collector...who transports fewer than 10 tires at any one time."

4. If the "tires are received from a person transporting fewer than five tires in combination with the person's own solid waste for disposal."

The second exception leaves an "out" for remote areas where recycling or reuse options for tires are expensive or do not exist.

The Commission adopted rules (OAR 340-62-005 through 340-62-070) on July 8, 1988 governing permitting requirements and chipping standards for landfilling of tires. The rule did not specify how to determine whether recycling of waste tires is "economically feasible." The main purpose of the current rule is to adopt a methodology to do that.

Another significant proposed addition is a provision recommended by the Waste Tire Task Force. The Task Force recommends adding a procedure using "block passes" to allow permitted waste tire carriers to hire, under their permits, common carriers who do not have waste tire carrier permits. The proposed rule contains this "block pass" provision.

The Department is proposing certain other changes. The Department has issued 108 Stage I ("temporary") waste tire storage site permits. It is now issuing Stage II ("regular") storage site permits and waste tire carrier permits. In administering this new program, the Department has found certain parts of the permitting rules that needed change or elaboration.

ALTERNATIVES AND EVALUATION

1. Economic Feasibility Rule. As noted above, whole tires are banned from being landfilled after July 1, 1989, with four exceptions. The proposed economic feasibility rule defines the procedure to establish one exception, and assure that all sites requesting this exemption are evaluated on the same basis.

Economic feasibility of tire reuse should compare the cost of reuse with the cost of legal disposal. There are several ways that economic feasibility of tire recycling could be calculated:

a) It could be based on the amount that most people are paying for landfill disposal of tires;

b) It could be based on the charge at the local landfill;

c) It could use the definition of "recyclable material" from the Recycling and Waste Reduction rule (OAR 340-60-010 (19)), under which tires would be considered recyclable if they could "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"; or

d) It could be based on the highest landfill charge in the state, since some persons are willing to pay that amount to legally dispose of tires.

The Department recommends the first option. Recycling or reuse of tires should be deemed "economically feasible" if the cost is below the cost of disposal at the disposal site, or below a figure based on the cost that most people in the State are paying for disposal, whichever is greater. The Department surveyed all public landfills in the State in April 1988 and found that most landfills charged $1.00 per passenger tire, and $2.00 per truck tire. (Therefore, $1.00 is the state mode for passenger tires, and $2.00 is the state mode for truck tires.)

The proposed rule would allow an exemption to the whole tire disposal ban if recycling or reuse in a given area costs more than 10 percent above the "mode" (as determined by a Department survey) of statewide landfill charges for passenger tires. The standard for truck tires would be the landfill charge "mode" plus 25 percent. Based on the Department's current survey, passenger tires could be landfilled if recycling cost over $1.10 per tire. The standard would be $2.50 for truck tires. However, if a landfill charges more than $1.10 to dispose of passenger tires (or $2.50 for truck tires), the actual landfill charge becomes the standard for economic feasibility of recycling. That is, recycling or reuse would be deemed economically feasible if the cost of recycling is equal to or less than the cost of landfill disposal of the tire.

The Task Force noted that costs of recycling will increase over time. To account for rising costs, they recommended that an annual inflation factor be built into the economic feasibility standard. Another possibility would be to conduct periodic surveys of landfill charges and increase the standard based on the new mode. Or, the standard could be left alone, since rising disposal charges at individual landfills will in effect cause the standard to rise over time. The Department recommends conducting a survey at least every biennium to update the modal landfill disposal charges. The draft rule would make that requirement.

A solid waste site would apply to the Director for this exemption. The burden of proof would be on the applicant to show the costs of tire recycling.

Recycling of "oversize" tires is deemed not to be economically feasible under the existing rule. The Task Force pointed out that truck tires can economically be chipped, and recommended that the definition of "oversize" tire be changed to exclude truck tires. Accordingly, the rule proposes to increase the existing definition of "oversize" tires to tires with a bead diameter of over 24.5 inches.

2. Block Passes for Unpermitted Carriers. A tire carrier is defined by statute as "any person engaged in picking up or transporting waste tires for the purpose of storage or disposal." The statute provides for two exemptions: solid waste collectors hauling fewer than 10 tires, and persons hauling fewer than 5 tires with their own garbage. Any other "tire carrier" needs a permit from the Department to haul waste tires after January 1, 1989. The existing rule includes a leasing provision for permitted carriers to temporarily add leased vehicles to their permitted fleet.

In implementing the carrier law, the Department has found some problems which need to be addressed. One problem involves the economics of backhauling waste tires, and concerns common carriers. Common carriers do not lease their vehicles out, but operate "for hire." Common carriers are generally larger trucking lines with a number of vehicles. Hauling waste tires would not generate enough business to warrant their getting a waste tire carrier permit. However, in some cases common carriers can offer a cheap backhaul option to bring waste tires to a tire processor. The Waste Tire Task Force felt it was important to keep this option available. The proposed procedure would allow the holder of a combined tire carrier/storage site permit to hire an unpermitted common carrier to haul waste tires on a temporary basis (no longer than 10 days). The common carrier would be operating under the waste tire permit of the permittee.

The permittee would buy from the Department a book of "block passes", at a cost of $5 each. The permittee would be responsible for filling them out, and getting them to the common carrier. The permittee would also be responsible for ensuring that the common carrier followed waste tire program rules and statutes. The common carrier would be responsible for keeping the block pass in the cab during the time he operated as a tire carrier under the other's permit.

A common carrier would only be allowed to operate as a waste tire carrier under a block pass three times in any one quarter. If he was hauling tires more than that, he would have to become a permitted carrier on his own.

Another problem concerns private carriers (such as auto wreckers) who haul their own waste tires for disposal. If they haul five or more tires at a time, they are required by statute to get a waste tire carrier permit. This requirement has been a continuing source of contention among private carriers. The existing rule offers some relief by establishing a separate lower annual fee category for the PUC unregulated category of private carriers with a combined loaded weight of 8,000 lbs. But some private carriers have bigger vehicles and do not meet the weight limit.

A minority view on the Task Force recommended that the block pass option be available to private carriers as well as to common carriers. This would extend regulatory relief to those private carriers who could find a permitted carrier willing to offer the "umbrella" of their permit to the private carrier delivering tires to their site. The Department agrees with the minority view, and recommends that private carriers also be allowed to operate under block passes. The majority of the Task Force did not agree with this proposal; they were concerned that this would "open up" the carrier permit requirement too much. They felt one waste tire processor with a carrier permit could use block passes for all haulers using their site, and no one would bother getting an individual carrier permit. However, the Department believes this would probably not be abused. The permittee would be responsible for the actions of any carrier operating under a block pass under his permit; the permittee would thus want assurance that the private carrier was operating properly.

3. Other Changes.

- The rule would institute a provision for storage site permittees to petition the Commission for a variance to the waste tire storage standards for tires stored at their site before January 1, 1988. Fire concerns would still have to be met.

- The Department proposes adopting a definition the Department of Revenue (DOR) is adding to their waste tire rule, clarifying what constitutes all-terrain vehicle tires. This would ensure conformity between DOR's definition and the Department's.

- The rule would clarify that a tire retailer or retreader could store up to a total of 1,500 and 3,000 tires respectively for each retail business location without getting a waste tire

storage site permit. The statute and existing rule are unclear on this issue.

- The rule would clarify that if tire-derived products (tire chips) are subject to the storage permitting requirement, such chips would have to be stored following the storage standards for waste tires. However, it would allow tire chip piles to be higher than whole tire piles (12 feet rather than 6 feet) with approval by local fire authorities. The main purpose of the height restriction is to reduce risk of a large fire. A tire chip pile burns differently from a pile of whole tires. Chips burn on the surface. A chip fire is easier to put out with standard fire-fighting equipment. The Department believes the extra height is reasonable, if fire authorities do not object.

- The rule would add permit modification and permit renewal fees for waste tire storage site permits and waste tire carrier permits. The existing rule has no fee structure for these. Proposed fees:

	Permit Modification	Permit Renewal
Storage sites	$25	$125
Carrier	15	25

- The rule would allow the Department to process a waste tire storage site permit application, and draft a permit, before the land use compatibility statement and financial assurance are received. The permit itself could not be issued before these are received. Many applicants have had difficulties obtaining financial assurance. This would give the Department flexibility to proceed with permit processing while the applicant pursued getting financial assurance. A local jurisdiction considering a land use application might also find a draft permit useful in making their decision.

- The rule would allow the Department to waive the storage requirement for ricking. "Ricking" is stacking tires securely by overlapping. Ricking adds to the stability of the tire pile. However, truck tires cannot be easily ricked. Also, ricking does not make sense for tires being stored for short periods of time.

- The rule would specify that a claim on a storage site permittee's financial assurance must be made within one year of notice of cancellation of the financial assurance. Bonding companies have asked for this change in order to be willing to write these bonds. Otherwise they feel that their liability extends indefinitely into the future. The statute requires that claims on the tire carrier bond be made within two years. It is silent on claim time for financial assurance for sites. It is

reasonable to have a shorter claim time for site financial assurance than for carrier bonds, since third parties may submit claims on carrier bonds. Such claims are likely to take longer.

- An exemption in the existing rule allows tire retailers to carry waste tires from customers back to their store, in exchange for new tires, or for repair, without getting a waste tire carrier permit. The proposed rule would add retreaders to this exception, when transporting waste tires from customers to their retread operation to be recapped. This would give retreaders equitable treatment with tire retailers.

- A few additional housekeeping changes have been made to the existing rule.

DIRECTOR'S RECOMMENDATION

The new rule would establish a procedure to determine whether it is economically feasible to recycle tires. Solid waste disposal sites where such recycling is determined not to be economically feasible may be exempted from the whole tire burial ban. The proposed procedure is based on existing landfill disposal costs. It also takes the Solid Waste hierarchy into account, by giving a premium for recycling (over landfilling). This procedure was endorsed by the Waste Tire Task Force.

The proposed "block pass" system for use by permitted waste tire carriers would allow unpermitted common carriers and private carriers to haul tires for permitted waste tire carriers, under their permit. Unpermitted common carriers can in many cases provide cheap backhauls for tires. This system would also provide relief for some private carriers who haul their own tires infrequently.

Other proposed revisions would improve administration of the program.

It is recommended that the Commission authorize public hearings to take testimony on the proposed new rule on determining "economic feasibility" of tire recycling, and on revisions to the existing rule governing waste tire storage sites and waste tire carriers.

Fred Hansen

Attachment D

RULEMAKING STATEMENTS
for
Proposed New Rule and Revisions to Existing Rules
Pertaining to Disposal, Storage and Hauling of Waste Tires

OAR Chapter 340, Division 62

Pursuant to ORS 183.335, these statements provide information on the intended action to adopt a rule.

STATEMENT OF NEED:

Legal Authority

The 1987 Oregon Legislature passed the Waste Tire Act regulating the disposal, storage and transportation of waste tires. ORS 459.785 requires the Commission to adopt rules and regulations necessary to carry out the provisions of ORS 459.705 to 459.790. The Commission is adopting a new rule and revisions to existing rules which are necessary to carry out the provisions of the Waste Tire Act.

Need for the Rule

Improper storage and disposal of waste tires represents a significant problem throughout the State. The Waste Tire Act establishes a comprehensive program to regulate the disposal, storage and transportation of waste tires. The new rule from the Commission is needed to set program procedures. The rule revisions are needed to make changes the Department has found necessary in administering this new program.

Principal Documents Relied Upon

a. Oregon Revised Statutes, Chapter 459.
b. Oregon Administrative Rules, Chapter 340, Division 62.

LAND USE CONSISTENCY STATEMENT:

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

With regard to Goal 6 (Air, Water and Land Resources Quality), the rules provide for the proper storage and disposal of waste tires. The law provides that tires disposed of in solid waste disposal sites after July 1, 1989 must be chipped. The chipping requirement ensures proper burial. The new rule provides an exemption to the chipping requirement. ORS 459.710(2)(c) allows this exemption if the Commission finds that reuse or recycling of waste tires is not economically feasible. The rule gives a slight advantage to recycling in making this determination.

With regard to Goal 11 (Public Facilities and Services), the new rule provides that solid waste disposal sites may request an exemption to the landfill chipping requirement for waste tires. This will provide an option for legal disposal of waste tires in remote areas without options for tire recycling, and where chipping the tires would be prohibitively expensive for the local solid waste disposal site.

The rules do not appear to conflict with other Goals.

Public comment on any land use issue involved is welcome and may be submitted in the manner described in the accompanying NOTICE OF PUBLIC HEARING.

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

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

ecfsstm

Attachment E

FISCAL AND ECONOMIC IMPACT STATEMENT

I. Introduction

The rule establishes an exemption procedure to allow solid waste sites to continue to bury whole tires after July 1, 1989. ORS 459.710 requires tires landfilled after that date to be chipped to the Department's specifications. The exemption would be allowed if tire recycling is not economically feasible. The exemption will give remote solid waste disposal sites the option of continuing to accept tires for disposal without expensive chipping.

The rule also establishes a procedure (use of "block passes") to allow a holder of a combined tire carrier/storage site permit to use common carriers and private carriers to haul tires under their permit. This will create an option for a permittee to obtain an advantageous backhaul rate from a common carrier without a waste tire carrier permit, who otherwise could not haul waste tires. It will also offer regulatory relief to private carriers; they would be able to haul their tires to the permittee's site for disposal, without having to get a separate permit.

II. General Public

A. Landfill Exemption

The public in areas served by landfills receiving an exemption to the ban on burial of whole tires would have a more affordable legal disposal option for waste tires. Charges for landfill disposal of whole tires range from free (in unattended dumps) to $4.25 per passenger tire. The average statewide charge was $.94 in spring of 1988. Permitted waste tire storage sites, the main alternative to landfill disposal, charge around $.50. But the cost of transporting the waste tire from where it is generated to a permitted storage site (in Portland or southwestern Oregon) can add significantly to that cost, perhaps doubling it in some cases. See also discussion under "Small Business" below.

Unless they obtain an exemption, solid waste disposal sites will be required to chip tires to Department specifications in order to landfill them after July 1, 1989. Or, they could modify their solid waste permit to allow storage of tires. The permit modification would have no cost, but the landfill would incur extra costs in handling the tires and arranging for their pickup and proper disposal from time to time. If the landfill chose to either acquire a chipping machine, or contract for chipping, the extra costs could be in the range of $.30 per tire. For landfills with smaller volumes of waste tires the cost would be correspondingly higher. These extra costs would be passed on to the public. A rule of thumb might be that landfills would double

their existing charge if they decided to chip tires for landfill. Obtaining an exemption would presumably allow landfills to continue to accept tires at the current charge. The general public with tires to dispose of would benefit in that the current charge would not be increased.

B. "Block Passes"

The general public would only very indirectly be influence by the rule on block passes.

III. Small Business

A. Landfill Exemption

Some landfills qualify as small businesses (independently owned and operated by 50 or fewer employees). The exemption would allow them to continue business as usual, without additional costs for chipping tires for landfill. On the other hand, landfills are not required to accept tires. So they could independently of the rule decide not to do that. This would in turn create extra costs for the general public served by the landfill, in seeking alternative legal tire disposal options. The procedure for applying for an exemption is relatively straightforward, and should not require more than about two hours of administrative time on the part of the applicant.

On the other hand, if landfills obtain an exemption to continue burying whole tires, tire processing businesses (some of which are also small businesses) will be negatively impacted. They need a supply of waste tires to operate their business. A few processors now accept waste tires at no charge. They might have to start paying for them if landfills continue to accept waste tires at attractive charges. If a processor who needs 250,000 tires a year has to begin paying $.10/tire to get them, it would cost him an addition $25,000 annually.

B. "Block Passes"

Most private carriers are small businesses. There may be several hundred auto wreckers and retail tire dealers who want to continue hauling their own waste tires for disposal. Extending the block pass provision to private carriers would save each of them from $25 to $100 a year in direct waste tire carrier fees to the Department, an annual bond fee ($50 - $100), and the administrative costs of maintaining a waste tire carrier permit. The latter could amount to several hours per quarter in recordkeeping.

See also following section on Large Business.

IV. Large Business

A. Landfill Exemption

Some landfills may be large businesses. The rule would have the same impact on them as on landfills which are small businesses.

B. "Block Passes"

Common carriers who would be used by combination carrier/site permittees under the "block pass" provision, may be large businesses. This provision would cost them nothing, and afford them some additional business (perhaps $1,000 or so a quarter) in backhauling waste tires. The combination carrier/site permittee might be either a large or small business; the permittee would incur the extra $5 cost of the block pass each time it was used, plus perhaps 15 minutes to half an hour of administrative costs. The permittee would gain a more advantageous backhaul rate from the common carrier.

V. Local Governments

The landfill exception would have the same impact on those local governments which operate landfills as discussed under Small Business. The block pass provision would have no effect on local governments.

VI. Stage Agencies

The Department is the only agency impacted. This action will create two new tasks for Department Waste Tire Act staff: a periodic survey of landfill charges to accept waste passenger and truck tires; and a procedure to issue and track "block passes" to be used by waste tire carrier permittees. These tasks can be handled by existing staff assigned to implementing waste tire storage permits and carrier permits.

ecfsecim

Oregon Department of Environmental Quality

Attachment F

A CHANCE TO COMMENT ON...

Proposed Rules Related to Regulating Landfilling, Storing and Transporting of Waste Tires

Hearing Dates: 2/15/89
2/16/89
2/17/89
Comments Due: 2/21/89

WHO IS AFFECTED: Permitted solid waste disposal site operators. Persons hauling waste tires. Owners and operators of sites where more than 100 waste tires are stored. The public who dispose of waste tires. Tire retailers. Tire retreaders. Local governments. Common carriers. Waste tire processors.

WHAT IS PROPOSED: The Department proposes to adopt a new administrative rule, OAR 340-62-053 to establish a procedure to determine when reuse or recycling of waste tires is economically feasible. The Department also proposes to revise existing administrative rules OAR 340-62-010, 340-62-015, 340-62-020, 340-62-022, 340-62-025, 340-62-030, 340-62-035, 340-62-045, 340-62-052, 340-62-055, and 340-62-063, which establish procedures and standards governing waste tire storage site permits and waste tire carrier permits.

WHAT ARE THE HIGHLIGHTS: The new rule would establish a procedure to determine when reuse or recycling of waste tires is economically feasible. If recycling is not economically feasible, a solid waste disposal site may apply for an exemption to the prohibition (effective July 1, 1989) against landfill burial of whole tires. The rule revisions would establish fees for renewal and modification for waste tire storage site permits and waste tire carrier permits. They would set up a procedure under which permitted waste tire carriers could use "block passes" allowing unpermitted common and private carriers to haul waste tires for the permittee. The rule revisions also make various housekeeping changes.

PUBLIC HEARINGS: Public hearings will be held before a hearings officer at:

4:00 - 7:00 p.m.
Wednesday, February 15, 1989
Malheur Co. Library
388 S.W. 2nd
Ontario, OR

4:00 - 7:00 p.m.
Thursday, February 16, 1989
Rogue Community College
Building T., Room 1
3345 Redwood Highway
Grants Pass, OR

(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.

PUBLIC HEARINGS: (cont'd)

4:00 - 6:00 p.m.
Friday, February 17, 1989
Federal Building, Room 221
211 East 7th
Eugene, OR

HOW TO COMMENT: Written or oral comments may be presented at the hearings. Written comments may also be sent to the Department of Environmental Quality, Waste Tire Program, Hazardous and Solid Waste Division, 811 S.W. 6th Avenue, Portland, OR 97204, and must be received no later than 5:00 p.m., Tuesday, February 21, 1989.

Copies of the complete proposed rule package may be obtained from the DEQ Hazardous and Solid Waste Division. For further information, contact Deanna Mueller-Crispin at 229-5808, or toll-free at 1-800-452-4011.

WHAT IS THE NEXT STEP: The Environmental Quality Commission may adopt new rules identical to the ones proposed, adopt modified rules as a result of testimony received, or may decline to adopt rules. The Commission will consider the proposed new rule and rule revisions at its meeting on April 14, 1989.

SB8146

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item G, July 8, 1988, EQC Meeting

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

BACKGROUND

Some 2 million waste tires are generated each year in Oregon. About ten percent are used for retreading. An additional 55 percent are currently being reused as fuel for use in industrial boilers, or raw materials for manufacturing. Most of them go into landfills, tire "piles", or are illegally dumped.

Waste tires pose environmental problems, as they resist compaction in solid waste disposal sites, and once they catch on fire, they are nearly uncontrollable. Tire fires emit many toxic compounds. Tires also offer a breeding ground for mosquitoes nd other vectors.

Proper disposal of waste tires can be expensive, making illegal dumping a serious problem. The reuse and recycling of waste tires has been restricted by a lack of developed markets.

Policy

In developing rules for the Waste Tire Program, the Department has had to consider the interrelationships between waste tire cleanup, disposal, storage and reuse. The Department's priority is the reuse and recycling of waste tires. The Department anticipates that over time, storage will be confined to temporary rather than permanent storage. The purpose of the reimbursement to users of waste tires is to encourage reuse and recycling. This is intended to increase the demand for waste tires so that the Department's involvement in cleanup of tire piles can be minimized. The highest priority for use of cleanup funds would be for sites posing the greatest hazard to health and the environment.

Waste Tire Program (HB 2022)

The 1987 Oregon Legislature passed HB 2022 (Attachment VI) to address the waste tire disposal problem, and to enhance the market for waste tires. It sets up the following comprehensive program for waste tires:

1. Effective July 1, 1988, storage sites accepting waste tires must have a permit issued by DEQ. Solid waste disposal sites which store over 100 tires must have their DEQ permit modified to authorize tire storage.

   The following are exempt from the permitting requirement: a) sites with fewer than 100 tires; b) tire retailers with fewer than 1,500 waste tires; and c) tire recappers with fewer than 3,000 waste tires.

2. Certain carriers hauling waste tires must have a permit issued by DEQ.

3. Waste tires may not be disposed of in land disposal sites after July 1, 1989 unless they are chipped, or recycling is not economical.

4. A $1.00 fee is assessed on the sale of all new replacement tires sold in Oregon, beginning January 1, 1988. It is collected by retail tire dealers and paid to the Oregon Department of Revenue (DOR). The tire dealers keep $.15 per tire. DOR deducts their administrative expenses from the fund. The rest goes into the Waste Tire Recycling Account, administered by DEQ.

5. The Waste Tire Recycling Account will be used for partial reimbursements to users of recycled tires or tire chips; to help finance the cleanup of some waste tire piles; and to pay for DEQ's administrative costs.

Department responsibilities under the statute fall into two broad areas: permitting (tire storage sites and tire carriers); and overseeing use of the Waste Tire Recycling Account. The first statutory deadline requiring Department action is July 1, 1988, by when sites storing waste tires must have DEQ permits. Therefore the Department first developed the present rule covering permits to meet that deadline. A second stage of rulemaking (Agenda Item E) treats use of the Waste Tire Recycling Account for reimbursements and tire cleanup.

The Department initiated a two-stage waste tire storage site permitting process before the adoption of this rule, and is proceeding with processing Stage I permits to meet the July 1 legislative deadline. However, Stage I permits are essentially a compliance schedule to complete Stage II permits, the requirements of which will be determined by the Commission in the rule now under consideration. This process was presented to the Commission at

its April 29, 1988, meeting. At that time the Department requested and received permission to hold public hearings on this proposed rule governing waste tire storage sites and carriers. Notice of the hearings was published in the May 15, 1988 Secretary of State's Bulletin. The following hearings were held:

Pendleton	May 31
Bend	June 1
Springfield	June 2
Medford	June 3
Oregon City	June 6

Statement of Need for Rulemaking is attached (Attachment I), as well as a copy of the notice of public hearing (Attachment II). The Commission is authorized to adopt rules pertaining to the waste tire program by ORS 459.710, 459.725, 459.730, 459.750 and 459.785.

ALTERNATIVES AND EVALUATION

Public Comment Process

At the five public hearings concerning the proposed rule, 18 people submitted oral testimony. In addition, ten people submitted written testimony. Several presenters were auto wreckers, and felt the rule did not take their concerns into account. They also complained that they had not been involved in the development of the proposed rule. Many auto wreckers have substantial amounts of waste tires. The auto wreckers felt that they should be allowed to store more than 100 waste tires before being required to get a waste tire storage site permit. They also wanted clarification on the definition of "waste tire", one suggestion being that if a tire was on a rim it should not be considered a waste tire.

Another frequent comment was that there need to be alternatives for disposal of waste tires which are not prohibitively expensive. A related comment was that the proposed chipping standard for tire disposal in landfills will be too expensive; purchase of a shredding machine to meet the standard could cost over $100,000. The concern was that solid waste disposal sites are unlikely to make that investment, and will simply stop accepting tires after July 1, 1989. Several people recommended allowing splitting rather than chipping.

The law allows an exception to the chipping requirement if "The Commission finds that the reuse or recycling of waste tires is not economically feasible." (ORS 459.710 (1)(c)) Several presenters felt that in rural areas reuse of tires is not economically feasible, and wanted landfills in their area to be able to keep accepting whole tires. They asked what standard would be used for that finding, and who could apply for it. The proposed rule does not address this issue. The Department feels this should receive public scrutiny, and intends to draft a rule setting an economic

feasibility standard later this year. The draft rule would receive public hearings, and be adopted in early 1989. The Department's preference would be to set a procedure to determine an average statewide cost of landfill disposal of tires, and add a ten percent premium for reuse. The resulting cost would be deemed the amount it was "economically feasible" to pay for tire reuse. If tire reuse cost more than that in a region, then landfilling of whole tires would be allowed there.

The attached hearing officer's reports (Attachment III) and response to public comment (Attachment IV) provide a complete listing of all comments received and the Department's responses.

Major Elements in the Proposed Rule

The present proposed rule was developed with substantial input from the Waste Tire Task Force. The rule covers permitting and storage standards for waste tire storage sites, permitting of tire carriers, and standards for tire chipping for landfills.

The rule as drafted is broken down into the following main elements: conditions when a waste tire storage permit is required; permittee obligations; storage site standards; closure procedures; modification of solid waste disposal site permits for solid waste site storing over 100 tires; chipping standards; and requirements for waste tire carrier permits.

1. Waste Tire Storage Site Permit Procedure. In order to meet the statutory deadline of getting sites under permit by July 1, 1988, the Department proposed to issue waste tire storage site permits in a two-stage procedure. The Stage I permit is of limited duration (maximum six months, or December 31, 1988, whichever comes first) and is based on statutory requirements. Permittees must either remove all waste tires from their site by December 31, 1988, or apply for a Stage II waste tire storage site permit. The Stage II or "regular" permit will be required of any site still having over 100 tires after the expiration of their Stage I permit.

   The Stage II permit will include additional requirements, such as an application and annual compliance fee, financial assurance, a comprehensive tire management plan, and a compliance plan to remove or process the waste tires. Permittees will have to comply with DEQ standards for storing waste tires.

   An alternative considered was issuing a permit by rule to all identified sites storing waste tires on July 1, 1988, and establishing by rule a later date for a "regular" waste tire storage site application. The Department felt it was important to more actively involve permittees, and use the Stage I permit as a first step towards a Stage II "regular" permit.

2. Fee Structure. The Task Force recommended uniform permit fees for all waste tire storage site permit applicants, rather than the other alternative, fees based on the size of the facility. Their thinking was that DEQ's administrative costs per site may well not depend on the size of the site. Some relatively small sites whose owners have few resources may be more difficult to bring under compliance than large sites.

   The tire carrier fee would however take into account the size of the applicant's operation. The recommended fee structure includes an annual compliance fee partially based on how many trucks the business has.

   The Task Force recommended a combined storage site/carrier permit application and fee for persons who must have both permits.

   DEQ received some public comments that the proposed fees were too high, but no specific recommendations for changes. The Department is not changing its recommended fee structure from the draft rule.

Recommended fee structure:

- Waste tire storage sites:

"Stage II" application fee	$250
Annual compliance fee	$250

- Waste tire carriers:

Application fee	$25
Annual compliance fee	
Base (per company or corporation)	$175
Plus annual fee per vehicle	$25

- Combined fee (storage site/carrier)

Application fee	$250
Annual compliance fee	
Base (per company or corporation)	$250
Plus annual fee per vehicle	$25

3. Site Storage Standards. Major concerns in setting standards for waste tire storage sites are fire prevention and suppression, vector control, and keeping tires out of waterways.

The following "maximum bulk" standard for tire piles is recommended to allow fires to be broken up:

Width: 50 feet
Area: 15,000 square feet
Height: 6 feet
Minimum fire lane width: 50 feet

Staff added to the draft rule a standard for indoor storage of tires after several questions arose about indoor storage: The Standard for Storage of Rubber Tires, NFPA 231D-1986 edition, adopted by the National Fire Protection Association.

4. Definition of Waste Tire. The statute defines "waste tire" as a tire that is no longer suitable for its original intended purpose because of wear, damage or defect. With input from the Task Force, the Department clarified that definition to cover tire casings intended for recapping. Only a person involved in the tire trade can tell whether a used tire is recappable, or only fit to be discarded.

During the public comment process, auto wreckers recommended that a tire on a rim not be considered a waste tire. However, whether a tire is on a rim or not does not determine whether it meets the statutory definition of "waste tire". The Department does not recommend adding that change. In response to other questions from auto wreckers, the Department clarified that a used tire which can be resold for use on a vehicle is not a waste tire, and thus not subject to regulation under this program.

5. "Beneficial Use" of Whole Waste Tires. The Task Force felt that there may be various legitimate uses of whole waste tires such as farm use of tire fences that should be exempt from the storage site permit requirement. Rather than trying to define all such uses in the rule, the Task Force recommended allowing the Department to grant exemptions on a case-by-case basis. This is provided for in OAR 340-62-015 (7). The use would have to meet state and local requirements for vector and fire control. At the Oregon City public meeting, several people noted that mosquito breeding can be a serious concern with tire "fences."

6. Financial Assurance. Financial assurance is required of waste tire storage site permittees and waste tire carriers. For storage sites, this is to cover waste tire removal and processing and fire suppression. The statute allows a waiver for existing sites. The proposed rule would allow DEQ to grant a waiver for sites that were not accepting additional waste tires, and which were complying with a schedule to clean up their site. One comment was received that a waste tire processor, which was also a waste tire storage site permittee, should not be required to have over $5,000

in financial assurance. The Department feels this must be determined on a case-by-case basis, depending on the number of tires stored. Several members of the public commented that the $5,000 bond required by statute of tire carriers was unnecessary and/or burdensome. The statute does not allow a waiver of financial assurance for tire carriers.

7. Chipping Standards. The Commission is required to set standards to which tires must be "chipped" in order to be disposed of in solid waste disposal sites after July 1, 1989. As noted above, this standard will have an economic impact on landfill operators and indirectly on the public; machines will have to be purchased or services contracted for to chip the tires. Splitting (cutting the tires in two) would be cheaper than chipping to smaller pieces, and several landfills now are using splitters. Many on the Task Force felt that "splitting" is not "chipping". They feel that if the Legislature had intended to allow land disposal of split tires, it would have so specified. However it is difficult to identify any environmental advantage to landfilling chipped tires over landfilling split tires. The Department is not recommending changes to the chipping standard as proposed in the draft rule.

   The statute provides for an exception to the chipping standard if the EQC "finds that the reuse or recycling of waste tires is not economically feasible". Several presenters felt that may be the case in the more rural parts of the state. The Department feels it would be premature to recommend that finding now, before the reimbursement for use of waste tires is in place. But DEQ intends to examine more closely the economic feasibility of tire recycling early in 1989 to see if it may be warranted in some areas.

   The issue of applying the chipping standard to oversize tires arose in one public meeting. Such tires cannot be chipped, and in addition there is little demand for their reuse (aside from one manufacturer of discs for fishing nets). The Department is adding a recommendation to the draft rule that reuse or recycling of tires larger than 18 inches is not economically feasible. This would allow them to be landfilled whole.

8. Tire Carrier Standards. The main issues concerning tire carriers were how to treat tire dealers and retreaders who haul recappable casings in-house; retail tire dealers servicing commercial accounts and hauling replaced casings back to their store; and waste tire processors who need to lease or otherwise hire additional vehicles from large commercial fleets that are not, and have no interest in becoming, waste tire carriers. Several members of the public commented that persons (such as tire dealers) who now haul their own scrap tires to proper disposal sites should not have to become permitted tire carriers. Written

testimony was also received from public agencies who are required to pick up abandoned casings from public rights-of-way. They requested exemption from the carrier permit requirement.

The draft rule offered relief from the permit requirement for in-house haulers of casings, and retail tire dealers serving accounts. DEQ received public comment that the in-house hauling exemption should be extended to company-franchised outlets. The Department agrees, and is incorporating that recommendation into this proposed rule.

The Task Force recommended adding a provision to the draft rule that would allow a temporary extension of a tire carrier permit to additional leased or contracted for vehicles. Thus a processor who had a carrier permit could obtain a temporary permit for a temporarily leased vehicle (less than 30 days). The Department is proposing adding a provision to allow this, under a blanket $25 per year additional fee. The permittee would keep a log of all vehicles used. The permittee's bond would have to cover vehicles leased or under contract.

To ease the burden of obtaining a carrier permit for persons who haul their own tires for disposal in small trucks, the Department is proposing a lower annual compliance fee for them ($25 instead of $175).

DEQ agrees that public agencies who are required to pick up scrap tires should be exempt from the permitting requirement. The Department has added language to this proposed rule exempting agencies under the PUC "E" plate definition from the carrier requirement.

As a housekeeping change, the Department also added a provision to the rule to allow a waste tire carrier to add a permanent vehicle to its tire carrier fleet after its original carrier permit was issued.

9. Other Proposed Changes from the Draft Rule. DEQ has made various housekeeping changes, such as making references to bonding requirements consistent for storage site permits and carrier permits.

OAR 340-62-070 noting civil penalties was deleted on the advice of the Attorney General. Civil penalties are covered in OAR 340-12. A portion of the financial assurance section (OAR 340-62-022) was also deleted on advice of the Attorney General.

A subsection is added to OAR 340-62-055 to clarify that persons subject to the waste tire carrier permit requirement who fail to apply for the permit are subject to civil penalty.

At their May 17 meeting, the Task Force recommended that waste tire storage sites be required to inform DEQ of any non-permitted tire carriers delivering waste tires to their site. The Task Force felt that the sites should accept the tires, but forward the name of the unpermitted carrier to DEQ for enforcement. This change has been incorporated into the proposed rule.

Following DEQ staff comment, a proposed requirement has been added for solid waste disposal sites that want to landfill chipped tires after July 1, 1989. This would require the site operator to verify to the Department that alternatives to such tire disposal have been investigated and found not to be economically feasible.

A $10 fee to replace a lost or destroyed tire carrier ID decal is proposed.

SUMMATION

1. The Waste Tire Program passed by the 1987 Legislature gives DEQ responsibilities to implement a program regulating storage, transportation and reuse of waste tires. This includes establishing rules to set standards for storage sites, permit fees.

2. The statute directs the Commission to adopt rules to implement the Waste Tire Program (ORS 459.710, 459.725, 459.730, 459.750, and 459.785).

3. The draft rule was developed with the help of the Waste Tire Task Force.

4. The Commission on April 29, 1988 authorized the Department to hold public hearings on a proposed rule to implement the Waste Tire Program.

5. Notice of proposed rulemaking was published in the May 15, 1988 Secretary of State's Bulletin.

6. Five public hearings were held between May 31 and June 6, 1988.

7. This proposed rule covers:

   - Permitting and storage standards for waste tire storage sites;
   - Solid waste permit modifications to allow waste tire storage;
   - Permit procedures and requirements for waste tire carriers; and
   - Chipping standards for waste tires to be landfilled.

8. In order to store more than 100 waste tires, a site must receive a permit from the Department by July 1, 1988. The Department is proposing a two-stage permit process to comply with this statutory deadline.

DIRECTOR'S RECOMMENDATION

Based upon the summation, 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.

Fred Hansen

Attachments
I. Rulemaking Statements
II. Notice of Public Hearing
III. Hearing Officer's Reports (6)
IV. Department Response to Public Comment
V. Draft Rule OAR Chapter 340, Division 62
VI. HB 2022

Deanna Mueller-Crispin:dmc
229-5808
June 7, 1988

SB7625

Attachment I
Agenda Item G
7/8/88, EQC Meeting

RULEMAKING STATEMENTS
for
Proposed New Rules Pertaining to the Storage of Waste Tires

OAR Chapter 340, Division 62

Pursuant to ORS 183.335, these statements provide information on the intended action to adopt a rule.

STATEMENT OF NEED:

LEGAL AUTHORITY:

The 1987 Oregon Legislature passed the Waste Tire Act regulating the storage and transportation of waste tires. ORS 459.785 requires the Commission to adopt rules and regulations necessary to carry out the provisions of ORS 459.705 to 459.790. The Commission is adopting new rules which are necessary to carry out the provisions of the Waste Tire Act.

NEED FOR THE RULE:

Improper storage and disposal of waste tires represents a significant problem throughout the State. The Waste Tire Act establishes a comprehensive program to regulate the storage, transportation and disposal of waste tires. It also establishes a Waste Tire Recycling Fund to help pay for the cleanup of some tire dumps, and to create financial incentives for people to reuse waste tires. Rules from the Commission are needed to set program procedures, requirements, standards and permit fees. The rule now proposed deals with requirements for permits for: waste tire storage sites; waste tire carriers; modification of solid waste site permits to allow waste tire storage. A rule covering use of the Waste Tire Recycling Fund will be proposed at a later date.

PRINCIPAL DOCUMENTS RELIED UPON:

a. Oregon Revised Statutes, Chapter 459.
b. Oregon Administrative Rules, Chapter 340, Division 60.
c. Report to Minnesota Pollution Control Agency on Scrap Tires in Minnesota, October 1987, prepared by Waste Recovery, Inc.
d. Used Tire Recovery and Disposal in Ohio, March 1987
e. Proceedings of a Workshop on Disposal Techniques with Energy Recovery for Scrapped Vehicle Tires, sponsored by US Dept of Energy et al, November 1987
f. Waste Tire Permitting Rules as Proposed by the Minnesota Waste Management Board, Minn. Rules Parts 9220.0200 to 9220.0835

Attachment I
Agenda Item G
7/8/88, EQC Meeting

FISCAL AND ECONOMIC IMPACT STATEMENT:

This action will require the Department to add two full-time equivalent employees to implement the permitting portions of the rule, and monitor, inspect and provide surveillance over permitted and non-permitted waste tire storage sites. It may also cause additional work for the Department's enforcement personnel, and Regional staff. The additional employees are included in the Department's approved budget.

This action will have an economic impact on local government, private businesses and the public.

Permit fees and financial assurance will be required of persons obtaining waste tire storage site permits, and those becoming waste tire carriers. Operators of waste tire storage sites and permitted solid waste sites may incur additional costs in complying with the standards this action establishes for waste tire storage and tire chipping, and/or in removing and properly disposing of waste tires from their site. Waste tire carriers and members of the public may incur additional costs in disposing of waste tires, as they will be required to use only permitted waste tire storage sites (or solid waste disposal sites) where fees may be higher than in the past. Ultimately the public will pay additional costs of proper waste tire disposal. The public should also benefit from not having to pay for the disposal of tires improperly and illegally dumped.

Many of the persons now storing or hauling waste tires are small businesses. Therefore the small business impact could be appreciable. The two-phase permit procedure proposed by the Department will give businesses additional time to phase out their waste tires, allowing them to avoid costs of becoming a permanent waste tire storage site.

LAND USE CONSISTENCY STATEMENT:

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

With regard to Goal 6 (Air, Water and Land Resources Quality), the rules provide for the proper storage and disposal of waste tires. They should help eliminate or reduce potential tire fires, a source of air pollution. Storage standards will keep waste tires out of waterways. Waste tires are often stored in conflict with local land use rules. As tire sites are identified and either permitted or cleaned up, land use compliance should improve.

With regard to Goal 11 (Public Facilities and Services), the rules provide that solid waste disposal sites store and dispose of waste tires in conformance with new standards. The standards are intended to improve the public health, safety and welfare.

The rules do not appear to conflict with other Goals.

Public comment on any land use issue involved is welcome and may be submitted in the manner described in the accompanying NOTICE OF PUBLIC HEARING.

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

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

SB7433I

REQUEST FOR EQC ACTION

Meeting Date: 1/20/89
Agenda Item: G
Division: WQ
Section: CG

SUBJECT:

State Revolving Fund (SRF)

PURPOSE:

Provide loans for water pollution control facilities.

ACTION REQUESTED:

___ Work Session Discussion
- ___ General Program Background
- ___ Program Strategy
- ___ Proposed Policy
- ___ Potential Rules
- ___ Other: (specify)

_X_ Authorize Rulemaking Hearing

Proposed Rules (Draft)	Attachment A
Rulemaking Statements	Attachment D
Fiscal and Economic Impact Statement	Attachment D
Public Notice	Attachment E

___ Adopt Rules

Proposed Rules (Final Recommendation)	Attachment ___
Rulemaking Statements	Attachment ___
Fiscal and Economic Impact Statement	Attachment ___
Public Notice	Attachment ___

___ Issue Contested Case Decision/Order

Proposed Order	Attachment ___

___ Other: (specify)

AUTHORITY/NEED FOR ACTION:

_X_ Pursuant to Statute: ORS 468.423-.440 — Attachment B
Enactment Date: 1987

___ Amendment of Existing Rule: _____ — Attachment ___

___ Implement Delegated Federal Program: _____ — Attachment ___

___ Department Recommendation: — Attachment ___

___ Other: — Attachment ___

_X_ Time Constraints:
Must adopt final rules by March to prepare Intended Use plan, listing proposed loan recipients, and other federally required documents by June 1989.

DESCRIPTION OF REQUESTED ACTION:

The proposed rules contain the following elements:

- Definitions of terms,
- List of eligible projects and financial uses of the fund,
- Application requirements,
- Environmental review procedures,
- Loan approval criteria,
- Loan terms, interest rates and conditions, and
- A priority listing process.

DEVELOPMENTAL BACKGROUND:

X	Department Report (Background/Explanation)	Attachment O
X	Advisory Committee Report/Recommendation	Attachment M
___	Hearing Officer's Report/Recommendations	Attachment ___
___	Response to Testimony/Comments	Attachment ___
___	Prior EQC Agenda Items:	Attachment ___
X	Other Related Reports/Rules/Statutes:	
	Title VI, Clean Water Act, 1986	Attachment C
	List of Title II Requirements	Attachment F
	List of SRF Task Force Members	Attachment G
	List of Other Potential Uses of SRF for Financing	Attachment H
	Comparison of Project Eligibility Under the Oregon and Federal Construction Grant and SRF Regulations	Attachment I
	Comparison of Local Cost to Fund Projects Under the Construction Grant Program and the SRF	Attachment J
	Priority List Explanation	Attachment K
	Methods for Setting Interest Rates	Attachment L
	Supplemental Department Report on Six Statutory Factors EQC Must Consider	Attachment N

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The proposed rules implement the statutory mandate and legislative intent of accepting and using federal funds to capitalize a perpetual revolving loan fund; assisting public agencies in controlling water pollution by providing them low interest loans; and providing a process to administer the SRF.

It also should fulfill the Department's goal of loaning all first-use funds to communities, thereby not allowing any federal money to go back to the federal government.

The proposed rules are consistent with the Department's proposed strategy for transition from a grant to a loan program which is on the January 19 EQC Work Session Agenda. This strategy would establish a final list of projects eligible for grant funding; limit projects eligible for grant assistance to those communities with documented water quality problems (Letter Classes A, B, and C on the priority list); and limit total eligible project costs for those projects not currently a Letter Class A, B, or C on the FY89 priority list to under $1,500,000.

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

These rules establish an alternative financial assistance program to that offered by the federal construction grant program which will be terminated after September 30, 1991. The Department believes that, for municipalities, an effective financial assistance program is very helpful in resolving compliance problems with municipal sewerage facilities. These rules are intended to fill that role.

A task force of municipal representatives was created to assist the Department in the development of these proposed rules. The task force spent over a year working on these proposed rules.

PROGRAMMATIC CONSIDERATIONS:

This program will receive 5/6 of its funding from a federal capitalization grant and 1/6 of its funding from state match. The Department will seek authorization from the 1989 legislature to sell bonds to provide the state match. The Department will receive federal capitalization grants through 1994 which, combined with the state match, will total approximately $140 million. The Department is allowed to use up to 4% of the capitalization grant for administration of the program.

Currently, it is anticipated that all 50 states will develop a State Revolving Fund. Approximately 10 states already have approved State Revolving Fund programs. Alaska is the only state on the west coast to receive approval.

POLICY ISSUES FOR COMMISSION TO RESOLVE:

The Commission is required by state statute (ORS 468.440) to consider six factors in establishing the loan terms and interest rates. These factors are discussed in Attachment N.

COMMISSION ALTERNATIVES:

1. Authorize hearing on rules proposed in Attachment A. This alternative requires a dedicated source of revenue for loan repayment including general obligation bonds, revenue bonds or user fees. It also establishes interest rates at 0% for 5 years or less and 3% for 5-20 years. Under these proposed rules, the Commission would review the interest rates in two years and adjust them if necessary. This alternative is supported by the Task Force.

2. Modify the rules proposed in Attachment A to tie interest rates to local affordability. The Department does not recommend this alternative at this time but does recommend further investigation of this alternative during the next two years.

3. Modify the rules proposed in Attachment A to include a higher interest rate commensurate with inflation. The Department does not recommend this alternative at this time. The lower interest rate is recommended to encourage a fast turnaround of money, and to ensure that a smooth transition may take place between the grant program and the loan program by making the loans affordable. This alternative may be examined by the EQC in the future after the program has been established.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends that the Commission adopt Alternative 1 and the findings in Attachment N.

This alternative appears to best implement legislative intent. It provides security for loan repayment thereby ensuring the integrity of the SRF. It establishes low interest rates to ensure a smooth transition for communities from reliance on federal grants to the loan program and ensures that communities will borrow all available first-use SRF funds. If any first-use funds are not borrowed, they must be returned to the federal government. The five year, 0% loans encourage short-term borrowing. After the funds are repaid, a substantial number of federal requirements,

particularly with regard to the types of facilities which may receive funding, are dropped.

INTENDED FOLLOWUP ACTIONS:

Hold a public hearing on the proposed rules. Amend the rules, if necessary, to address public comment. Recommend adoption of the rules at the March 3, 1989 EQC meeting.

Prepare an assessment of the SRF program in 1991 and report to the Commission any need for rule amendments.

Approved:

Section: Thomas J. Lucas

Division:

Director: Fredia Taylor

Contact: Maggie Conley

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MFC:kjc
WJ1358
December 16, 1988

DIVISION 54

STATE REVOLVING FUND PROGRAM

PURPOSE

340-54-005

These rules are intended to implement (ORS 468.423 - .440) under which financial assistance is made available to and utilized by Oregon municipalities to plan, design and construct water pollution control facilities.

DEFINITIONS

340-54-010

(1) "Alternative treatment technology" means any proven wastewater treatment process or technique which provides for the reclaiming and reuse of water, productive recycling of wastewater constituents, other elimination of the discharge of pollutants, or the recovery of energy.

(2) "Categorical exclusion" means an exemption from environmental review requirements for a category of actions which do not individually, cumulatively over time, or in conjunction with other actions have a significant effect on the quality of the environment. Environmental impact statements, environmental assessments and environmental information documents are not required for categorical exclusions.

(3) "Change order" means a written order and supporting information from the borrower to the contractor authorizing an addition, deletion, or revision in the work within the scope of the contract documents, including any required adjustment in contract price or time.

(4) "Clean Water Act" means the Federal Water Pollution Control Act, as amended, 33 USC 1251 et. seq.

(5) "Collector sewer" means the portion of the public sewerage system which is primarily installed to receive wastewater directly from individual residences and other individual public or private structures.

(6) "Combined sewer" means a sewer that is designed as both a sanitary and a stormwater sewer.

(7) "Default" means nonpayment of SRF repayment when due, failure to comply with SRF loan covenants, a formal bankruptcy filing, or other written admission of inability to pay its SRF obligations.

(8) "Department" means the Oregon Department of Environmental Quality.

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

(10) "Environmental assessment" means an evaluation prepared by the Department to determine whether a proposed project may have a significant impact on the environment and, therefore, require the preparation of an environmental impact statement (EIS) or a Finding of No Significant Impact (FNSI). The assessment shall include a brief discussion of the need for a proposal, the alternatives, the environmental impacts of the proposed action and alternatives and a listing of persons or agencies consulted.

(11) "Environmental impact statement (EIS)" means a report prepared by the Department analyzing the impacts of the proposed project and discussing project alternatives. An EIS is prepared when the environmental assessment indicates that a significant environmental impact may occur and significant adverse impacts can not be eliminated by making changes in the project.

(12) "Environmental information document" means a written analysis prepared by the applicant describing the environmental impacts of the proposed project. This document is of sufficient scope to enable the Department to prepare an environmental assessment.

(13) "EPA" means the U.S. Environmental Protection Agency.

(14) "Estuary management" means development and implementation of a plan for the management of an estuary of national significance as described in §320 of the Clean Water Act.

(15) "Excessive infiltration/inflow" means the quantities of infiltration/inflow which can be economically eliminated from a sewer system as determined in a cost effective analysis that compares the costs for correcting the infiltration/inflow conditions to the total costs for transportation and treatment of the infiltration/inflow from sanitary sewers.

(16) "Facility plan" means a systematic evaluation of environmental factors and engineering alternatives considering demographic, topographic, hydrologic, and institutional characteristics of a project area that demonstrates that the selected alternative is cost effective and environmentally acceptable.

(17) "Federal Capitalization Grant" means federal dollars allocated to the State of Oregon for a federal fiscal year from funds

appropriated by Congress for the State Revolving Fund under Title VI of the Clean Water Act. This does not include state matching monies.

(18) "Infiltration" means the intrusion of groundwater into a sewer system through defective pipes, pipe joints, connections, or manholes in the sanitary sewer system.

(19) "Inflow" means a direct flow of water other than wastewater that enters a sewer system from sources such as, but not limited to, roof gutters, drains, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, stormwaters, surface runoff, or street wash waters.

(20) "Initiation of operation" means the date on which the facility is substantially complete and ready for the purposes for which it was planned, designed, and built.

(21) "Innovative technology" means developed wastewater treatment processes and techniques which have not been fully proven under the circumstances of their contemplated use and which represent a significant advancement over the state of the art in terms of significant reduction in life cycle cost of the project or environmental benefits when compared to an appropriate conventional technology.

(22) "Intended Use Plan" means a report which must be submitted annually by the Department to EPA identifying proposed uses of the SRF including, but not limited to a list of public agencies planning to receive SRF funding and a schedule of grant payments. The Intended Use Plan includes two lists of projects. The principal list of projects on the Intended Use Plan includes projects for which adequate SRF funds are available during that year. The alternate list includes projects which may receive funding if projects on the principal list do not submit final applications, withdraw their applications, or do not qualify for SRF funding.

(23) "Interceptor sewer" means a sewer which is primarily intended to receive wastewater from a collector sewer, another interceptor sewer, an existing major discharge of raw or inadequately treated wastewater, or a water pollution control facility.

(24) "Maintenance" means work performed to make repairs, make minor replacements or prevent or correct failure or malfunctioning of the water pollution control facility in order to preserve the functional integrity and efficiency of the facility, equipment and structures.

(25) "Major sewer replacement and rehabilitation" means the repair and/or replacement of interceptor or collector sewers, including replacement of limited segments.

(26) "Nonpoint source control" means implementation of a plan for managing nonpoint source pollution as described in §319 of the Clean Water Act.

(27) "Operation" means control of the unit processes and equipment which make up the treatment system and process, including financial and personnel management, records, laboratory control, process control, safety, and emergency operation planning.

(28) "Operation and maintenance manual" means a guide used by an operator for operation and maintenance of the water pollution control facility.

(29) "Project" means the activities or tasks identified in the loan agreement for which the borrower may expend, obligate, or commit funds.

(30) "Public agency" means any state agency, incorporated city, county sanitary authority, county service district, sanitary sewer service district, metropolitan service district, or other district authorized or required to construct water pollution control facilities.

(31) "Replacement" means expenditures for obtaining and installing equipment, accessories or appurtenances which are necessary during the design or useful life, whichever is longer, of the water pollution control facility to maintain the facility for the purpose for which it was designed and constructed.

(32) "Reserve capacity" means that portion of the treatment works that is designed and incorporated in the constructed facilities to handle future sewage flows and loadings from existing or future development consistent with local comprehensive land use plans acknowledged by the Land Conservation and Development Commission.

(33) "Sewage collection system" means pipelines or conduits, pumping stations, force mains, and any other related structures, devices, or applications used to convey wastewater to a sewage treatment facility.

(34) "Sewage treatment facility" means any device, structure, or equipment used to treat, neutralize, stabilize, or dispose of wastewater and residuals.

(35) "SRF" means State Revolving Fund and includes funds from state match, federal capitalization grants, SRF loan repayments and interest earnings. The State Revolving Fund is the same as the Water Pollution Control Revolving Fund referred to in ORS 468.423 - .440.

(36) "Significant industrial dischargers" means water pollution control facility users as defined in the Department's Pretreatment Guidance Handbook.

(37) "Small community" means a city, sanitary authority or service district with a population of less than 5,000.

(38) "Wastewater" means water carried wastes from residences, commercial buildings, industrial plants, and institutions together with minor quantities of ground, storm, and surface waters that are not admitted intentionally.

(39) "Water pollution control facility" means a sewage disposal, treatment and/or collection system.

(40) "Value engineering" means a specialized cost control technique which uses a systematic approach to identify cost savings which may be made without sacrificing the reliability or efficiency of the project.

PROJECT ELIGIBILITY

340-54-015

(1) A public agency may apply for a loan for up to 100% of the cost of the following types of projects and project related costs:

(a) Facility plans including supplements are limited to one complete facility plan financed by the SRF per project;

(b) Secondary treatment facilities;

(c) Advanced waste treatment facilities if required to meet Department water quality statutes and rules;

(d) Reserve capacity for a sewage treatment or disposal facility receiving SRF funding which will serve a population not to exceed a twenty year population projection and for a sewage collection interceptor not to exceed a fifty year population projection;

(e) Sludge disposal and management;

(f) Interceptors and associated force mains and pumping stations;

(g) Infiltration/inflow correction;

(h) Major sewer replacement and rehabilitation if components are a part of an approved infiltration/inflow correction project;

(i) Combined sewer overflow correction if required to protect sensitive estuarine waters, if required to comply with Department water quality statutes and rules, or if required by Department permit;

(j) Collector sewers if required to alleviate documented groundwater quality problems, to serve an area with a documented health hazard, or to serve an area where a mandatory health hazard annexation is required pursuant to ORS 222.850 to 222.915;

(k) Stormwater control if project is a cost effective solution for infiltration/inflow correction to sanitary sewer lines;

(l) Estuary management if needed to protect sensitive estuarine waters and if the project is publicly owned; and

(m) Nonpoint source control if required to comply with Department water quality statutes and rules.

(2) Funding for projects listed under (1) above may be limited by Section 201(g)(1) of the Clean Water Act.

(3) Loans will not be made to cover the non-federal matching share of an EPA grant.

(4) Plans funded in whole or in part from the SRF must be consistent with plans developed under Sections 208, 303(e), 319, and 320 of the Clean Water Act.

(5) Loans shall be available only for projects on the SRF Priority List, described in OAR 340-54-065 through 340-54-090.

USES OF THE FUND

340-54-020

The SRF may only be used for the following project purposes:

(1) To make loans, purchase bonds or acquire other debt obligation;

(2) To pay SRF program administration costs (not to exceed 4% of the federal capitalization grant or as otherwise allowed by federal law);

(3) To earn interest on fund accounts.

PREPARATION OF THE INTENDED USE PLAN AND THE PRELIMINARY APPLICATION PROCESS

340-54-025

(1) Each year the Department will prepare and submit an Intended Use Plan to EPA which includes a list of public agencies ready to submit a final application for SRF funding.

(2) In order to develop a list of projects for the Intended Use Plan, the Department will contact, by certified mail, the public agencies with problems listed in the priority list (OAR 340-54-065) and ask them to submit a preliminary application for SRF funding.

(3) In order to be listed in the Intended Use Plan, a public agency must return a completed preliminary SRF application by certified mail within 30 days of the date the Department mails the application form.

(4) Any public agency that does not submit a completed preliminary application within 30 days of the date that the Department mails the application will waive its right for inclusion in the intended use plan and loses any opportunity for a loan from the SRF in that year.

FINAL APPLICATION PROCESS FOR SRF FUNDING FOR FACILITY PLANNING FOR WATER POLLUTION CONTROL FACILITIES.

340-54-030

Applicant(s) for SRF loans for facility planning of water pollution control facilities must submit:

(1) A final application on forms provided by the Department;

(2) Evidence that the public agency has authorized development of the facility plan; and

(3) A demonstration that applicant complies with the requirements of OAR 340-54-060(1).

FINAL APPLICATION PROCESS FOR SRF FUNDING FOR DESIGN AND CONSTRUCTION OF WATER POLLUTION CONTROL FACILITIES

340-54-035

Applicants for SRF loans for design and construction of water pollution control facilities must submit:

(1) A final SRF loan application on forms provided by the Department (See also Section 340-54-045(2), Loan Approval and Review Criteria).

(2) A facilities plan which includes the following:

(a) A demonstration that the project will apply best practicable waste treatment technology as defined in 40 CFR 35.2005(b)(7).

(b) A cost effective analysis of the alternatives available to comply with applicable Department water quality statutes and rules over the design life of the facility and a demonstration that the selected alternative is the most cost effective.

(c) A demonstration that excessive inflow and infiltration (I/I) in the sewer system does not exist or if it does exist, how it will be eliminated.

(d) An analysis of alternative and innovative technologies. This must include:

(A) An evaluation of alternative methods for reuse or ultimate disposal of treated wastewater and sludge material resulting from the treatment process;

(B) An evaluation of improved effluent quality attainable by upgrading the operation and maintenance and efficiency of existing facilities as an alternative or supplement to building new facilities;

(C) A consideration of systems with revenue generating applications; and

(D) An evaluation of the opportunity to reduce the use of energy or to recover energy.

(e) An analysis of the potential open space and recreational opportunities associated with the project.

(f) An evaluation of the environmental impacts of alternatives as discussed in OAR 340-54-040.

(g) Documentation of the existing water quality problems which the facility plan must correct.

(3) Adopted sewer use ordinance(s).

(a) Sewer use ordinances adopted by all municipalities and service districts discharging effluent to the water pollution control facility must be included with the application.

(b) The sewer use ordinance(s) shall prohibit any new connections from inflow sources into the water pollution control facility, without the approval of the Department.

(c) The ordinance(s) shall require that all wastewater introduced into the treatment works not contain toxics or other pollutants in amounts or concentrations that have the potential of endangering public safety and adversely affecting the treatment works or precluding the selection of the most cost-effective alternative for wastewater treatment sludge disposal.

(4) Documentation of pretreatment surveys and commitments:

(a) A survey of nonresidential users must be conducted and submitted to the Department, as part of the final SRF application which identifies significant industrial discharges as defined in the Department's Pretreatment Guidance Handbook. If the Department determines that the need for a pretreatment program exists, the borrower must develop and adopt a program approved by the Department before initiation of operation of the facility.

(b) The borrower must document to the satisfaction of the Department that necessary pretreatment facilities have been constructed and that a legally binding commitment or permit exists with the borrower and any significant industrial discharger(s), being served by the borrower's proposed sewage treatment facilities. The legally binding commitment or permit must insure that pretreatment discharge limits will be achieved on or before the date of completion of the proposed wastewater treatment facilities or that a Department approved compliance schedule is established.

(5) Adoption of a user charge system.

(a) General. The borrower must develop and obtain the Department's approval of its user charge system. If the borrower has a user charge system in effect, the borrower shall demonstrate that it meets the provisions of this section or amend it as required by these provisions.

(b) Scope of the user charge system.

(A) The user charge system must, at a minimum, be designed to produce adequate revenues to provide for operation and maintenance (including replacement expenses);

(B) Unless SRF debt retirement is reduced by other dedicated sources of revenue discussed in OAR 340-54-060, the user

charge system must be designed to produce adequate revenues to provide for SRF debt retirement.

(c) Actual use. A user charge system shall be based on actual use, or estimated use, of sewage treatment and collection services. Each user or user class must pay its proportionate share of the costs incurred in the borrower's service area.

(d) Notification. Each user charge system must provide that each user be notified, at least annually, in conjunction with a regular bill or other means acceptable to the Department, of the rate and that portion of the user charge that is attributable to wastewater treatment services.

(e) Financial management. Each borrower must demonstrate compliance with state and federal audit requirements. If the borrower is not subject to state or federal audit requirements, the borrower must provide a report reviewing the account system prepared by a Certified Municipal Auditor. A systematic method must be provided to resolve material audit findings and recommendations.

(f) Adoption of system. The user charge system must be legislatively enacted before loan approval and implemented before initiation of operation of the facility. If the project will serve two or more municipalities, the borrower shall submit the executed intermunicipal agreements, contracts or other legally binding instruments necessary for the financing, building and operation of the proposed treatment works.

(6) A value engineering study, if total project costs will exceed $10 million.

(7) A financial capability assessment for the proposed project which demonstrates the applicant's ability to repay the loan and to provide for operation and maintenance costs (including replacement) for the wastewater treatment facility.

(8) Any other information requested by the Department.

ENVIRONMENTAL REVIEW

340-54-040

(1) The applicant shall consult with the Department during facility planning to determine the required level of environmental review. The Department will notify the applicant of the type of environmental documentation which will be required. Based upon the Department's determination, the applicant shall:

(a) Submit a request for categorical exclusion with supporting backup documentation as specified by the Department; or

(b) Prepare an environmental information document in a format specified by the Department.

(2) If an applicant requests a categorical exclusion, the Department shall review the request and based upon project documentation submitted by the applicant the Department shall:

(a) Notify the applicant of categorical exclusion;

(b) Notify the applicant of the need for preparation of an environmental information document, or

(c) Issue notice of need for preparation of an environmental impact statement.

(3) If an environmental information document is required, the Department shall:

(a) Conduct an environmental assessment based upon the applicant's environmental information document and:

(A) Issue a draft Finding of No Significant Impact documenting any mitigative measures required of the applicant; or

(B) Issue a Notice of Need for Preparation of an Environmental Impact Statement.

(b) Allow a thirty day public comment period, following public notice at least once in a newspaper of general circulation in the community, for all projects receiving a draft Finding of No Significant Impact. If substantive comments are received during the public comment period that challenge the proposed Finding of No Significant Impact, the Department will reassess the project to determine whether the environmental assessment will be supplemented or whether an environmental impact statement will be required.

(c) Issue a final Finding of No Significant Impact if no new information is received during the public comment period which would require a reassessment or if after reviewing public comments and reassessing the project, an environmental impact statement was not found to be necessary.

(4) If an environmental impact statement is required, the Department shall:

(a) Contact all affected local, state and federal agencies,

tribes or other interested parties to determine the scope required of the document;

(b) Prepare and submit a draft environmental impact statement to all affected agencies or parties for review and comment;

(c) Following publication of a public notice in appropriate newspapers or journals, allow a 45 day comment period; and

(d) Prepare and submit a final environmental impact statement (FEIS) incorporating all agency and public input.

(5) Upon completion of a FEIS, the Department will issue a Record of Decision (ROD) documenting the mitigative measures which will be required of the applicant. The financial assistance agreement will be conditioned upon such mitigative measures. The Department will allow a 30 day comment period for the ROD and FEIS.

(6) If a federal environmental review for the project has been conducted, the Department may, at its discretion, adopt all or part of the federal agency's documentation.

(7) Environmental determinations under this section are valid for five years. If a financial assistance application is received for a project with an environmental determination which is more than five years old, or if conditions or project scope have changed significantly since the last determination, the Department will re-evaluate the project, environmental conditions, and public comments and will either:

(a) Reaffirm the earlier decision;

(b) Require supplemental information to the earlier Environmental Impact Statement, Environmental Information Document, or Request for Categorical Exclusion. Based upon a review of the updated document, the Department will issue and distribute a revised notice of categorical exclusion, Finding of No Significant Impact, or Record of Decision; or

(c) Require a revision to the earlier Environmental Impact Statement, Environmental Information Document, or Request for Categorical Exclusion. If a revision is required, the applicant must repeat all requirements outlined in this section.

LOAN APPROVAL AND REVIEW CRITERIA

340-54-045

(1) Loan Approval. The final SRF loan application must be reviewed and approved by the Director.

(2) Loan Review Criteria. In order to get approval of a final SRF loan application, the following criteria must be met:

(a) The applicant must submit a completed final loan application including all information required under OAR 340-54-025 or 340-54-030, whichever is applicable;

(b) There are adequate funds in the SRF to finance the loan;

(c) The project is eligible for funds under this chapter;

(d) The State of Oregon's bond counsel finds that the applicant has the legal authority to incur the debt;

(e) For revenue secured loans described under OAR 340-54-060(2), the applicant must demonstrate to the Director's satisfaction its ability to repay a loan and, where applicable, its ability to ensure ongoing operation and maintenance (including replacement) of the proposed water pollution control facility. At a minimum, unless waived by the Director, the following criteria must be met:

(A) Where applicable, the existing water pollution control facilities are free from operational and maintenance problems which would materially impede the proposed system's function or the public agency's ability to repay the loan from user fees as demonstrated by the opinion of a registered engineer or other expert acceptable to the Department;

(B) Historical and projected system rates and charges, when considered with any consistently supplied external support must be sufficient to fully fund operation, maintenance, and replacement costs including depreciation expense and the debt service expense of the proposed borrowing;

(C) To the extent that projected system income is materially greater than historical system income, the basis for the projected increase must be reasonable and documented as to source;

(D) The public agency's income and budget data must be computationally accurate and must include four years historical and projected statements of consolidated sewer system revenues, cash flows, and expenditures;

(E) The budget of the project to be supported by the proposed Revenue Secured Loan must be reflected in the public agency's data;

(F) Audits during the last four years are free from adverse opinions or disclosures which cast significant doubt on the borrower's ability to repay the Revenue Secured Loan in a timely manner;

(G) The proposed borrowing's integrity is not at risk from undue dependence upon a limited portion of the system's customer base and a pattern of delinquency on the part of that portion of the customer base;

(H) The public agency must have the ability to bring effective sanctions to bear on non-paying customers; and

(I) The opinion of the pubic agency's legal counsel states that the proposed Revenue Secured Loan will be a valid and binding obligation and that no litigation exists or has been threatened which would cast doubt on the enforceability of borrow's obligations under the loan.

LOAN DOCUMENTATION AND CONDITIONS

340-54-050

The loan documentation shall contain conditions including, but not limited to, the following:

(1) Accounting.

(a) Applicant shall use accounting, audit and fiscal procedures which conform to generally accepted government accounting standards.

(b) Files and records must be retained by the borrower for at least three (3) years after performance certification.

(c) Project accounts must be maintained as separate accounts.

(2) Wage & Labor Laws. Applicant shall ensure compliance with state and federal wage and labor laws including the Davis-Bacon Act. When the state and federal laws are not consistent, the more stringent shall apply.

(3) Operation and Maintenance Manual. If the SRF loan is for design and construction, the borrower shall submit a facility operation and maintenance manual which meets Department approval before the project is 75% complete.

(4) Inspections. During the building of the project, the borrower shall provide inspections in sufficient number to ensure the project complies with approved plans and specifications. These inspections shall be conducted by qualified inspectors under the

direction of a registered civil engineer. The Department or its representatives may conduct interim building inspections to determine compliance with approved plans and specifications and with the loan agreement, as appropriate.

(5) Loan amendments.

(a) Changes in the project work that are consistent with the objectives of the project and that are within the scope and funding level of the loan do not require the execution of a formal loan amendment. However, if additional loan funds are needed, a loan amendment shall be required.

(b) Loan amendments increasing the originally approved loan amount may be requested either prior to implementation of changes or at the end of a project when the total of all loan amendments will not exceed 10% of the total amount approved in the original loan agreement.

(c) Loan amendments increasing the originally approved loan amount must be requested prior to implementation of changes when the total of all loan amendments will exceed 10% of the total amount approved. The Department may approve these loan amendments when the borrower demonstrates the financial capability to repay the increased loan amount as required under OAR 340-54-060.

(d) Loan amendments decreasing the loan amount may be requested at the end of a project when the final cost of the project is less than the total amount approved in the original loan agreement.

(e) Loan amendments may be made to cover the difference between the original construction cost estimate and the contract price. They may also be made to cover increased cost for engineering services.

(6) Change orders. Upon execution, the borrower must submit change orders to the Department. The Department shall review the change orders to determine the eligibility of the project change.

(7) Project Performance Certification.

(a) The borrower shall notify the Department within thirty (30) days of the actual date of initiation of operation;

(b) One year after initiation of operation, the borrower shall certify whether the facility meets Department approved performance specifications.

(c) If the project is completed, except for minor items, and the facility is operating, but the borrower has not sent its

notice of initiation of operation, the Department may assign an initiation of operation date and conduct a final on-site inspection.

(d) The borrower shall, pursuant to a Department approved corrective action plan, correct any factor that does not meet the Department approved performance specifications. Costs incurred to meet the requirements of this subsection are eligible for loan funding under this Chapter.

(8) Eligible Costs. Payments shall be limited to eligible work that complies with plans and specifications as approved by the Department.

(9) Adjustments. The Department may at any time review and audit requests for payment and make adjustments for, but not limited to, math errors, items not built or bought, and unacceptable construction.

(10) Contract and Bid Documents. The borrower shall submit a copy of the awarded contract and bid documents to the Department.

(11) Audit. An audit consistent with generally accepted accounting procedures of project expenditures will be conducted by the borrower within one year after performance certification. This audit shall be paid for by the borrower and shall be conducted by a financial auditor approved by the Department.

(12) Operation and Maintenance. The borrower shall provide for adequate operation and maintenance (including replacement) of the facility and shall retain sufficient operating personnel to operate the facility.

(13) Default remedies. Upon default by a borrower, the Department shall have the right to pursue any remedy available at law or in equity and may appoint a receiver at the expense of the public agency to operate the utility which produces pledged revenues and collect utility rates and charges. The Department may also withhold any amounts otherwise due to the public agency from the State of Oregon and direct that such funds be applied to the indebtedness and deposited in the fund.

(14) Release. The borrower shall release and discharge the Department, its officers, agents, and employees from all liabilities, obligations, and claims arising out of the project work or under the loan, subject only to exceptions previously contractually arrived at and specified in writing between the Department and the borrower.

(15) Effect of approval or certification of documents. Review and approval of facilities plans, design drawings and specifications or other documents by or for the Department does not relieve the

borrower of its responsibility to properly plan, design, build and effectively operate and maintain the treatment works as required by law, regulations, permits and good management practices. The Department is not responsible for any project costs or any losses or damages resulting from defects in the plans, design drawings and specifications or other subagreement documents.

(16) Reservation of rights.

(a) Nothing in this rule prohibits a borrower from requiring more assurances, guarantees, or indemnity or other contractual requirements from any party performing project work; and

(b) Nothing in the rule affects the Department's right to take remedial action, including, but not limited to, administrative enforcement action and actions for breach of contract against a borrower that fails to carry out its obligations under this chapter.

(17) Other provisions. SRF loans shall contain such other provisions as the Director may reasonably require to meet the goals of the Clean Water Act and ORS 468.423 to 468.440.

LOAN TERMS AND INTEREST RATES

340-54-060

As required by ORS 468.440, the following loan terms and interest rates are established in order to provide loans to projects which enhance or protect water quality; to provide loans to public agencies capable of repaying the loan; to establish an interest rate below market rate so that the loans will be affordable; to provide loans to all sizes of communities which need to finance projects; to provide loans to the types of projects described in these rules which address water pollution control problems; and to provide loans to all public agencies, including those which can and cannot borrow elsewhere.

(1) An SRF loan must meet the following criteria:

(a) The loan must be a general obligation bond, or other full faith and credit obligation of the borrower, which is supported by the public agency's unlimited ad valorem taxing power; or

(b) The loan must be a bond or other obligation of the public agency which is not subject to appropriation, and which has been rated investment grade by Moody's Investor Services, Standard and Poor's Corporation, or another national rating service acceptable to the Director; or

(c) The loan must be a Revenue Secured Loan which complies with subsection (2) of this section; or,

(d) The loan must be a Discretionary Loan which complies with subsection (3) of this section.

(2) All Revenue Secured Loans shall:

(a) Be bonds, loan agreements, or other unconditional obligations to pay from specified revenues which are pledged to pay to the borrowing; the obligation to pay may not be subject to the appropriation of funds;

(b) Contain a rate covenant which requires the borrower to impose and collect each year pledged revenues which are sufficient to pay all expenses of operation and maintenance (including replacement) of the facilities which are financed with the borrowing and the facilities which produce the pledged revenues, plus an amount equal to the product of the coverage factor shown in subsection (d) of this section times the debt service due in that year on the SRF loan and all obligations which have an equal or superior lien on the pledged revenues. The coverage factor selected from subsection (d) shall correspond to the reserve percentage selected for the SRF loan;

(c) Require the public agency to maintain in each year the SRF loan is outstanding, a pledged reserve which is dedicated to the payment of the SRF loan. The amount of the reserve shall be at least equal to the product of the reserve percentage shown in subsection (d) of this section times the debt service due in the following year on the SRF loan and all obligations which have an equal or superior lien on the pledged revenues. The reserve percentage selected from subsection (d) shall correspond to the coverage factor selected for the SRF loan. Reserves shall be funded with cash, or a letter of credit or other third party commitment to advance funds which is satisfactory to the Director;

(d) Comply with the following coverage factors and reserve percentages:

Coverage Factor	Reserve Percentage
1.05:1	100%
1.15:1	75%
1.25:1	50%
1.50:1	25%

(e) Contain a covenant to review rates periodically, and to adjust rates, if necessary, so that estimated revenues in subsequent years will be sufficient to comply with the rate covenant;

(f) Contain a covenant that, if pledged revenues fail to achieve the level required by the rate covenant, the public agency will promptly adjust rates and charges to assure future compliance with the rate covenant. However, failure to adjust rates shall not constitute a default if the public agency transfers unpledged resources in an amount equal to the revenue deficiency to the utility system which produces the pledged revenues;

(g) Make monthly SRF loan payments to the Department, or, if monthly loan payments are not practicable, make periodic loan payments as frequently as possible with monthly deposits to a dedicated loan payment account whenever practicable;

(h) Contain a covenant that, if the reserve account is depleted for any reason, the public agency will take prompt action to restore the reserve to the required minimum amount;

(i) Contain a covenant that the public agency will not, except as provided in the SRF loan documentation, incur obligations (except for operating expenses) which have a lien on the pledged revenues which is equal or superior to the lien of the SRF loan, without the prior written consent of the Director. The Director shall withhold consent only if the Director determines that incurring such obligations would materially impair the ability of the public agency to repay the SRF loan or the security for the SRF loan;

(j) Contain a covenant that the borrower will not sell, transfer or encumber any financial or fixed asset of the utility system which produces the pledged revenues, if the public agency is in violation of any SRF loan covenant, or if such sale, transfer or encumbrance would cause a violation of any SRF loan covenant.

(3) A Discretionary Loan shall be made only to a public agency which has a population of less than 5,000 persons which, in the judgment of the Director, cannot practicably comply with the requirements of OAR 340-54-060(1)(a), (b), or (c). Discretionary Loans shall comply with OAR 340-54-060(4) of this section, and otherwise be on terms approved by the Director. The total principal amount of Discretionary Loans made in any fiscal year shall not exceed five percent of the money available to be loaned from the SRF in that fiscal year.

(4) SRF loans which mature within five years shall bear no interest; at least three percent of the original principal amount of the loan shall be repaid each year. A Discretionary Loan shall bear interest at not less than three percent per annum, compounded annually; shall schedule principal repayments as rapidly as is consistent with estimated revenues (but no more rapidly than would

be required to produce level debt service during the period of principal repayment); and, shall require all principal and interest to be repaid within twenty years. All other SRF loans in which the final principal payment is due more than five years after the loan is made shall bear interest at a rate of at least three percent per annum, compounded annually; shall have approximately level annual debt service during the period which begins with the first principal repayment and ends with the final principal repayment; and, shall require all principal and interest to be repaid within twenty years.

(5) The interest rates on SRF loans described in OAR 340-54-060(2) shall be in effect for loans made by September 30, 1991. Thereafter, interest rates may be adjusted by the EQC, if necessary, to assure compliance with ORS 468.440.

(6) Interest accrual begins at the time of each loan disbursement from the SRF to the borrower.

(7) Principal and interest repayments on loans for design and construction of wastewater facilities shall begin within one year after initiation of operation or the initiation of operation date established under OAR 340-54-050(7)(c).

(8) Principal and interest repayments on loans for facility planning shall begin no later than one year after Department approval of the facility plan, consistent with the date established in the loan agreement.

SRF PRIORITY LIST DEVELOPMENT

340-54-065

(1) The Department will develop an annual statewide priority list of water quality pollution problems which could be financed through the State Revolving Fund.

(2) The statewide priority list will be developed and approved by the Department prior to the establishment and submittal of the intended use plan to the U. S. Environmental Protection Agency.

(3) The Department will develop a proposed priority list utilizing criteria and procedures set forth in OAR 340-54-070.

(4) The Department will distribute the proposed priority list to all interested parties for review. Interested parties include, but are not limited to, the following:

(a) Public agencies with water quality pollution problems on the list;

(b) Interested local, state and federal agencies;

(c) Any other persons or public agencies who have requested to be on the mailing list.

(5) The Department will allow 30 days after issuance of the proposed list for review and for public comments to be submitted.

(a) During the 30 day comment period any public agency can request the Department to:

(A) Include a problem not identified on the proposed list; or

(B) Reevaluate a problem on the proposed priority list.

(b) The Department shall consider all requests submitted during the comment period before establishing the official statewide priority list.

(c) The Department shall distribute the official priority list to all interested parties.

(d) If an affected party does not agree with the Department's determination on a priority list then the interested party may within 15 days of the distribution of the official list file an appeal to present their case to the Commission.

(e) The official priority list will be modified by any action the Commission may take on an appeal.

SRF PRIORITY LIST CRITERIA

340-54-070

The priority list will consist of a rank ordering of all water quality pollution problems potentially eligible for funding.

(1) Rank order of water quality pollution problems will be based on points assigned from the following three (3) criteria:

(a) Water Quality Pollution Problem Emphasis

(A) 100 points will be assigned for:

(i) Environmental Quality Commission order pertaining to water quality problems;

(ii) Stipulated consent orders and agreements pertaining to water quality problems;

(iii) Court orders pertaining to water quality problems; or

(iv) Department orders.

(B) 90 points will be assigned for health hazard declarations and annexations with associated demonstrated water quality problems or beneficial use impairments.

(C) 80 points will be assigned for streams where the Environmental Quality Commission has established Total Maximum Daily Loads.

(D) 70 points will be assigned for documented water quality problems or beneficial use impairments.

(E) 60 points will be assigned for:

(i) Notices issued by the Department for permit violations related to inadequate water pollution control facilities (Notice of Violation); or

(ii) Non-compliance with the Department's statutes, rules or permit requirements resulting from inadequate water pollution control facilities.

(F) 40 points will be assigned for health hazard declaration or annexation areas without documented water quality problems.

(G) 20 points will be assigned for existing potential, but undocumented, water quality problems noted by the Department.

(b) Population Emphasis

(A) Points shall be assigned based on the population the project will serve as follows:

$$\text{Points} = (\text{population served})^{2 \log 10}$$

(c) Receiving Waterbody Sensitivity Emphasis

(A) A maximum of 50 points shall be assigned for the sensitivity of the water body as follows:

(i) Stream sensitivity will be based on the following:

(I) The following formula will be used to determine stream sensitivity where an

existing water pollution control facility discharges into a stream:

Points = $(Ce * Qe / Qe + Qs)^{2.5}$ where;

Ce = Concentration of effluent as represented by BOD^5 (Bio Chemical analysis)

Qe = Quantity of permitted effluent flow from treatment facility (mgd) or current low flow average if higher than permit limits

Qs = Quantity of minimum receiving stream flow (mgd) from statistical summaries of stream flow data in Oregon (7 day/10 year average low flow) or from Department measurements

(II) 50 points will be assigned to any water quality problem where the Department determines surface waters are being contaminated by areawide on-site system failures or documented nonpoint source pollution problems.

(III) 25 points will be assigned to any potential surface water quality problem, resulting from effluent from on-site systems or from nonpoint sources.

(ii) Groundwater sensitivity points will be assigned based on the following:

(I) 50 points will be assigned to any Department documented groundwater quality pollution problem.

(II) 25 points will be assigned to any potential groundwater quality pollution problem as noted by the Department.

(iii) Lake and Reservoir sensitivity points. 50 points will be assigned any discharge to a lake or reservoir.

(iv) Estuary sensitivity points. 50 points will be assigned any discharge to an estuary.

(v) Ocean sensitivity. 25 points will be assigned for a discharge to the ocean.

(2) Point scores will be accumulated as follows:

(a) Points will be assigned based on the most significant documented water quality pollution problem within each emphasis category.

(b) The score used in ranking a water quality problem will consist of the sum of the points received in each of the three (3) emphasis categories.

(3) The priority list entry for each water quality problem will include the following:

(a) Problem priority rank based on total points. The problem with the most points will be ranked number one (1) and all other problems will be ranked in descending order based on total points.

(b) Name of public agency.

(c) Description of project(s).

(d) The priority point score used in ranking the water quality pollution problem.

PRIORITY LIST MANAGEMENT

340-54-075

(1) Projects placed on the priority list must be eligible under OAR 340-54-015(1).

(2) A project may be phased if the total project cost is in excess of that established in OAR 340-54-090(3).

(3) The Department may delete any project from the priority list provided:

(a) It has received full funding; or

(b) It is no longer entitled to funding under OAR 340-54-015(1); or

(c) The identified water quality pollution problems have been addressed.

PRIORITY LIST MODIFICATION

340-54-080

(1) The Department may modify the priority list if notice of the proposed action is provided to all affected lower priority projects.

(2) Any affected project may, within 20 days of notice, request a review by the Department.

(3) If an affected party does not agree with the Department's determination on the priority list, the interested party may, within 15 days of the distribution of the official list, file an appeal to present their case to the Commission, provided a hearing can be arranged before the intended use plan is required to be submitted to the U. S. Environmental Protection Agency.

(4) The official priority list will be modified by any action the Commission may take on an appeal.

PRIORITY LIST BYPASS PROCEDURE

340-54-085

(1) The Department will initiate bypass procedures for the following reasons:

(a) If a public agency does not submit a preliminary application for SRF funding; or

(b) If the Department determines that a public agency which submits a preliminary application or which has a project listed in the Intended Use Plan will not be ready to proceed that year.

(2) Except as provided by OAR 340-54-025(4), to bypass a project the Department will:

(a) Give written notice to the applicant of the intent to bypass the project.

(b) Allow the applicant 15 days after notice to demonstrate to the Department its readiness and ability to proceed immediately with an application for State Revolving Fund financing.

RESERVES AND LOAN AMOUNTS

340-54-090

(1) Facilities Planning Reserve.

(a) Each fiscal year, 10 percent of the total available SRF will be set aside for loans for facilities planning. However, if preliminary applications for facilities planning representing 10 percent of the available SRF are not received, these funds may be allocated to other projects;

(b) Funds from the Facilities Plan Reserve will be offered to those public agencies in rank order where the project is identified as a facilities plan study;

(c) If a public agency has applied for State Revolving Fund financing, the project will be included in the intended use plan;

(d) If a public agency has not applied for State Revolving Fund financing, the project will be bypassed per OAR 340-54-085 and the next lower ranked project will be offered State Revolving Fund funding;

(e) If funds remain in the reserve after all available facilities plan projects have been offered funds, the remaining funds can be used for other types of projects on the priority list.

(2) Small Communities Reserve

(a) Each fiscal year, 15 percent of the total available SRF will be set aside for loans to small communities. However, if preliminary applications from small communities representing 15 percent of the available SRF are not received, these funds may be allocated to other public agencies;

(b) Funds from the Small Communities Reserve will be offered to those public agencies where the project is identified to be covered under OAR 340-54-015(7);

(c) If a public agency has applied for State Revolving Fund financing, the project will be included on the intended use plan;

(d) If a public agency has not applied for State Revolving Fund financing, the project will be bypassed per OAR 340-54-085 and the next lower ranked project will be offered State Revolving Fund funding.

(e) If funds remain in the reserve after all available projects eligible under OAR 340-54-090(2)(a) have been offered funds,

the remaining funds can be used for other types of projects on the priority list.

(3) Loan amounts. In any fiscal year, no public agency on the priority list may receive more than 25 percent of the total available SRF. However, if the SRF funds are not otherwise allocated, a public agency may apply for more than 25 percent of the available SRF, not to exceed the funds available in the SRF.

for each such class. The fee for the issuance of certificates shall be established by the commission in an amount based upon the costs of administering this program established in the current biennial budget. The fee for a certificate shall not exceed $10.

(2) The department shall collect the fees established pursuant to paragraph (b) of subsection (1) of this section at the time of the issuance of certificates of compliance as required by ORS 468.390 (2)(c).

(3) On or before the 15th day of each month, the commission shall pay into the State Treasury all moneys received as fees pursuant to subsections (1) and (2) of this section during the preceding calendar month. The State Treasurer shall credit such money to the Department of Environmental Quality Motor Vehicle Pollution Account, which is hereby created. The moneys in the Department of Environmental Quality Motor Vehicle Pollution Account are continuously appropriated to the department to be used by the department solely or in conjunction with other state agencies and local units of government for:

(a) Any expenses incurred by the department and, if approved by the Governor, any expenses incurred by the Motor Vehicles Division of the Department of Transportation in the certification, examination, inspection or licensing of persons, equipment, apparatus or methods in accordance with the provisions of ORS 468.390 and 815.310.

(b) Such other expenses as are necessary to study traffic patterns and to inspect, regulate and control the emission of pollutants from motor vehicles in this state.

(4) The department may enter into an agreement with the Motor Vehicles Division of the Department of Transportation to collect the licensing and renewal fees described in paragraph (a) of subsection (1) of this section subject to the fees being paid and credited as provided in subsection (3) of this section. [Formerly 449.965; 1974 s.s. c.73 §5; 1975 c.535 §3; 1977 c.704 §10; 1981 c.294 §1; 1983 c.338 §936]

468.410 Authority to limit motor vehicle operation and traffic. The commission and regional air pollution control authorities organized pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter by rule may regulate, limit, control or prohibit motor vehicle operation and traffic as necessary for the control of air pollution which presents an imminent and substantial endangerment to the health of persons. [Formerly 449.747]

468.415 Administration and enforcement of rules adopted under ORS 468.410. Cities, counties, municipal corporations and other agencies, including the Department of State Police and the Highway Division, shall cooperate with the commission and regional air pollution control authorities in the administration and enforcement of the terms of any rule adopted pursuant to ORS 468.410. [Formerly 449.751]

468.420 Police enforcement. The Oregon State Police, the county sheriff and municipal police are authorized to use such reasonable force as is required in the enforcement of any rule adopted pursuant to ORS 468.410 and may take such reasonable steps as are required to assure compliance therewith, including but not limited to:

(1) Locating appropriate signs and signals for detouring, prohibiting and stopping motor vehicle traffic; and

(2) Issuing warnings or citations. [Formerly 449.753]

FINANCING TREATMENT WORKS

468.423 Definitions for ORS 468.423 to 468.440. As used in ORS 468.423 to 468.440:

(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 or the director's designee.

(4) "Fund" means the Water Pollution Control Revolving Fund established under ORS 468.427.

(5) "Public agency" means any state agency, incorporated city, county, sanitary authority, county service district, sanitary district, metropolitan service district or other special district authorized or required to construct water pollution control facilities.

(6) "Treatment works" means:

(a) The devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature, necessary to recycle or reuse water at the most economical cost over the estimated life of the works. "Treatment works" includes:

(A) Intercepting sewers, outfall sewers, sewage collection systems, pumping power and other equipment, and any appurtenance, exten-

sion, improvement, remodeling, addition or alteration to the equipment;

(B) Elements essential to provide a reliable recycled water supply including standby treatment units and clear well facilities; and

(C) Any other acquisitions that will be an integral part of the treatment process or used for ultimate disposal of residues resulting from such treatment, including but not limited to land used to store treated waste water in land treatment systems prior to land application.

(b) Any other method or system for preventing, abating, reducing, storing, treating, separating or disposing of municipal waste, storm water runoff, industrial waste or waste in combined storm water and sanitary sewer systems.

(c) Any other facility that the commission determines a public agency must construct or replace in order to abate or prevent surface or ground water pollution. [1987 c.648 §1]

Note: 468.423 to 468.440 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 468 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

468.425 Policy. It is declared to be the policy of this state:

(1) To aid and encourage public agencies required to provide treatment works for the control of water pollution in the transition from reliance on federal grants to local self-sufficiency by the use of fees paid by users of the treatment works;

(2) To accept and use any federal grant funds available to capitalize a perpetual revolving loan fund; and

(3) To assist public agencies in meeting treatment works' construction obligations in order to prevent or eliminate pollution of surface and ground water by making loans from a revolving loan fund at interest rates that are less than or equal to market interest rates. [1987 c.648 §2]

Note: See note under 468.423.

468.427 Water Pollution Control Revolving Fund; sources. (1) The Water Pollution Control Revolving Fund is established separate and distinct from the General Fund in the State Treasury. The moneys in the Water Pollution Control Revolving Fund are appropriated continuously to the department to be used for the purposes described in ORS 468.429.

(2) The Water Pollution Control Revolving Fund shall consist of:

(a) All capitalization grants provided by the Federal Government under the federal Water Quality Act of 1986;

(b) All state matching funds appropriated or authorized by the legislature;

(c) Any other revenues derived from gifts, grants or bequests pledged to the state for the purpose of providing financial assistance for water pollution control projects;

(d) All repayments of moneys borrowed from the fund;

(e) All interest payments made by borrowers from the fund; and

(f) Any other fee or charge levied in conjunction with administration of the fund.

(3) The State Treasurer may invest and reinvest moneys in the Water Pollution Control Revolving Fund in the manner provided by law. All earnings from such investment and reinvestment shall be credited to the Water Pollution Control Revolving Fund. [1987 c.648 §3]

Note: See note under 468.423.

468.429 Uses of revolving fund. (1) The Department of Environmental Quality shall use the moneys in the Water Pollution Control Revolving Fund to provide financial assistance:

(a) To public agencies for the construction or replacement of treatment works.

(b) For the implementation of a management program established under section 319 of the federal Water Quality Act of 1986 relating to the management of nonpoint sources of pollution.

(c) For development and implementation of a conservation and management plan under section 320 of the federal Water Quality Act of 1986 relating to the national estuary program.

(2) The department may also use the moneys in the Water Pollution Control Revolving Fund for the following purposes:

(a) To buy or refinance the treatment works' debt obligations of public agencies if such debt was incurred after March 7, 1985.

(b) To guarantee, or purchase insurance for, public agency obligations for treatment works' construction or replacement if the guarantee or insurance would improve credit market access or reduce interest rates, or to provide loans to a public agency for this purpose.

(c) To pay the expenses of the department in administering the Water Pollution Control Revolving Fund. [1987 c.648 §4]

Note: See note under 468.423.

468.430 [1983 c.218 §1; repealed by 1985 c.222 §6]

468.433 Duties of department. In administering the Water Pollution Control Revolving Fund, the department shall:

(1) Allocate funds for loans in accordance with a priority list adopted by rule by the commission.

(2) Use accounting, audit and fiscal procedures that conform to generally accepted government accounting standards.

(3) Prepare any reports required by the Federal Government as a condition to awarding federal capitalization grants. [1987 c.648 §5]

Note: See note under 468.423.

468.435 [1983 c.218 §2: repealed by 1985 c.222 §6]

468.437 Loan applications; eligibility; waiver; default remedy. (1) Any public agency desiring a loan from the Water Pollution Control Revolving Fund shall submit an application to the department on the form provided by the department. Each applicant shall demonstrate to the satisfaction of the State of Oregon bond counsel that the applicant has the legal authority to incur the debt. To the extent that a public agency relies on the authority granted by law or charter to issue revenue bonds pursuant to the Uniform Revenue Bonding Act, the department may waive the requirements for the findings required for a private negotiated sale and for the preliminary official statement.

(2) Any public agency receiving a loan from the Water Pollution Control Revolving Fund shall establish and maintain a dedicated source of revenue or other acceptable source of revenue for the repayment of the loan.

(3) If a public agency defaults on payments due to the Water Pollution Control Revolving Fund, the state may withhold any amounts otherwise due to the public agency and direct that such funds be applied to the indebtedness and deposited into the fund. [1987 c.648 §6]

Note: See note under 468.423.

468.440 Loan terms and interest rates; considerations. (1) The Environmental Quality Commission shall establish by rule policies for establishing loan terms and interest rates for loans made from the Water Pollution Control Revolving Fund that assure that the objectives of ORS 468.423 to 468.440 are met and that adequate funds are maintained in the Water Pollution Control Revolving Fund to meet future needs. In establishing the policy, the commission shall take into consideration at least the following factors:

(a) The capability of the project to enhance or protect water quality.

(b) The ability of a public agency to repay a loan.

(c) Current market rates of interest.

(d) The size of the community or district to be served by the treatment works.

(e) The type of project financed.

(f) The ability of the applicant to borrow elsewhere.

(2) The commission may establish an interest rate ranging from zero to the market rate. The term of a loan may be for any period not to exceed 20 years.

(3) The commission shall adopt by rule any procedures or standards necessary to carry out the provisions of ORS 468.423 to 468.440. [1987 c.648 §7]

Note: See note under 468.423.

Note: Section 8, chapter 648, Oregon Laws 1987, provides:

Sec. 8. Before awarding the first loan from the Water Pollution Control Revolving Fund, the Department of Environmental Quality shall submit an informational report to the Joint Committee on Ways and Means or, if during the interim between sessions of the Legislative Assembly, to the Emergency Board. The report shall describe the Water Pollution Control Revolving Fund program and set forth in detail the operating procedures of the program. [1987 c.648 §8]

FIELD BURNING REGULATION

468.450 Regulation of field burning on marginal days. (1) As used in this section:

(a) "Marginal conditions" means atmospheric conditions such that smoke and particulate matter escape into the upper atmosphere with some difficulty but not such that limited additional smoke and particulate matter would constitute a danger to the public health and safety.

(b) "Marginal day" means a day on which marginal conditions exist.

(2) In exercising its functions under ORS 476.380 and 478.960, the commission shall classify different types or combinations of atmospheric conditions as marginal conditions and shall specify the extent and types of burning that may be allowed under different combinations of atmospheric conditions. A schedule describing the types and extent of burning to be permitted on each type of marginal day shall be prepared and circulated to all public agencies responsible for providing information and issuing permits under ORS 476.380 and 478.960. The schedule shall give first priority to the burning of perennial grass seed crops used for grass seed production, second priority to annual grass seed crops used for grass seed production, third priority to grain crop burning, and fourth priority to all other

required to meet the requirements of paragraphs (1), (2), and (3) of subsection (d) of this section in order to receive such a grant.

(g) ALASKA NATIVE ORGANIZATIONS.—No provision of this Act shall be construed to—

(1) grant, enlarge, or diminish, or in any way affect the scope of the governmental authority, if any, of any Alaska Native organization, including any federally-recognized tribe, traditional Alaska Native council, or Native council organized pursuant to the Act of June 18, 1934 (48 Stat. 987), over lands or persons in Alaska;

(2) create or validate any assertion by such organization or any form of governmental authority over lands or persons in Alaska; or

(3) in any way affect any assertion that Indian country, as defined in section 1151 of title 18, United States Code, exists or does not exist in Alaska.

(h) DEFINITIONS.—For purposes of this section, the term—

(1) "Federal Indian reservation" means all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; and

(2) "Indian tribe" means any Indian tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation.

SHORT TITLE

SEC. [518.] *519.* This Act may be cited as the "Federal Water Pollution Control Act" (commonly referred to as the Clean Water Act).

TITLE VI—STATE WATER POLLUTION CONTROL REVOLVING FUNDS

SEC. 601. GRANTS TO STATES FOR ESTABLISHMENT OF REVOLVING FUNDS.

(a) GENERAL AUTHORITY.—Subject to the provisions of this title, the Administrator shall make capitalization grants to each State for the purpose of establishing a water pollution control revolving fund for providing assistance (1) for construction of treatment works (as defined in section 212 of this Act) which are publicly owned, (2) for implementing a management program under section 319, and (3) for developing and implementing a conservation and management plan under section 320.

(b) SCHEDULE OF GRANT PAYMENTS.—The Administrator and each State shall jointly establish a schedule of payments under which the Administrator will pay to the State the amount of each grant to be made to the State under this title. Such schedule shall be based on the State's intended use plan under section 606(c) of this Act, except that—

(1) such payments shall be made in quarterly installments, and

(2) such payments shall be made as expeditiously as possible, but in no event later than the earlier of—

72-355 O - 88 - 7

(A) 8 quarters after the date such funds were obligated by the State, or

(B) 12 quarters after the date such funds were allotted to the State.

SEC. 602. CAPITALIZATION GRANT AGREEMENTS.

(a) GENERAL RULE.—To receive a capitalization grant with funds made available under this title and section 205(m) of this Act, a State shall enter into an agreement with the Administrator which shall include but not be limited to the specifications set forth in subsection (b) of this section.

(b) SPECIFIC REQUIREMENTS.—The Administrator shall enter into an agreement under this section with a State only after the State has established to the satisfaction of the Administrator that—

(1) the State will accept grant payments with funds to be made available under this title and section 205(m) of this Act in accordance with a payment schedule established jointly by the Administrator under section 601(b) of this Act and will deposit all such payments in the water pollution control revolving fund established by the State in accordance with this title;

(2) the State will deposit in the fund from State moneys an amount equal to at least 20 percent of the total amount of all capitalization grants which will be made to the State with funds to be made available under this title and section 205(m) of this Act on or before the date on which each quarterly grant payment will be made to the State under this title;

(3) the State will enter into binding commitments to provide assistance in accordance with the requirements of this title in an amount equal to 120 percent of the amount of each such grant payment within 1 year after the receipt of such grant payment;

(4) all funds in the fund will be expended in an expeditious and timely manner;

(5) all funds in the fund as a result of capitalization grants under this title and section 205(m) of this Act will first be used to assure maintenance of progress, as determined by the Governor of the State, toward compliance with enforceable deadlines, goals, and requirements of this Act, including the municipal compliance deadline;

(6) treatment works eligible under section 603(c)(1) of this Act which will be constructed in whole or in part before fiscal year 1995 with funds directly made available by capitalization grants under this title and section 205(m) of this Act will meet the requirements of, or otherwise be treated (as determined by the Governor of the State) under sections 201(b), 201(g)(1), 201(g)(2), 201(g)(3), 201(g)(5), 201(g)(6), 201(n)(1), 201(o), 204(a)(1), 204(a)(2), 204(b)(1), 204(d)(2), 211, 218, 511(c)(1), and 513 of this Act in the same manner as treatment works constructed with assistance under title II of this Act;

(7) in addition to complying with the requirements of this title, the State will commit or expend each quarterly grant payment which it will receive under this title in accordance with laws and procedures applicable to the commitment or expenditure of revenues of the State;

(8) in carrying out the requirements of section 606 of this Act, the State will use accounting, audit, and fiscal procedures conforming to generally accepted government accounting standards;

(9) the State will require as a condition of making a loan or providing other assistance, as described in section 603(d) of this Act, from the fund that the recipient of such assistance will maintain project accounts in accordance with generally accepted government accounting standards; and

(10) the State will make annual reports to the Administrator on the actual use of funds in accordance with section 606(d) of this Act.

SEC. 603. WATER POLLUTION CONTROL REVOLVING LOAN FUNDS.

(a) REQUIREMENTS FOR OBLIGATION OF GRANT FUNDS.—Before a State may receive a capitalization grant with funds made available under this title and section 205(m) of this Act, the State shall first establish a water pollution control revolving fund which complies with the requirements of this section.

(b) ADMINISTRATION.—Each State water pollution control revolving fund shall be administered by an instrumentality of the State with such powers and limitations as may be required to operate such fund in accordance with the requirements and objectives of this Act.

(c) PROJECTS ELIGIBLE FOR ASSISTANCE.—The amounts of funds available to each State water pollution control revolving fund shall be used only for providing financial assistance (1) to any municipality, intermunicipal, interstate, or State agency for construction of publicly owned treatment works (as defined in section 212 of this Act), (2) for the implementation of a management program established under section 319 of this Act, and (3) for development and implementation of a conservation and management plan under section 320 of this Act. The fund shall be established, maintained, and credited with repayments, and the fund balance shall be available in perpetuity for providing such financial assistance.

(d) TYPES OF ASSISTANCE.—Except as otherwise limited by State law, a water pollution control revolving fund of a State under this section may be used only—

(1) to make loans, on the condition that—

(A) such loans are made at or below market interest rates, including interest free loans, at terms not to exceed 20 years;

(B) annual principal and interest payments will commence not later than 1 year after completion of any project and all loans will be fully amortized not later than 20 years after project completion;

(C) the recipient of a loan will establish a dedicated source of revenue for repayment of loans; and

(D) the fund will be credited with all payments of principal and interest on all loans;

(2) to buy or refinance the debt obligation of municipalities and intermunicipal and interstate agencies within the State at or below market rates, where such debt obligations were incurred after March 7, 1985;

(3) to guarantee, or purchase insurance for, local obligations where such action would improve credit market access or reduce interest rates;

(4) as a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the State if the proceeds of the sale of such bonds will be deposited in the fund;

(5) to provide loan guarantees for similar revolving funds established by municipalities or intermunicipal agencies;

(6) to earn interest on fund accounts; and

(7) for the reasonable costs of administering the fund and conducting activities under this title, except that such amounts shall not exceed 4 percent of all grant awards to such fund under this title.

(e) LIMITATION TO PREVENT DOUBLE BENEFITS.—If a State makes, from its water pollution revolving fund, a loan which will finance the cost of facility planning and the preparation of plans, specifications, and estimates for construction of publicly owned treatment works, the State shall ensure that if the recipient of such loan receives a grant under section 201(g) of this Act for construction of such treatment works and an allowance under section 201(l)(1) of this Act for non-Federal funds expended for such planning and preparation, such recipient will promptly repay such loan to the extent of such allowance.

(f) CONSISTENCY WITH PLANNING REQUIREMENTS.—A State may provide financial assistance from its water pollution control revolving fund only with respect to a project which is consistent with plans, if any, developed under sections 205(j), 208, 303(e), 319, and 320 of this Act.

(g) PRIORITY LIST REQUIREMENT.—The State may provide financial assistance from its water pollution control revolving fund only with respect to a project for construction of a treatment works described in subsection (c)(1) if such project is on the State's priority list under section 216 of this Act. Such assistance may be provided regardless of the rank of such project on such list.

(h) ELIGIBILITY OF NON-FEDERAL SHARE OF CONSTRUCTION GRANT PROJECTS.—A State water pollution control revolving fund may provide assistance (other than under subsection (d)(1) of this section) to a municipality or intermunicipal or interstate agency with respect to the non-Federal share of the costs of a treatment works project for which such municipality or agency is receiving assistance from the Administrator under any other authority only if such assistance is necessary to allow such project to proceed.

SEC. 604. ALLOTMENT OF FUNDS.

(a) FORMULA.—Sums authorized to be appropriated to carry out this section for each of fiscal years 1989 and 1990 shall be allotted by the Administrator in accordance with section 205(c) of this Act.

(b) RESERVATION OF FUNDS FOR PLANNING.—Each State shall reserve each fiscal year 1 percent of the sums allotted to such State under this section for such fiscal year, or $100,000, whichever amount is greater, to carry out planning under sections 205(j) and 303(e) of this Act.

(c) ALLOTMENT PERIOD.—

(1) PERIOD OF AVAILABILITY FOR GRANT AWARD.—Sums allotted to a State under this section for a fiscal year shall be available for obligation by the State during the fiscal year for which sums are authorized and during the following fiscal year.

(2) REALLOTMENT OF UNOBLIGATED FUNDS.—The amount of any allotment not obligated by the State by the last day of the 2-year period of availability established by paragraph (1) shall be immediately reallotted by the Administrator on the basis of the same ratio as is applicable to sums allotted under title II of this Act for the second fiscal year of such 2-year period. None of the funds reallotted by the Administrator shall be reallotted to any State which has not obligated all sums allotted to such State in the first fiscal year of such 2-year period.

SEC. 605. CORRECTIVE ACTION.

(a) NOTIFICATION OF NONCOMPLIANCE.—If the Administrator determines that a State has not complied with its agreement with the Administrator under section 602 of this Act or any other requirement of this title, the Administrator shall notify the State of such noncompliance and the necessary corrective action.

(b) WITHHOLDING OF PAYMENTS.—If a State does not take corrective action within 60 days after the date a State receives notification of such action under subsection (a), the Administrator shall withhold additional payments to the State until the Administrator is satisfied that the State has taken the necessary corrective action.

(c) REALLOTMENT OF WITHHELD PAYMENTS.—If the Administrator is not satisfied that adequate corrective actions have been taken by the State within 12 months after the State is notified of such actions under subsection (a), the payments withheld from the State by the Administrator under subsection (b) shall be made available for reallotment in accordance with the most recent formula for allotment of funds under this title.

SEC. 606. AUDITS, REPORTS, AND FISCAL CONTROLS; INTENDED USE PLAN.

(a) FISCAL CONTROL AND AUDITING PROCEDURES.—Each State electing to establish a water pollution control revolving fund under this title shall establish fiscal controls and accounting procedures sufficient to assure proper accounting during appropriate accounting periods for—

(1) payments received by the fund;

(2) disbursements made by the fund; and

(3) fund balances at the beginning and end of the accounting period.

(b) ANNUAL FEDERAL AUDITS.—The Administrator shall, at least on an annual basis, conduct or require each State to have independently conducted reviews and audits as may be deemed necessary or appropriate by the Administrator to carry out the objectives of this section. Audits of the use of funds deposited in the water pollution revolving fund established by such State shall be conducted in accordance with the auditing procedures of the General Accounting Office, including chapter 75 of title 31, United States Code.

(c) INTENDED USE PLAN.—After providing for public comment and review, each State shall annually prepare a plan identifying the intended uses of the amounts available to its water pollution control

revolving fund. Such intended use plan shall include, but not be limited to—

(1) a list of those projects for construction of publicly owned treatment works on the State's priority list developed pursuant to section 216 of this Act and a list of activities eligible for assistance under sections 319 and 320 of this Act;

(2) a description of the short- and long-term goals and objectives of its water pollution control revolving fund;

(3) information on the activities to be supported, including a description of project categories, discharge requirements under titles III and IV of this Act, terms of financial assistance, and communities served;

(4) assurances and specific proposals for meeting the requirements of paragraphs (3), (4), (5), and (6) of section 602(b) of this Act; and

(5) the criteria and method established for the distribution of funds.

(d) ANNUAL REPORT.—Beginning the first fiscal year after the receipt of payments under this title, the State shall provide an annual report to the Administrator describing how the State has met the goals and objectives for the previous fiscal year as identified in the plan prepared for the previous fiscal year pursuant to subsection (c), including identification of loan recipients, loan amounts, and loan terms and similar details on other forms of financial assistance provided from the water pollution control revolving fund.

(e) ANNUAL FEDERAL OVERSIGHT REVIEW.—The Administrator shall conduct an annual oversight review of each State plan prepared under subsection (c), each State report prepared under subsection (d), and other such materials as are considered necessary and appropriate in carrying out the purposes of this title. After reasonable notice by the Administrator to the State or the recipient of a loan from a water pollution control revolving fund, the State or loan recipient shall make available to the Administrator such records as the Administrator reasonably requires to review and determine compliance with this title.

(f) APPLICABILITY OF TITLE II PROVISIONS.—Except to the extent provided in this title, the provisions of title II shall not apply to grants under this title.

SEC. 607. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out the purposes of this title the following sums:

(1) $1,200,000,000 per fiscal year for each of fiscal years 1989 and 1990;

(2) $2,400,000,000 for fiscal year 1991;

(3) $1,800,000,000 for fiscal year 1992;

(4) $1,200,000,000 for fiscal year 1993; and

(5) $600,000,000 for fiscal year 1994.

NOTE

The following provisions of Public Law 96–483 do not amend the Clean Water Act:

Agenda Item E, December 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 a rule.

Legal Authority:

ORS 468.423 to 468.440 gives authority for establishment of the State Revolving Fund. ORS 468.440 gives the Commission the authority to adopt rules to carry out ORS 468.423 to 468.440.

Need for the Rule:

The State Revolving Fund rules are needed to identify projects eligible for loans, to outline application procedures, to establish loan terms, to describe the SRF priority system and to implement federal requirements.

Fiscal and Economic Impact:

The State Revolving Fund Program replaces the Construction Grants Program which is being eliminated by the federal government. Under the proposed rule, a new loan program would be established which would allow the planning, design and construction of water pollution control facilities. The cost to local governments may be slightly higher than under the Grant Program since the loans must be paid.

The overall impact of the rules should be beneficial to small businesses since it will fund new projects.

Land Use Consistency:

The proposal described appears to be consistent with all statewide planning goals. Specifically, the rules comply with Goal 6 because they would provide loans for water pollution control facilities, thereby contributing to the protection of water quality. The rules comply with Goal 11 because they assist communities in financing needed sewage collection and treatment facilities.

Public comment on this proposal is invited and may be submitted in the manner described in the accompanying Public Notice of Rules Adoption.

It is requested that local, state and federal agencies review the proposal and comment on possible conflicts with their programs affecting land use and with statewide planning goals within their jurisdiction. The Department of Environmental Quality intends to ask the Department of Land Conservation and Development to mediate any apparent conflicts thereby brought to its attention.

After public ... ng, the Commission may adopt permanent rules identical to the proposal, adopt modified rules on the same subject matter, or decline to act. The Commission's deliberation should come on March 3, 1989 as part of the agenda of a regularly scheduled Commission meeting.

MC:crw
WC4055
November 7, 1988

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

State Revolving Fund Rules Public Hearings

Date Prepared: 12/16/88
Notice Issued: 1/1/89
Comments Due: 2/1/89

WHO IS THE APPLICANT

Adoption of the rules will affect communities financing water pollution control facilities

WHAT IS PROPOSED:

The DEQ proposes to adopt OAR 340 Division 54 to implement the State Revolving Fund (SRF) program (ORS 468.423 to .440). This program would provide loans for planning, design and construction of sewage collection and treatment facilities, nonpoint source water pollution control projects and estuary protection projects. The rules describe the loan application process, loan terms, and the loan review process. The SRF Program replaces the Construction Grants program which is being phased out by the federal government.

WHAT ARE THE HIGHLIGHTS:

Adoption of the rules would establish a loan program with an interest rate of 0% for all loans repaid in 5 years or less and 3% for all loans repaid in more than 5 years and less than 20 years.

Adoption of the rules would establish eligibility for projects needed to prevent or eliminate water pollution from existing development.

Adoption of the rules would establish a priority list to rank eligible projects.

HOW TO COMMENT:

Copies of the proposed rules can be obtained from:

Karen D'Eagle
Department of Environmental Quality
Water Quality Division
811 S.W. Sixth Avenue
Portland, OR 97204 Telephone: 229-5705

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

11/1/86

FOR FURTHER INFORMATION:

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

Written comments should be sent to the same address by February 1, 1989. Verbal comments may be given during the public hearing scheduled as follows:

2:30 p.m.
January 25, 1989
Room 4A -- 4th Floor
811 S.W. Sixth Avenue
Portland, OR

WHAT IS THE NEXT STEP: After the public hearing, the Environmental Quality Commission may adopt rules identical to those proposed, modify the rules or decline to act. The Commission's deliberations should come on March 3, 1989 as part of the agenda of a regularly scheduled Commission meeting.

ATTACHMENTS:
Statement of Need for Rules (including Fiscal Impact)
Statement of Land Use Consistency

TITLE II REQUIREMENTS

Treatment works constructed with funds directly from federal SRF capitalization grants will meet the following requirements of Title II of the Clean Water Act. After the federal dollars are loaned twice, the following requirements will not apply.

(a) Section 201(b) requires that projects apply best practicable waste treatment technology.

(b) Section 201(g)(1) limits assistance to projects for secondary or more stringent treatment, or any cost-effective alternative thereto; new interceptors and appurtenances; and, infiltration/inflow correction. This subsection also has a provision that state governors may reserve 20% of the state's allotment for projects which meet the definition of treatment works found in section 212(2), but are otherwise not eligible for assistance under this subsection. The governor's reserve is intended to apply to funds made available under this title.

(c) Section 201(g)(2) requires that alternative waste treatment techniques be considered in project design.

(d) Section 201(g)(3) requires the applicant to show that the related sewer collection system is not subject to excessive infiltration.

(e) Section 201(g)(5) requires that applicants study innovative and alternative treatment technologies and take into account opportunities to make more efficient use of energy and resources.

(f) Section 201(g)(6) requires the applicant to analyze recreational and open space opportunities in the planning of the proposed project.

(g) Section 201(n)(1) provides that funds under section 205 may be used to address water quality problems due to discharges of combined stormwater and sanitary sewage overflows, which are not otherwise eligible, if such discharges are a major priority in the state.

(h) Section 201(o) calls on the Administrator to encourage and assist communities in the development of capital financing plans.

(i) Section 204(a)(1) and (2) require that treatment works projects be included in plans developed under section 208 and 303(e).

(j) Section 204(b)(I) requires communities to develop user charge systems and have the legal, institutional, managerial, and financial capabilities to construction, operate, and maintain the treatment works.

(k) Section 204(d)(2) requires that, one year after the date of start-up, the owner/operator of the treatment works must certify that the facility meets design specifications and new effluent limitations included in its permit.

(l) Section 211 provides that collectors are not eligible unless the collector is needed to assure the total integrity of the treatment works or that adequate capacity exists at the treatment facility.

(m) Section 218 requires an assurance that treatment systems are cost effective and those projects exceeding $10M include a value-engineering review.

(n) Section 511(c)(1) applies the National Environmental Policy Act to treatment works projects.

(o) Section 513 applies Davis-Bacon labor wage provisions to treatment works construction.

MC:crw
WC4057
November 7, 1988

MEMBERS - STATE REVOLVING FUND TASK FORCE

Chairperson
Linda Swearingen, Mayor (549-6022)
P.O. Box 37
Sisters, OR 97759

B.J. Smith, Senior Staff Associate (588-6550)
League of Oregon Cities
Box 928
Salem, OR 97308

Bob Rieck, Manager, Systems Management Branch (796-7133)
Bureau of Environmental Services
1120 S.W. Fifth Avenue, Room 400
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Gordon Merseth, Manager, Wastewater Systems Dept. (224-9190)
CH2M HILL
2000 Fourth Avenue, Second Floor
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Pat Curran, President, Curran-McLeod (684-3478)
Consulting Engineers
7460 S.W. Hunziker Road
Portland, OR 97223

Gary Krahmer, Administrator, Unified Sewerage Agency (648-8621)
150 N. First Avenue, Room 302
Hillsboror, OR 97123

Terry Smith, Deputy Director, Public Works (687-5074)
City of Eugene
858 Pearl Street
Eugene, OR 97401

Jeff Towery, Mgr-Pro-Tem (269-1181)
City of Coos Bay
500 Central
Coos Bay, OR 97420

Jonathan Jalali, Finance Director (770-4487)
411 W. 8th Street
Medford, OR 97501

David Abraham, Director, Department of Utilities (655-8521)
Clackamas County
902 Abernethy Road
Oregon City, OR 97045

Uses for SRF Money - Other than for Direct Loans

Under the Title VI of the Clean Water Act, the SRF may be used to provide the following types of financing in addition to loans.

1. Bond Guarantee. State can pledge money to guarantee bonds issued by local governments thereby enabling the local government to get a better bond rating. The guarantee provides municipal bond holders with a guarantee of full and timely payment of principal and interest on the obligation to the limit of the guarantee, in the event of default by the municipality.

2. Loan Guarantee. State can pledge money to guarantee loans from other sources to local governments. By doing this, communities could get lower interest rates and/or be able to provide security to get the loan.

3. Loan Guarantees of Sub-State Revolving Funds. State can pledge money to guarantee similar revolving funds established by municipal or intermunicipal agencies.

4. Bond Bank. The state can act as a bond bank and buy bonds issued by local governments.

5. Insurance for Local Debt Obligations. SRF funds can be used to purchase bond insurance to guarantee debt service payment.

6. Refinancing Existing Debt Obligation. An SRF may buy or refinance local debt obligations (e.g., retire existing municipal bonds to reduce the interest rate or extend the maturity date or both) at or below market rates, where the initial debt was incurred after March 7, 1985.

7. Security for State Match. The state can use the funds in the SRF as security for the issuance of state bonds used to provide state match.

8. Security for State Bonds. SRF funds may be used as a source of revenue or security for the payment of principal and interest on revenue bonds or general obligation bonds issued by the state if the "net proceeds" of the sale of such bonds are deposited in the SRF.

WJ632

PROJECT ELIGIBILITY UNDER FEDERAL AND OREGON GRANT AND SRF FUNDING

	Allowed Under Current Federal Grant Regulations	Allowed Under Current State Grant Regulations	Allowed Under Federal SRF Legislation	Allowed Under Proposed Oregon SRF Legislation
Facilities Plans	Yes	Yes	Yes	Yes
Secondary Treatment Facilities	Yes	Yes	Yes	Yes
Advanced Waste Treatment Facilities	Yes	No	Yes	Yes (If required to meet DEQ Standards)
Reserve Capacity	No	No	Yes	Yes (20 Years for Treatment & Disposal Facility (50 Years for Collection Systems)
Sludge Disposal and Management	Yes	Yes	Yes	Yes
Interceptors	Yes	Yes	Yes	Yes
Infiltration/Inflow Correction	Yes	Yes	Yes	Yes
Major Sewer Replacement and Rehabilitation	Yes[1]	Yes (If Cost Effective & I/I Related)	Yes	Yes[2] (If Part of an I/I Project)
Combined Sewer Overflow Correction	Yes[1]	No	Yes	Yes[2] (If Required to Protect Sensitive Estuaries, to Comply with DEQ WQ Standards, or Required by DEQ Permit)
Collector Sewers	Yes[1]	No	Yes	Yes[2] (If Required for Groundwater Quality or Documented Health Problems)
Stormwater Management	Yes	No	Yes	Yes[2] (If Cost Effective Solution for I/I Correction)
Estuary Management	No	No	Yes	Yes (If Needed to Protect Sensitive Estuaries and Project is Publicly Owned)
Nonpoint Source Control	No[3]	No	Yes	Yes (If Required to Meet DEQ WQ Standards and is Cost Effective Alternative to Advanced Waste Treatment)

[1] Limited to 20 percent of the annual construction grant allotment.

[2] Limited to 33 percent of the SRF fund.

3 Nonpoint source planning received an 1 percent set aside from the annual construction grants appropriation, for use by the Department. No grants, however, are issued to public agencies.

Comparison of

Cost of Funding Projects

Under Grants and Loans

Project Cost	With 55% Construction Grant & Bond at 8.5% for 20 yrs	With 100% SRF Loan at 3% for 20 yrs	With 100% SRF Loan At 0% for 5 yrs
$ 500,000	475,519	672,157	500,000
$ 1,000,000	951,038	1,344,314	1,000,000
$ 5,000,000	4,755,194	6,721,570	5,000,000
$ 10,000,000	9,510,387	13,443,141	10,000,000

WC4086

PRIORITY LIST EXPLANATION

This attachment covers the rational for how the priority list will be established for the State Revolving Fund.

Section 340-54-065 established the requirement that a priority list must be developed annually for the State Revolving Fund. The section establishes a 30 day comment and review period, identifies who the list will be distributed to, and describes the appeal process for a public agency to have a problem reevaluated on the list. The section gives the Director the authority to approve an official list unless an appeal is filed for the Commission to make a final determination.

Section 340-54-070 establishes the ranking system for the State Revolving Fund priority list. The ranking system is a modification of the Construction grants priority ranking system. The modifications were made to simplify the system, remove the two tier priority ranking, and to facilitate administration. The system's emphasis was changed from a water quality pollution and project evaluation to a system based much more on water quality pollution related problems.

The ranking system is made up of three emphasis groups as follows:

1. The Water Quality Pollution Problem category prioritizes documented water quality pollution problems or specific actions taken by regulatory authorities to correct a pollution problem. Points are assigned based on the most significant action and are not cumulative.

   This category replaces the "Letter Class" of the Construction Grants Priority System. It allows easier determination of how a problem is ranked and should reduce the potential for disagreements on the appropriate ranking of a problem.

2. The Population Emphasis category assigns points based on a formula which allows a more densely populated area to gain additional points. The justification for allowing points based on population is to acknowledge that high population densities pose a greater potential for occurrence of water quality pollution problems than those with lower densities.

   The formula is unchanged from that used in the Construction Grants' priority system. Under this system, 4 points will be assigned to a town of 100 people and a city the size of Portland, with a population of about 400,000, would receive 11.2 points. The population emphasis points will also act as a tie breaker for the priority list by allowing the community with the larger population benefited to receive funding first.

3. The Receiving Waterbody Sensitivity Emphasis category is used to identify those waterbodies where pollution could have a severe effect on the receiving waters.

   a. The stream sensitivity points are based on a formula that takes into consideration the concentration of the effluent from existing treatment facilities being discharged to the stream and the dilution ratio of the effluent. The maximum points allowed are 50, but the formula is such that, as the pollution problem becomes more severe, points are assigned at an increasing rate. If surface waters are being contaminated by on-site system failures or nonpoint problems, 50 points are assigned. A total of 25 points are assigned for potential surface water problems associated with on-site system failures and nonpoint problems.

   b. Groundwater sensitivity is rated high in this management system because once groundwater is polluted it remains polluted much longer and is much more difficult to clean up than surface waters.

   c. Discharges to lakes and reservoirs are assigned 50 points because the Department has regulations prohibiting such discharges to them.

   d. Discharges to estuaries are also assigned 50 points because of the detrimental effects pollution can have on the aquatic life of an estuary.

   e. Guidelines for ocean outfalls are being developed. In the interim, 25 points have been assigned to this activity.

   The points assigned for each of the above categories are then added together to give the final priority points for the rank ordering of the water quality pollution problems. Under the Construction Grant priority system, the letter class was given precedence in the rank ordering of projects with priority points differentiating between projects within a letter class. This resulted in a two tier priority system which confused many public agencies. The proposed system should simplify the procedure and make it more understandable.

Sections 340-54-075 through 340-54-090 deal with reserve management, priority list modification, and priority list bypass procedures. The rules allow the Department to remove or bypass projects on the priority list in order to utilize all available funds in a given year. An appeal process has also been established to allow an affected party to request that a final determination be made by the Commission on the priority ranking of a problem.

METHODS FOR SETTING INTEREST RATES ACCORDING TO LOCAL ABILITY TO PAY

The State Revolving Fund Task Force discussed several potential methods for establishing loan interest rates based on the amount a local community can afford to pay. These methods are discussed below, along with the reasons for their rejection by the task force.

1. **Interest Rates Related to Average User Fees.** The use of average user fees as an indicator of the amount of interest the community can afford to pay is a technique used by the Farmers Home Administration and Utah's SRF.

   In Utah, the interest rates are varies so the user charges are kept down to 1½% of Median Household Income as determined by the U.S. Census Bureau. User charges are determined by looking at many factors including the cost to the user of paying for debt-service, operation and maintenance cost, and the number of households served. It is not possible for the municipality to know what interest rate it will pay or exactly what user charges will be until after applying for the loan. The only guarantee is that user charges will not be more than 1½% of the Median Household Income or less than the average sewer user rate for Utah. If it is not possible to keep the user charge below 1½% of Median Household Income even at 0% interest, Utah hopes to be able to provide grants to supplement the SRF loan. At this time, Oregon does not have funds available to provide grants to supplement the SRF loans. This approach might, therefore, not be as successful in Oregon.

2. **Affordability Based on Income.** The following information was prepared for the task force by Dan Anderson of the Oregon Bank:

   A simplified method would adjust periodic loan payment amounts ("affordability") to reflect ability to pay as measured by some agreed upon statistic. Payment amounts would, in turn, be adjusted by changing the term and interest rate of the loan. For example, suppose DEQ desires to offer five levels of affordability as expressed by five different annual payment amounts per $100 borrowed. The resulting relationship might look like this:

Affordability Category	Payment in $/year per $100 borrowed	(------Sample------) Term	Rate
1	$25	5.4 yrs	10.0%
2	20	7.3	10.0
3	15	11.5	10.0
4	10	26.7	9.0
5	5	52.3	4.5

Measures of Ability to Pay

Median Household Income data is collected by the US Census Bureau and is used as a community-wide ability to pay indicator. Two problems exist with this measure. First, the available data are vary stale with the most recent data being collected in 1979. This "stale data" problem is especially acute in communities which were economically robust in the late 1970s but which have made only a limited recovery from the recession of the early 1980s.

The second problem concerns median data as a measure. A median is that value which divides a count of observations in half for the selected characteristic being observed in a population. Note how the following two hypothetical communities have identical median incomes but very different average incomes (and hence abilities to pay). Both communities have 100 households.

The Median as a Deceptive Indicator of Ability to Pay

Number of Households at Different Income Levels

	$19,000	$21,000	$30,000	Median	Average
Community 1	50	50	0	$19,000	$20,000
Community 2	50	0	50	$19,000	$24,500

Adjusted Gross Income (AGI) data from Oregon personal income tax returns is compiled by the Oregon Department of Revenue. The Department sorts AGI data into 36 separate dollar amount categories and generates report by county, summarizing the number of filers per category. Data is currently available on a one tax year lag basis. The Department indicates that the database could (at a cost) be sorted to provide similar data sorted by ZIP code. Such a sort would provide relatively precise, current information about a community's income distribution and ability to pay.

If income distribution were expressed in percent by fractile terms and the resulting values weighted and summed, the resulting score could be used to classify a community's ability to pay with some precision. Consider the following hypothetical example of this process:

Step 1: Compute Community Weighted Income Score

(----AGI Range----)	% Filers in this Range	Range Weight	Weight x %
Less than $10,000	5	25	125
10,001 - 20,000	25	20	500
20,001 - 30,000	35	15	525
30,001 - 40,000	20	5	100
More than 40,000	15	0	-0-
Weighted Income Score			1,250

Step 2: Link Community Weighted Income Score to Affordability

If Your Community's Weighted Income Score Is	Your Affordability Category Is	And Your Annual Cost per $100 Loaned Is
Under 750	5	$ 5
750 - 1250	4	10
1251 - 1750	3	15
1751 - 2250	2	20
Over 2250	1	25

Our hypothetical community has a weighted income score of 1,250, making it an affordability category 4 community and providing it with revolving loan funds at $10 per year per $100 borrowed.

Per capita wealth as captured by the assessed value of real property in the community might also be used to rank communities by their ability to pay. The Department of Revenue annually produces a publication titled "Oregon Property Tax Statistics" which lists total assessed value by community around the state. If these values are divided by community population, a per capita assessed value figure results. These values could be sorted into ranges and used much like the weighted community income scores above. A few sample per capita assessed value figures include:

Community	Per Cap AV in $000s
Elgin	$12
Toledo	34
Albany	23
Ashland	28

The existing tax burden as captured in a community's consolidated tax rate per $1,000 assessed valuation might also be used. As revolving fund loans will likely be repaid from governmental charges or taxes, one could argue that the loans are least affordable in communities where tax rates are already high. The Department of Revenue publication which provides assessed valuation data (see above) also contains tax rate data. The tax rates could be sorted into ranges and used as previously suggested. A few sample consolidated tax rates per $1,000 assessed value are:

Community	Consolidated Tax Rate
Elgin	$30.73
Toledo	23.54
Albany	25.84
Ashland	17.83

After reviewing these methods of relating interest rates directly or indirectly to income, the task force concluded that income levels alone are inadequate for determining interest rates affordable to the local community. Instead, a more balanced approach, analyzing a variety of local financial and economic criteria was necessary.

3. **An Affordability Rating Based on Many Factors.** The task force determined that this approach would provide the greatest equitability. Unfortunately, it is also the most complicated and costly technique to implement.

   One option is to perform the rating only for communities interested in receiving loans in a given year. This would be the least costly, however, it would also provide the least notice to communities ahead of time as to what interest rate to expect. The result might be that communities would not apply if they could not be told beforehand what the interest rate might be. Also, communities which initially applied for loans might be more likely to withdraw after receiving notice of the interest rate.

   The rating could alternatively be done annually for all communities in the state and an index developed indicating the interest rate each jurisdiction can expect to pay based on affordability.

The follo ng index is used by the Tennessee SRF:

Index Points	Interest Rate
151 & over	Market Rate (for municipal bonds as listed in the Bond Buyer)
141 - 150	9/10 Market Rate
131 - 140	8/10 Market Rate
121 - 130	7/10 Market Rate
111 - 120	6/10 Market Rate
101 - 110	5/10 Market Rate
91 - 100	4/10 Market Rate
81 - 90	3/10 Market Rate
71 - 80	2/10 Market Rate
61 - 70	1/10 Market Rate
Below 60	0% Interest

To develop and maintain this type of index, DEQ would need to hire a consultant or state university. The results could be quite costly.

SUMMARY

After analyzing the above alternatives, the task force decided that it would be best, initially, to have a low fixed interest rate. Later, the effectiveness of this approach should be reanalyzed and other alternatives considered, if necessary.

RESOLUTION

THE STATE REVOLVING FUND TASK FORCE RECOMMENDS TO DEPARTMENT OF ENVIRONMENTAL QUALITY DIRECTOR FRED HANSEN THAT PRIORITY MANAGEMENT SYSTEM RULES FOR LOAN PROJECT ELIGIBILITY BE PREPARED AS FOLLOWS:

A. Water Quality Based Program. The Department should continue a water quality based program for State Revolving Fund project loans. Project letter class codes (A-E), described in OAR 340-53 and based on associated severity of water quality problems should be retained to establish rank/order of projects.

B. Priority List/Intended Use Plan. The Department should continue to prepare an annual project priority list which establishes rank/order for projects. The annual Intended Use Plan submitted to the U.S. Environmental Protection Agency (basis for federal capitalization grants and subsequent project loans) should be based on rank/order established in the project priority list. Projects can be bypassed for funding only after required bypass procedures described in OAR 340-53 are satisfied.

C. Cost Effective Restriction. Projects not considered by the Department to be cost effective over time should not be funded.

D. Growth. Projects solely for growth, i.e., no associated water quality problems, should not be eligible for loans.

E. Maximum Loan Amount/Small Community Reserve. No project included on the priority list should receive more than 25 percent of the state's allotment in any given funding year unless all of the funds are not otherwise allocated. There should be 15% set aside for small cities for each year unless the funds can not be committed.

F. Percent Eligible. One hundred percent of eligible project components should be eligible for loan funds.

G. Reserve Capacity. Reserve capacity should be eligible for loan funds; however, eligibility should be restricted to twenty year limits on treatment works and fifty year limits on sewer lines.

H. Eligible Project Components

1. Secondary treatment plant and outfalls.
2. Sludge disposal and management.
3. Interceptors and associated force mains and pumping stations.
4. Infiltration/inflow correction of public sewers.
5. Major sewer replacement and rehabilitation.
6. Advanced waste treatment if required to meet EQC mandates.
7. Combined sewer overflow correction if required to meet EQC mandates.

8. Collection systems if required to alleviate documented groundwater quality problems.
9. Stormwater control if project is a cost effective solution for infiltration/inflow correction to sanitary sewer lines and required by DEQ.
10. Nonpoint source control if required to meet EQC mandates and if the project is a cost effective alternative to advanced waste treatment.

Linda Swearingen

Linda Swearingen, Chair

May 27, 1988

WJ568

SUPPLEMENTAL DEPARTMENT REPORT

SIX STATUTORY FACTORS EQC MUST CONSIDER

Background

In 1987, the Clean Water Act was amended to phase out the Construction Grants Program and replace it with the State Revolving Fund (SRF)(Attachment C). The Construction Grants Program has provided grants for sewage treatment facility planning design and operation since 1972. Under the SRF, the federal government will offer capitalization grants through 1994 in order to allow each state to establish a SRF. (See Work Session Agenda Item 2, Transition Strategy From Grants to Loans, for additional background.)

In 1987, the Oregon legislature adopted legislation (ORS 468.423 - 468.440, Attachment B)) authorizing development of a State Revolving Fund Program. The purpose of the program is to provide an ongoing source of financing for planning, design and construction of water pollution control facilities. In order to implement the State Revolving Fund legislation and to comply with federal SRF legislation, the Department is proposing adoption of the attached rules (Attachment A).

Issues, Alternatives, and Evaluation

Under state statutory requirements, the Environmental Quality Commission is required to "establish by rule, policies for establishing loan terms and interest rates" (ORS 468.440). In establishing the policy, the Commission must consider the following factors:

1. The capability of the project to enhance or protect water quality. There are more water quality problems in Oregon than there are funds available to address them as demonstrated by the Oregon Sewage Facilities Needs Survey and a study currently under way to identify state sewage facilities needs and how they should be financed. It was therefore determined that in order to provide funding for the most urgent water quality needs in the state, funding should only be available to projects with associated water quality problems. Under the priority system in the proposed rules, funds would be available for existing problems as well as potential water quality problems; higher priority, however, would be given to projects with existing problems. Projects needed for proposed growth would not be ranked and would

therefore be ineligible for funding. The priority system considers the capability and need for the project to enhance or protect water quality by providing a higher ranking for projects with greater water quality impacts as reflected by DEQ or EQC enforcement actions, regulatory standards, health hazards, population size and waterbody sensitivity to pollution (OAR 340-54-070(1)(a),(b) & (c), pp. A-21 - A-23).

One alternative would be to make water pollution control projects for current and future development eligible and to give those projects with existing needs a higher rating than others. This approach might be beneficial if an inadequate number of projects to address documented water quality problems request funding in a given year. The Department has determined, however, that, with proper planning and analysis, there should be an adequate number of projects with documented problems.

There could be several alternatives to a water quality based priority management system. For example, a system could be based on project "ready to proceed" dates. Although this is a very convenient system to administer, it might fail to address high priority problems. Another alternative would be a system based on potential water quality problems rather than existing problems. This system is preferred by some states and amounts to an economic development project list.

In preparing a water quality based system, different combinations of categories and points could be used. The system proposed by the Department is easy to understand and administer (Attachment K). The system would be effective in so far as it gives substantial weight to serious pollution problems affecting receiving waterbodies. An alternative to the Department establishing the official list is to continue the current grants priority system of requesting Commission approval of the list. However, it is believed that Department approval, combined with the affected party's ability to appeal decisions to the Commission, will result in a fairly administered priority management system.

2. The ability of a public agency to repay a loan. In developing the rules, the Department weighed the value of requiring communities to provide a substantial amount of security to assure loan repayment against the value of requiring a minimal amount of security, such as dedicated user fees, to encourage communities to borrow SRF funds. The Department believes the rules provide a middle ground where a reasonable amount of security is required which is within the means of most communities.

The rules require loans to be in the form of a general obligation bond, a revenue bond, a revenue secured loan or a discretionary loan (OAR 340-54-060, pp. A-17).

Loans in the form of bonds would allow the Department would purchase the bonds from the local government. The bonds provide security that the repayment will be made from taxes or user fees.

The Revenue Secured Loan would require a dedicated source of revenue, such as user fees plus a letter of credit for one year of service which the local government would get from a bank. The letter of credit would be of low cost to the community. For example, the estimated cost of a letter of credit for one year of debt service for a $1 million loan is $500. It is anticipated that this type of loan would be used by communities seeking to fund small projects or communities which cannot or choose not to issue bonds.

The Discretionary Loan would be available to communities with a population of under 5,000 which cannot issue bonds or comply with the requirements for a revenue secured loan. This type of loan is intended for small communities that are unable to qualify for the other three types of loans. The amount of discretionary loans which can be issued in any year may not exceed five percent of the money available to be loaned from the SRF in that year.

One alternative would be to only give loans in the form of general obligation bonds or revenue bonds since these are the most secure of the types of loans available under the proposed rules. This alternative is not recommended because it would eliminate from eligibility for loans, communities unable or unwilling to issue bonds.

Another alternative is to require only a dedicated source of revenue, such as user fees, as security for the loan. The use of a dedicated source of revenue as the only alternative is not recommended because it is very difficult to ensure that the users' fees will always be adequate to cover debt service on the SRF loan.

3. Current market rates of interest. Federal legislation allows the state to make loans from the SRF for 20 years or less at an interest rate at or below market rate, including zero percent (0%) interest. The proposed rules provide two types of loans. First, the proposed rules allow zero percent interest loans to jurisdictions repaying the loans in 5 years or less. Second, a 3% interest rate would apply to all loans repaid in more than 5 years and less than 20 years. (OAR 340-54-060(4), pp. A-19).

   In establishing the interest rates in the proposed rules, the Department considered the current market rates of interest and determined that in order to make the SRF marketable, it would be necessary to set interest rates below market rate.

   The SRF enabling legislation's policy statement (ORS 468.425) says that the program is intended to aid and encourage public agencies in the transition from reliance on federal grants to local self-sufficiency by the use of fees paid by users of the treatment works. In order to make this transition affordable, the Department determined that the interest rates must be kept low so the cost to communities for sewage facilities would not be prohibitive.

The Department recommends 0% interest on loans of five years or less to encourage fast repayment of the loans. Fast repayment of loans is beneficial because after the loans are repaid, federal requirements under Title II of the Clean Water Act (see Attachment F) cease to apply and the funds may be provided to fund a greater range of project types. Initial communication with communities indicates that at least 30 to 40% of the available SRF could be loaned at 0% each year through 1994.

An alternative to the proposed interest rates is to have a flexible interest rate based on the amount the public agency can afford to pay. This option was examined at length and rejected due to the difficulty and expense of developing an accurate method for determining affordability (see Attachment L). The Department believes that to make the program attractive to borrowers, it is important to have a simple, fixed interest rate. The Department recommends further examination of the possibility of developing an interest rate based on affordability. The proposed rules include a requirement that these interest rates only be in effect until September 1991. At this time, the Commission would reevaluate interest rates, and reconsider the possibility of basing the interest rate on affordability.

4. <u>The size of the community or district to be served by the treatment works</u>.

The proposed rules address the size of the community or district to be served in several ways. First, the proposed rules set up a 15% reserve for communities or districts with a population of less than 5,000. This was done in order to assure that small communities or districts are able to successfully compete for funds with larger jurisdictions (OAR 340-54-090(2), pp. A-26). The figure of 15% is proposed because approximately 15% of the population of Oregon resides in communities with populations under 5,000.

Second, as previously discussed above, discretionary loans are available to small communities with a population of under 5,000. These loans allow the loan security required from the community to be tailored to the community's financial abilities.

Third, community or service district size is taken into account in establishing the priority ratings in the proposed rules. Larger jurisdictions are given a slightly higher priority ranking since the magnitude of their water quality problems is anticipated to be greater.

An alternative would be to redraft the rules to be based strictly on water quality impacts and not to include special reserve for small communities. The Department does not recommend this alternative. Based on the Department's experience under the federal grant program, it appears that small communities are much more likely to have difficulty financing needed water pollution control facilities than larger communities and that special provisions are necessary to accommodate their needs.

5. The type of projects financed. The Department proposes to provide funding for all of the types of projects which the state is allowed to fund under the federal legislation for the first use of funds (OAR 340-54-015(1), pp. A-5). After the federal capitalization grant and state match are loaned and repaid, the state will have greater discretion in determining the types of projects which may be funded. At that time, the Commission may wish to reconsider the types of projects which may be funded under the SRF rule.

   An alternative available to the Commission is to limit the types of projects for which funds are available. For example, eliminate eligibility of advanced treatment or collectors. These types of facilities have not been eligible for construction grants under the administrative rules. Under the SRF program, the Department feels it is more appropriate to initially allow funding for a broader variety of projects to meet currently unmet needs. Many of the projects in Oregon which are currently in need of funding are ineligible for grants.

6. The ability of the applicant to borrow elsewhere. The Department considered this factor and determined that during program startup, it is important to make the fund available to as many potential borrowers as possible in order to ensure that all available SRF funds are borrowed each year. During first use of the SRF if binding commitment equivalent to the federal capitalization grant are not made within one year of submittal of the intended use plan to EPA, unborrowed funds must be returned to the federal government. Since the loan program may be more costly to some communities, the result may be delayed program participation and difficulty of finding borrowers for the funds. The Department, therefore, believes it is important to initially encourage the participation of borrowers, regardless of their ability to borrow elsewhere in order to assure that all available first use funds are used. This factor may be reevaluated after program startup.

BACKGROUND INFORMATION

To help address the pollution problems of the nation's waters, the U. S. Congress passed the Clean Water Act in 1972. Part of this legislation established a grant program to provide federal assistance to municipalities for the construction of sewerage facilities needed to meet the requirements of the new Act. Over $44.6 billion has been appropriated for the national construction grants program. Of this amount, $515 million has been used in Oregon to build sewerage facilities.

The program has become very costly to the federal government, and for this reason, Congress amended the Clean Water Act several times to reduce the level of federal funding for projects. Important changes included reducing federal grant participation, reducing eligibility of certain project components, and restricting funding to existing needs only, thereby excluding future growth capacity. Even with the changes, costs of the program continued to be a burden on the federal budget, and in 1987, when the Clean Water Act was reauthorized, Congress chose to phase out the construction grant program and replace it with a State Revolving Fund program.

A State Revolving Fund is a pool of money from which loans can be made for construction of sewerage facilities. As loans are repaid, the money is returned to the revolving fund to be used for more loans.

The revolving fund program was intended to provide a simple, stream-lined, state operated program, that would help fund projects without reliance on federal grants. Because of statutory requirements in the Act and requirements developed by the U.S. Environmental Protection Agency which apply to the money the first time it is loaned (i.e., first-use money), the program is burdened with more cumbersome bureaucracy than originally was envisioned by the states. These added federal requirements may make the program less desirable for cities. If the first-use money is not loaned by the states within specific time limits, it must be returned to EPA. The Department, however, believes the availability of loans at below market interest rates will still make the program attractive, particularly after construction grant funds are no longer available.

Grants will not be available to municipalities for construction of sewerage facilities after September 30, 1991, and states are required to set up a State Revolving Fund if they wish to receive further federal funds. During the 1987 legislative session, the Department did receive authorization through ORS 468.423 to establish a State Revolving Fund program. The Department intends to return to the 1989 Legislature to request the 20 percent state matching funds needed to receive federal funds.

REQUEST FOR EQC ACTION

Meeting Date: 1/20/89
Agenda Item: H
Division: ECD
Section: SA

SUBJECT:

Delisting sites from the Inventory and modifying information in the Inventory.

PURPOSE:

Provide a standard process to allow owners and operators to modify information in the Inventory and delist sites from the Inventory.

ACTION REQUESTED:

___ Work Session Discussion
- ___ General Program Background
- ___ Program Strategy
- ___ Proposed Policy
- ___ Potential Rules
- ___ Other: (specify)

___ Authorize Rulemaking Hearing

Proposed Rules (Draft)	Attachment ___
Rulemaking Statements	Attachment ___
Fiscal and Economic Impact Statement	Attachment ___
Draft Public Notice	Attachment ___

_X_ Adopt Rules

Proposed Rules (Final Recommendation)	Attachment A
Rulemaking Statements	Attachment B
Fiscal and Economic Impact Statement	Attachment B
Public Notice	Attachment C

___ Issue Contested Case Decision/Order

Proposed Order	Attachment ___

___ Other: (specify)

AUTHORITY/NEED FOR ACTION:

_X_ Pursuant to Statute: ORS 468.020, 466.553(1) Attachment ___
Enactment Date: SB 122 (1987)
___ Amendment of Existing Rule: _____ Attachment ___
___ Implement Delegated Federal Program:
_____ Attachment ___
_X_ Department Recommendation: Attachment D
Department Report: Background and
Summary of Major Elements of Proposed Rules
___ Other: Attachment ___

___ Time Constraints: (explain)

DESCRIPTION OF REQUESTED ACTION:

The rules proposed for adoption contain the following elements:

- Purposes of proposed rules,
- Definitions of terms,
- A process to be used to delist a site from the Inventory
- A procedure for public notice and participation
- A procedure for the Director to follow in making a delisting determination
- A process to be followed for appeals
- A process to modify information in the Inventory.

DEVELOPMENTAL BACKGROUND:

_X_ Department Report (Background/Explanation) Attachment D
___ Advisory Committee Report/Recommendation Attachment ___
_X_ Hearing Officer's Report/Recommendations Attachment J
_X_ Response to Testimony/Comments Attachment E
___ Prior EQC Agenda Items:
Agenda Item E, November 4, 1988, EQC Meeting -- Request for Authorization to Conduct a Public Hearing on Proposed Environmental Cleanup Rules Regarding Delisting of Facilities Listed on the Inventory and Establishing a Process to Modify Information Regarding Facilities Listed on the Inventory, OAR 340-122-310 to 340.
(Not Included)
_X_ Other Related Reports/Rules/Statutes:

ORS 466.540 to 466.590	Attachment F
ORS 183.310 to 183.550	Attachment G
Remedial Action Advisory Committee Members	Attachment H
List of Those Providing Comments	Attachment I

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

Implements a process for the Department to use to manage requests for delistings from and modifications to the Inventory of Facilities with Confirmed Releases of Hazardous Substances.

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

The proposed rules received general support from the public and the regulated community. The Remedial Action Advisory considered the proposed rules and those present at the meeting supported the proposed rules.

However, there are still differences of opinion regarding several issues. These issues are presented below.

PROGRAMMATIC CONSIDERATIONS:

The rules will be implemented by the Environmental Cleanup Division with assistance from other agency programs.

The Department is unable to estimate the number of delisting requests it will receive.

The proposed rules contain a provision for cost recovery. This provision has two conditions. First, it does not apply if the Director determines no action is necessary or no release of hazardous substance has been confirmed. Second, the petitioner will be responsible for the cost of delisting if the cleanup was conducted pursuant to one of the following: ORS 466.550(1) or ORS 466.570(8) (the State Superfund Law), ORS 466.680 (the Spill Response law), ORS 466.205 (the State RCRA law), or ORS 466.770 (the Underground Storage Tanks law) and the petitioner is liable for costs under that authority.

There is no comparable program at the federal level.

POLICY ISSUES FOR COMMISSION TO RESOLVE:

There are a number of policy issues for the Commission to consider in the proposed rules. The first and overriding policy issue for the Commission to consider is whether or not the rules should be adopted. The Department, the Remedial Action Advisory Committee and those commenting on the rules support the adoption of these rules.

If the Commission determines the proposed rules should be adopted there are additional policy issues to consider. One policy issue for the EQC is who should be provided the opportunity to request a contested case appeal. The Department originally proposed that only owners of the property be provided this right. Several members of the regulated community requested that this right be expanded to include operators. The Department supports expanding the right to petition to delist to owners and operators.

The EQC also needs to consider whether the provisions for public participation should be included and if so to what extent. The proposed rules provide for public participation and are modelled after the state Superfund law and the recently adopted cleanup rules. There are several members of the regulated community who contend that the public participation provisions should be eliminated or restricted.

Another policy issue for the Commission to address is should there be a right to appeal the Director's decision to grant or deny a delisting request. The Department has amended the proposed rules to provide an appeal process parallel with other agency rules. The rules as proposed provide for an appeal for only petitioners dissatisfied with the Director's decision to deny a delisting petition. The proposed process is similar to the process in other agency rules in that the appeal is first heard by the EQC instead of the circuit court. If a petitioner is dissatisfied with the decision by the EQC, the petitioner may appeal to the Court of Appeals. Several individuals believe the appeal right should be expanded to include requests for modification to the Inventory that are denied. The Department views having accurate information in the Inventory to be a very high priority but does not believe that this type of request should be subject to contested case appeal.

Finally, a couple of members of the regulated community suggested that a facility be delisted if an investigation or cleanup is conducted pursuant to a permit, program, order or

listed on the Federal National Priority List (NPL). The Department does not believe such action is within the legislative authority.

COMMISSION ALTERNATIVES:

1. Adopt Rules as proposed in Attachment A. This alternative provides a standard procedure for delisting facilities from the Inventory and modifying Inventory information.

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

2. No action. Initially, the Department considered using only ORS 466.557, which did not provide a mechanism for removing facilities from the Inventory. The statute also did not contemplate modifications to the Inventory when new data or changes in facility conditions might require updating facility information. This alternative does not allow for delisting a facility from the Inventory following the first 15 days after the owner has received notice.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department Recommends that the Commission adopt Alternative 1.

This Alternative will provide standard procedures for delisting facilities from the Inventory and modifying Inventory information.

INTENDED FOLLOWUP ACTIONS:

File Rules with the Secretary of State.

Notify interested persons of rule adoption by letter.

Approved:

Section: Christy Smith

Division: Don Russell for MED

Director: Jul Hansen

Contact: Sara Laumann

Phone: 229-6704

Sara Laumann:sll
test
January 6, 1989

Attachment A
Agenda Item H
January 20, 1989
EQC Meeting

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

340-122-310 PURPOSE

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

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

340-122-315 DEFINITIONS

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

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

340-122-320 DELISTING PROCESS

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

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

(3) The Department reserves the right to request additional information necessary to complete a petition or to assist the Department to adequately evaluate the petition. Failure to complete a petition or provide any requested information within the time specified in the request shall be grounds for denial of the petition.

([3]4) The Department may initiate a delisting in accordance with OAR 340-122-310, 340-122-315, 340-122-325, and 340-122-330.

(5) Other parties may petition the Director to request that a facility be delisted from the Inventory. The Director shall accept the petition if the Director determines that serious economic harm would result if the petition was not accepted.

340-122-325 PUBLIC NOTICE AND PARTICIPATION

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

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

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

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

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

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

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

Where possible, the Department shall combine public notification procedures for delisting with remedial action notification procedures conducted pursuant to ORS 466.540 to 466.590.

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

(4) Unless a determination is made under OAR 340-122-330(2)(b) or (c), [the persons(s) liable under the authority used by the Department shall pay the Department's cost of delisting the facility from the Inventory.] the petitioner shall be responsible for the costs of delisting if the cleanup was conducted pursuant to:

(a) ORS 466.550(1) or 466.570(8), ORS 466.680, ORS 466.205 or ORS 466.770; and

(b) the petitioner is liable for costs under the authority listed in OAR 340-122-325(4)(a).

340-122-330 **DETERMINATION BY DIRECTOR**

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

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

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

(c) any previous delisting actions under similar circumstances; and

([c]d) any other available relevant information.

(2) The Director shall delist a facility if:

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

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

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

(3) The Director shall not delist a facility listed on the Inventory if continuing environmental controls or restrictions are necessary to assure protection of present and future public health, safety, welfare and the environment, provided such environmental controls or restrictions are related to remedial or removal actions.

(4) The Director shall issue an administrative order stating [the reasons] the findings of fact and conclusions of law for granting or denying the petition or proposal for delisting.

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

(6) An unsuccessful petitioner shall wait a minimum of six months prior to submitting a new petition. All new petitions shall be based on new information or changed circumstances.

(7) If the Director relies on information pursuant to OAR 340-122-330(1)(c), the Director shall reference such information in the order.

340-122-335 **APPEAL PROCESS**

(1) [The owner may appeal any administrative order issued by the Director denying any delisting petition.] If a petitioner is dissatisfied with the Director's order denying the delisting petitioner, the petitioner may request a hearing before the Environmental Quality Commission.

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

340-122-340 **MODIFICATION PROCESS**

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

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

(a) A general description of the facility;

(b) Address or location;

(c) Time period during which a release occurred;

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

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

(f) Manner of release of the hazardous substance;

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

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

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

([3]2) Based on adequate documentation or investigation the [Director] Department may modify information regarding a facility listed on the Inventory. The [Director's] Department's decision regarding a modification request is not an agency order subject to judicial review or appeal to the Environmental Quality Commission.

Sara Laumann:sll
229-6704
delist
January 9, 1989

Attachment B
Agenda Item H
January 20, 1989
EQC Meeting

STATEMENT OF NEED FOR RULEMAKING

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

(1) Legal Authority

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

(2) Need for the Rule

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

(3) Principal Documents Relied Upon in this Rulemaking

-- ORS 466.540 to 466.575

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

LAND USE CONSISTENCY

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

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

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

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

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

FISCAL AND ECONOMIC IMPACT

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

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

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

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

Sara Laumannn:sll
229-6704
landuse
January 7, 1989

Attachment C
Agenda Item H
January 20, 1989
EQC Meeting

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON . . .

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

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

WHAT IS PROPOSED:

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

WHO IS AFFECTED:

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

WHAT ARE THE HIGHLIGHTS:

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

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

WHAT IS THE NEXT STEP:

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

HOW TO COMMENT:

A Public Hearing is scheduled for:

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

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

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

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.

ZB7886
811 S.W. 6th Avenue
Portland, OR 97204

11/1/86

Attachment D
Agenda Item H
January 20, 1989
EQC Meeting

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item H, January 20, 1989, EQC Meeting

Department Report: Background and Summary of Major Elements of Proposed Rules

BACKGROUND

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

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

While the statue clearly outlines how a facility is listed on the Inventory, it did not contemplate a similar process for removing

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

The purpose of these proposed rules is to provide a process and the criteria for delisting facilities from the Inventory and making modifications to information on the Inventory. The proposed rules provide a formal procedure for owners and operators of facilities and the Department to delist facilities from the Inventory. Additionally, the proposed rules provide an informal procedure for any person and the Department to modify information included in the Inventory. ORS 466.553 provides the Commission with the authority to "adopt rules necessary to carry out the provisions of ORS 466.540 to 466.590 and 466.900."

Pursuant to requirements of ORS 466.555, the Department obtained advice from the Remedial Action Advisory Committee (RAAC). The committee consists of 22 members representing citizens, local governments, environmental organizations and industry. A draft of the proposed rules was provided to the RAAC for their review and comment. The RAAC met on October 4, 1988. A list of advisory committee members is attached. (Attachment I.) The agency conducted a public hearing on December 6, 1988 and December 14, 1988 to take comments to the proposed rules. The agency received public comments from four individuals at the public hearing and written comments from eight individuals. (Attachment J.) In addition, legal counsel from the Department of Justice reviewed and provided comments on the proposed rules.

SUMMARY OF MAJOR ELEMENTS AND IMPACT

Definitions 340-122-315

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

Delisting Process 340-122-320

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

Additionally, the proposed rules provide that the Director shall accept a petition from a petitioner if the Director determines that to not accept the petition would cause serious economic harm to the petitioner. The Department believes this "safety valve" is necessary to allow for events that the Department may not be able to anticipate.

The proposed rules provide a mechanism for the Department to make a "first cut" on the delisting petition to determine whether sufficient information has been submitted to warrant delisting. The Department need not provide for the procedures required in OAR 340-122-325 regarding public notice and participation if the Department determines there is insufficient information in the petition to proceed through the delisting process.

Public Notice and Participation 340-122-325

Before delisting a facility, the proposed rules require the Department to provide public notice and opportunity to comment. The notice includes a brief description of the reason for delisting and information on how to get a copy of the delisting petition or proposal. The proposed rules require the Department to publish notice in the Secretary of State's Bulletin, notify a local paper of general circulation, and make a reasonable effort to identify and notify interested community organizations. The proposed rules require the Department to conduct a public meeting upon written request by 10 or more persons or by a group having 10 or more members.

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

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

Determination by the Director 340-122-330

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

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

The proposed rules require the Director to issue an administrative order stating the findings of fact and conclusions of law for granting or denying the petition or proposal for delisting.

To provide the most current information to the public, the proposed rules require updating the Inventory as soon as the Director determines to delist a facility.

Appeal Process 340-122-335

The appeal process provides an appeal to the EQC to any petitioner dissatisfied with the Director's decision to deny a delisting petition. Such persons may appeal in accordance with ORS 183.310 to 183.550 governing contested cases. (Attachment H.)

Modification Process 340-122-340

Based on adequate documentation or investigation any person may submit information to the Department for the purpose of modifying existing information regarding a facility. This is an informal process without the opportunity for public participation. It will be used to update information about the facility so that the most current information is available for the public.

Attachment E
Agenda Item H .
January 20, 1989
EQC Meeting

SUMMARY AND RESPONSE TO WRITTEN COMMENTS
AND COMMENTS RECEIVED AT THE PUBLIC HEARING

PURPOSE 340-122-310

Comment - Threshold criteria for "confirmed release"

Teledyne Wah Chang Albany encouraged the Commission to consider adding to its delisting rules provisions which would clarify the meaning of the term "confirmed release" to incorporate an exemption for sites which have been the subject of succesful remediation.

Response

The Department has followed the statutory requirements in proposing sites to the Inventory. ORS 466.557 The Department intends to explore the development of listing rules in the future any will consider this comment at that time.

DELISTING PROCESS 340-122-320

Comment - Expand parties able to petition

Stoel, Rives, Boley & Grey (Stoel Rives) and Bogle & Gates commented that any party having an economic interest in the property (operators) as well as the owner be allowed to petition to delist a facility.

Response

The Department agrees with the comments and has decided to expand those able to petition to delist a facility from the Inventory to owners and operators. The proposed rules only provided owners of the facility the right to submit a delisting petition. The Department now believes both owners and operators should be given the right to submit a delisting petition and the proposed rules and been amended to expand the right. The Department believes this change will not adversely affect owners.

Comment - Delete reference to definitional section

Bogle & Gates suggested that the reference to OAR 340-122-315 in OAR 340-122-320(3) be deleted since it is merely a reference to the definitional section and not a substantive procedural section.

Response

The Department does not agree with this suggestion since the definition may be essential to the correct meaning of certain terms used throughout the proposed rules.

PUBLIC NOTICE AND PARTICIPATION 340-122-325

Comment - Petitioners should pay the costs of delisting

Stoel Rives and Bogle & Gates commented that the petitioner or petitioners pay the costs of the proceeding.

Response

Proposed OAR 340-122-325(4) has been amended to clarify that the petitioner shall be responsible for the costs of the delisting if the cleanup was conducted under statutory authority that the Department can use to cost recover. Such authority includes: the State Superfund Program ORS 466.550(1) and 466.570(8), Spill Response ORS 466.680, RCRA ORS 466.205 and UST ORS 466.770.

Comment - Rule should specify costs involved

Stoel Rives and Bogle & Gates commented that the rule should specify what costs the petitioner will likely be liable for or at least give some examples of the type of costs involved.

Response

The Department has amended the proposed cost recovery rules to provide that costs recovered will only include those permitted under the statutory authority used for cleanup.

Comment - Provide opportunity for public meetings at UST sites

The Oregon State Public Interest Research Group (OSPIRG) commented that sites involving underground storage tanks should be subject to the public meeting process and OAR 340-122-325(1)(d) should be amended. The Oregon Environmental Council (OEC) also suggested that leaking underground storage tanks should be subject to the public meeting opportunity as a part of a public notice upon delisting.

Response

The Department disagrees with this suggestion. Those underground storage tank cleanups conducted pursuant to OAR 340-122-245 will involve cleanup actions conducted pursuant to the soil cleanup matrix. Cleanup resulting from leaking underground storage tanks pursuant to the matrix will usually be conducted on an expedited basis before public comment can be submitted or considered and is often limited to removal of petroleum contaminated soils. Such releases may be addressed without listing on the Inventory due to expedited nature of the cleanup action.

Comment - Section referring to delisting costs should be clarified

OSPIRG commented that section OAR 340-122-325(4) should be clarified to include the costs of initiating the process of delisting even if the facility is not delisted.

Response

The Department disagrees with this recommendation. Owners should not be disadvantaged by erroneous listings by the agency.

Comment - Limit public participation

The Northwest Pulp and Paper Association (NWPPA) suggested that delistings and modifications to information be conducted without public notice and participation.

Response

The legislature created the Inventory for the purpose of providing public information. ORS 466.557(1) The Department believes the public should be notified of delistings from the Inventory and given the opportunity to participate in the delisting process. Therefore, the Department has decided to retain the proposed provisions regarding public notice and participation.

Comment - Public notification provisions will cause a chilling effect and are unprecedented

Bogle & Gates provided a number of comments regarding the public participation provisions. They suggested that some sections of OAR 340-122-325(a)-(d) be amended while other sections be deleted. They suggested Section (1) be amended to allow operators to submit delisting petitions. They requested that the Department delete the provision to "notify a local paper of general circulation." They proposed that the period for submission of written comments be limited to 15 days. They suggested that the proposed rule be amended to provide the opportunity for a "public hearing" rather than a meeting. Finally, they requested that the phrase "at or near the facility" be deleted from the proposed rule.

Response

The Department agrees with the suggestion to allow operators to submit delisting petitions. The Department has amended the proposed rules to allow an owner or operator to petition the Director to request that a site be delisted from the Inventory.

The Department developed the proposed public participation provisions so that they are similar to the statutory requirements regarding public participation in the state Superfund law and the recently adopted cleanup rules.

Comment - Amend rule so that all comments submitted will be considered

Bogle & Gates requested that the word "any" in OAR 340-122-325(1)(e) be replaced with the word "all", so as to clearly indicate that the Department must consider all written or verbal comments prior to making its decision.

Response

The agency thinks this suggestion clearly indicated the Department's intention in implementing this section and the word "any" has been replaced with the word "all".

Comment - OAR 340-122-325(2) is unclear and should be redrafted

Bogle & Gates commented that this subsection as written is unclear and requested that the Agency redraft the paragraph to clearly indicate its intentions.

Response

The Department agrees with this comment and has redrafted the subsection to read more clearly.

DETERMINATION BY DIRECTOR 340-122-330

Comment - Specify other information relied upon

Stoel Rives recommended that subsection 340-122-330(1)(c) also state that if the Director relies on other available relevant information in making this determination, the Director must also explain the nature of such other information in the Order, and the information itself should be placed in the record.

Response

The Department agrees with the first part of this recommendation and has added a section to OAR 340-122-330. Subsection (7) requires the order to explain the nature of "other relevant

information". However, the Department believes that placing such information in the record may involve unnecessary duplication of information already in agency files. Therefore, the Department rejects this suggestion.

Comment - Order should include facts relied upon

Stoel Rives and Bogle & Gates recommended that proposed rule OAR 340-122-330(4) be revised to require the Director to issue an administrative order stating the reasons and the facts relied upon for granted or denying the petition.

Response

The Department agrees with this suggestion and has amended the proposed rule so that the administrative order issued by the Director shall contain the findings of fact and conclusions of law for granting or denying the petition.

Comment - Incorporate background as standard in delisting rules

OSPIRG commented that the background standard approved by the EQC should be incorporated into the proposed delisting rules.

Response

The Department does not support this recommendation. Not all property listed on the Inventory will undergo a cleanup in accordance with the recently adopted cleanup rules OAR 340-12-010 to 340-122-110. Therefore, the background standard should not be linked to the proposed rules since that standard may not be applicable in all instances.

Comment - Delete reference to modification and move to appropriate section

Stoel Rives recommended that the reference to modification in proposed OAR 340-122-330(5) be deleted, and that a new subsection (4) be added to OAR 340-122-340 (Modification Process) stating that "Modifications to the Inventory shall be made immediately upon the Director's determination."

Response

The Department agrees in part with this request. The Department has deleted the reference to modifications in OAR 340-122-330(5). However, the Department has not inserted the requested reference to make modifications immediately. The Department believes updating and correcting factual information is part of the administrative obligation of the Department and this requirement is not needed in the rules.

Comment - Director should consider previous delisting actions

Waste Management, Inc. recommended that the Director also consider previous delisting actions and information regarding similar sites. They recommended adding Subsection (c) to OAR 340-122-330(1): "any previous delisting actions under similar circumstances."

Response

The department agrees with this comment and the proposed rule has been amended.

Comment - Develop cleanup standards

Waste Management, Inc. recommended that the Department should develop cleanup standards for the various media and hazardous substances that are considered adequate to assure public safety and environmental protection.

Response

The EQC recently adopted cleanup rules. (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) Early in that rulemaking process, the Department considered promulgating specific numeric standards for hazardous substances. For a variety of reasons the Department decided not to use specific numeric cleanup levels that would be applicable to 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. Based on the fundamental policy issue which has already been addressed the Department rejects this recommendation.

Comment - Delist any site listed on the Federal National Priority List

Teledyne Wah Chang Albany suggested that the proposed rules be modified to provide for mandatory delisting of nay site which is currently on the National Priority List and the subject of a remedial effort under the federal superfund statute.

Response

The 1987 legislature directed the Director to develop and maintain an Inventory of all facilities where a release has been confirmed by the Department. If the agency automatically delisted a site on the Federal National Priorities List, the agency would not be following the legislative mandate.

Comment - Amend section regarding continuing environmental controls

Teledyne Wah Chang Albany suggested that OAR 340-122-330(3) be modified to make it clear that the "continuing environmental controls" which would prevent delisting must be related to remediation of the specific release of hazardous substances which resulted in the facility's placement on the Inventory in the first place.

Response

The Department agrees with some of the language suggested by Teledyne Wah Chang. The Department has amended the proposed rules to make this section clearer. In particular, language has been added to clarify that the facility will not be delisted if environmental controls or restrictions are related to the remedial or removal actions.

Comment - Delist a facility if cleanup conducted pursuant to an order, permit or program

Tektronic, Inc. proposed an additional criterion for delisting be added to the proposed rule OAR 340-122-330(2) to provide for delisting of a facility if cleanup of the hazardous substance and control of further release of the hazardous substance, or other actions that assure protection of present and future public health, safety, welfare and the environment, will be accomplished by an owner or operator pursuant to Departmental order, permit or program. Bogle & Gates provided a similar request.

Response

The Department first points out that the proposed language achieves the intent and mandate specified in the statute. The Department believes the Inventory is a state-wide list of facilities covering all Department programs. Delisting facilities prior to a completed removal or remedial action is not within the Department's authority in implementing these statutory provisions.

APPEAL PROCESS 340-122-335

Comment - Expand right of appeal

Stoel Rives and Bogle & Gates commented that any petitioner who participates in the delisting petition should be allowed to file an appeal.

Response

The Department has amended the proposed section providing for an appeal process. The proposed section provides for an appeal to

the Environmental Quality Commission if the petitioner is dissatisfied with the Director's decision to deny a delisting petition. This procedure is parallel with appeal procedures provided in other agency rules. (For example, those rules in Division 48 - Certification of Compliance with Water Quality Requirements and Standards - OAR 340-48-025(3).) The proposed rules provide for an appeal process in accordance with ORS 183.310 to 183.550 governing contested cases.

MODIFICATION PROCESS 340-122-340

Comment - Limit property listed in Inventory to portion affected

Stoel Rives commented that if it can be determined that the release affected only a portion of a facility or only a portion of a tract of land, that the Inventory information (OAR 340-122-340(2)(a) should be modified to describe only the portion affected.

Response

If the information regarding the extent of the release is known, the Department intends to include only that portion of a facility or that portion of a tract of land in the "address or location" item specified to be included in the Inventory. The Department does not believe clarification to the proposed rule is necessary.

Comment - Names of owners and operators

Stoel Rives commented that additional explanation should be added to ensure that the section may be modified to acknowledge the existence of continuous releases over a period of time, so as to name those owners and operators connected to the facility during that period of time, even if the owners and operators did not contribute any additional hazardous substance during their time of ownership or operation.

Response

If information is available to clearly describe the owners and operators during the release or period of the release the Department plans to include such information in the Inventory. The Department thinks the proposed rules, modeled after the statute, provide ample explanation.

Comment - Lack of judicial review

Stoel Rives commented that the Director's modification decision presumably will be a final action on that petition, and if that decision adversely affects the petitioner, that person should have a right to file a petition for review in circuit court pursuant to

ORS 138.480 and 183.484. Stoel Rives recommended that the DEQ delete the reference to "judicial review" in this proposed rule.

NWPPA provided a similar comment and urged the Department to consider that since the Remedial Action statute is silent as to whether a party could seek EQC or judicial review of a denial of a request to modify information on the Site Inventory, the statutory and constitutional bases for appeal control.

Response

The Department has significantly amended the proposed rules regarding the modification process. In reviewing comments received and discussing the modification process with the Oregon Department of Justice, the Department has decided to propose a more informal process for modifying information included in the Inventory.

The Department proposes to allow any person to submit information to the Department for the purpose of modifying information regarding the Inventory. This will allow the Department to provide the most up-to-date information to the public.

In light of the informal process proposed to amend the information in the Inventory, the Department proposes not to include a provision providing for an appeal process.

Comment - Correct reference in OAR 340-122-340(1)

OSPIRG commented that OAR 340-122-340(1) refers to subsection (3)(d) which does not exist.

Response

This reference has been deleted from the proposed rules since the proposed rules now allow any person to submit information to the Department regarding facilities listed on the Inventory.

Comment - Allow the public to request modifications to the Inventory

OSPIRG supports adding members of the public or a local organization to the list of persons who may request a change in the status of the facility.

Response

The Department has modified the proposed rules to allow any person to submit information to the agency regarding facilities listed on the Inventory. The proposed rules provide that if adequate documentation or investigation is submitted to the Department, the

Department may modify information regarding a facility listed on the Inventory.

GENERAL COMMENTS

Comment - Subsequent petition for delisting or modification

Stoel Rives recommended that a new section be added stating that an unsuccessful petitioner must wait at least six months before DEQ will consider a new petition, and that any new petition must be based on new information or changed circumstances.

Response

The agency agrees with this recommendation and a new section has been added OAR 340-122-345.

Comment - Estimate of costs for delistings low

Waste Management, Inc. commented that the $5,000 estimate of the direct costs for preparing a delisting and transactional costs is low. They suggest that depending on the size and complexity of the site, such costs may run $50,000 to $100,000.

Response

The Department believes estimates that the costs for delisting will be $5,000 per site. This estimate is not based on the supporting documentation that may have been prepared to demonstrate that the site has been cleaned up.

Comment - Include procedure for public petitions to add sites to the Inventory

The Oregon Environmental Council suggested that these rules should include some procedure for public petitions to add sites to the Inventory. OEC suggested that such rules could also specify the Departmental procedures necessary to determine whether and how the Environmental Cleanup Division or a Regional office will respond to such a petition.

Response

The Department is considering proposing the adoption of "listing rules". The Department will consider this comment at that time.

Comment - Clarify rules so petitioner does not need to request a contested case to preserve rights in proposed rules

John Shurts, Stoel Rives, provided a comment at the public hearing and suggested that the Department add a provision to clarify that if an owner does not submit a contested case appeal on an original

Inventory listing that that does not bar one from filing a delisting or modification request at some point in the future.

Response

The Department believes an owner does not need to file a contested case on an original Inventory listing. The Department believes such a provision in unnecessary in the proposed rules.

Comment - A party that receives a certificate of completion should be delisted

NWPPA commented that a party that receives a certificate of completion based on remedial action according to an agreement with the Department should be delisted.

Response

The Department believes that this may occur in some cases but only where the standards and procedures in the proposed delisting rules have been met.

Attachments:

1. Written comments provided by Dick Bach, Stoel Rives Boley Jones & Grey
2. Written comments provided by Quincy Sugarman, Oregon State Public Interest Research Group
3. Written comments provided by Joseph L Suchecki, Waste Management of North America, Inc.
4. Written comments provided by Richard H. Williams and Ian K. Whitlock, Spears, Lubersky, Bledsoe, Anderson, Young & Hilliard, for Teledyne Wah Chang Albany
5. Written comments provided by John A. Charles, Oregon Environmental Council
6. Written comments provided by Miriam Feder, Tektronix, Inc.
7. Written comments provided by Douglas S. Morrison, Northwest Pulp & Paper
8. Written comments provided by James C. Brown, Bogle & Gates

Sara Laumann:sll
229-6704
response
January 9, 1989

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Attachment 1
Agenda Item H
January 20, 1989
EQC Meeting

December 1, 1988

Sara Laumann, Esq.
Environmental Cleanup Division
811 SW Sixth Avenue
Portland, OR 97204

Re: Proposed Rules Regarding Delisting Facilities on DEQ's Confirmed Release Inventory: OAR 340-122-310 to -340

Dear Ms. Laumann:

On behalf of a number of our clients, we hereby submit the following comments and suggestions with respect to the Department of Environmental Quality's (DEQ's) proposed rules for the delisting of facilities on DEQ's Confirmed Release Inventory and for the modification of information included in a listing. We heartily applaud DEQ's decision to add a delisting process to the Inventory, a welcome contrast to the black hole that its federal counterpart--CERCLIS--has become.

We also support the basic structure of the delisting and modification procedures, and most of the specific provisions of the proposed rules. We do, however, have a few specific comments and suggestions, as follows:

1. OAR 340-122-320: Delisting Process

The proposed rules would allow only the owner of the property to petition for delisting. We recommend that any party having an economic interest in the property (such as a tenant, a mortgagee or the beneficiary of a deed of trust, a contract purchaser, or a prospective purchaser) as well as the owner be allowed to petition to delist a facility. If the Department is concerned about receiving too many delisting petitions with respect to the same property, the rules could provide that all petitions in connection with the same facility be consolidated for review and hearing. The rules could also provide that anyone other than the owner filing the petition be charged with the

responsibility of providing notice to the owner, affording it an opportunity to join.

2. OAR 340-122-325(4): Public Notice and Participation (Cost of Delisting)

The proposed rule requires that persons "liable under the authority used by the Department" must pay for the cost of delisting unless the delisting determination is made by the Department pursuant to OAR 340-122-330(2)(b) or (c) (i.e., delisting is appropriate because no release occurred or because no action is required to assure protection of the public).

First, the term "liable under the authority used by the Department" is not clear, although we assume this refers to liability under ORS 466.567. To avoid any ambiguity and for the sake of simplicity, we recommend that the rule be revised to provide that the "petitioner or petitioners" pay the costs of the proceeding.

Second, depending on how the "costs" involved in the review of a delisting petition are calculated, the actual cost to the petitioner could range from minimal to exorbitant. For example, are the wages and salaries of DEQ personnel that review the request to be included in the calculation of costs for which the petitioner is to be liable? The rule should specify what costs the petitioner will be liable for, or at least give some examples of the type of costs involved.

3. OAR 340-122-330: Determination by Director

a. Subsection (1)(c): Information relied upon. Proposed OAR 340-122-330(1) would provide that in making a determination, the Director shall consider the petition, any public comments received and, under subsection (c), "any other available relevant information." We recommend that this subsection also state that if the Director relies on other available relevant information in making this determination, the Director must explain the nature of such other information in the Order, and the information itself should be placed in the record.

b. Subsection (4): Administrative order. This section would provide that the Director must issue an administrative order "stating the reasons" for granting or denying the petition. We believe the Order must also state the facts relied upon by the Director in making this determination. Thus, we recommend that the proposed rule be revised to require the

Director to issue "an administrative order stating the reasons and the facts relied upon" for granting or denying a petition.

c. Subsection (5): Immediate effect of decision. This section states that "delistings and modifications" to the Inventory shall be made immediately upon the Director's determination. The reference to "modifications" at this point seems inappropriate, coming as it does in a section relating only to delisting determinations. We recommend that the reference to modifications in OAR 340-122-330(5) be deleted, and that a new subsection (4) be added to OAR 340-122-340 (Modification Process) stating that "Modifications to the Inventory shall be made immediately upon the Director's determination."

4. OAR 340-122-335(1): Appeal Process (Who May Appeal)

OAR 340-122-335(1) provides that only the "owner" may appeal an administrative order issued by the Director denying a delisting petition. Repeating our comment concerning those who may file a petition, we believe that any petitioner who participates in the delisting petition should be allowed to file an appeal.

5. OAR 340-122-340: Modification Process

a. Subsection (2): Items subject to modification. We realize that ORS 466.557(3) provides a list of information that must be in the Inventory, and that proposed OAR 340-122-340(2) simply repeats the list and states that these items are subject to modifications. However, some additional explanation as to the types of modifications possible may be useful, as follows:

(i) Subsection (a): General description of facility. We propose that this section recognize that a facility description may be modified to "carve out" unaffected portions of a facility or a large parcel of real property. That is, if it can be determined that the release affects only a portion of a facility or only a portion of a tract of land, the Inventory information should be modified to describe only the portion affected.

(ii) Subsection (d): Names of owners and operators. This proposed subsection permits modifications in the names of the owners and operators "during the time period of a release." Additional explanation should be added to ensure that the section may be modified to acknowledge the existence of

continuous releases over a period of time, so as to name those owners or operators connected to the facility during that period of time, even if these owners and operators did not contribute any additional hazardous substances during their time of ownership or operation.

b. Subsection (3): Lack of judicial review. While the Commission has the authority to prohibit internal appeals of a modification decision by the Director, it does not have the authority to preclude judicial review of that decision. The Director's modification decision presumably will be a final action on that petition, and if that decision adversely affects the petitioner, that person should have a right to file a petition for review in circuit court pursuant to ORS 183.480 and 183.484. Whether that person is in fact adversely affected will, of course, be an issue in the court case; however, the agency cannot arbitrarily divest anyone of his, her or its right to judicial review in an agency rule. We recommend that DEQ delete the reference to "judicial review" in this proposed rule.

6. Subsequent Petition for Delisting or Modification

The proposed rules do not state whether a petitioner who is unsuccessful in obtaining a requested delisting or modification may file another petition with the same request. We recommend that a new section be added stating that an unsuccessful petitioner must wait at least six months before DEQ will consider a new petition, and that any new petition must be based on new information or changed circumstances.

Thank you for considering these comments. Please contact me if you have any questions or comments.

Sincerely,

Richard D. Bach

cc: Michael Houston

OSPIRG

OREGON STATE PUBLIC INTEREST RESEARCH GROUP
027 SW Arthur St.
Portland, OR 97201
(503) 222-9641

Attachment 2
Agenda Item H
January 20, 1989
EQC Meeting

Testimony of Quincy Sugarman,
Environmental Advocate for
Oregon State Public Interest Research Group,
before the
Department of Enviromental Quality
regarding rules on 'delisting'
OAR 340-122-310 to OAR 340-122-340

Thank you for this opportunity to submit written testimony. My name is Quincy Sugarman. I am the environmental advocate for the Oregon State Public Interest Research Group (OSPIRG). OSPIRG is a statewide environmental and consumer organization with over 30,000 members and programs at three universities.

Overall the rules for delisting a site, removing a facility from the State Superfund inventory, seemed quite good. OSPIRG particularly supports the numerous opportunities for public involvement. Section 340-122-325(3) addresses the issue of records being available to the public. This is an important avenue for information to reach citizens.

However, in section 340-122-325(1)(d), exemptions are made from the requirement of public hearing before delisting of underground storage tank sites. These sites affect the public just as much as any other state Superfund site. They also should be subject to the public hearing process.

Section 340-122-325(4) states very clearly that the "person(s) liable ... shall pay the Department's cost of delisting the facility from the Inventory." This

section should be clarified to include the costs of initiating the process of delisting even if the facility is not delisted, i.e. if the process does not go to completion. This would maintain the integrity of the basic principle of the Superfund law, that the party responsible for the pollution pays all the costs of cleanup.

Most of the statements regarding when the Director shall delist a facility fall easily into the category of common sense reasoning which these rules were written to clarify. A good example is that if no release of a hazardous substance has been confirmed then the site should be delisted. However, sections 340-12-330(2)(a) and (b) use the terms "degree of cleanup" , "control of further release", and "protection of present and future public health, safety, welfare and the environment" without refering to the background level of contamination. This background standard is the baseline standard or degree of cleanup that the EQC has approved. It should be incorporated into these rules as well.

Finally section 340-122-340(1) raises two questions. Is the reference to a section 340-122-340(3)(d) supposed to be to subsection(2)(d)? No (3)(d) is included in the regulations. More importantly, OSPIRG supports adding members of the public or a local organization to the list of persons who may equest a change in the status of a facility. Again this is an effort to include as many opportunities for public involvement as possible, particularly on important issues of such widespread concern.

Again most of the rules seemed quite good in areas of public involvement and of showing adequate care of the environment and public health. I

Waste Management of North America, Inc.
3003 Butterfield Road · Oak Brook, Illinois 60521

December 5, 1988

Ms. Sara Laumann
Environmental Cleanup Division
Environmental Quality Commission
811 S.W. Sixth Avenue
Portland, OR 97204

Attachment 3
Agenda Item H
January 20, 1989
EQC Meeting

RE: Proposed Delisting and Modification Rules
OAR 340-122-310 to 340-122-340

Dear Ms. Laumann:

Waste Management, Inc. wishes to provide written comments on the above-referenced action. As a major corporation involved in managing the nation's municipal and hazardous waste problems, we agree with the Department's recommendation regarding the need for the proposed environmental cleanup rules. It is important that modifications of information contained in the inventory, as well as delisting facilities from the inventory, be completed in an organized and defensible manner.

Waste Management believes that the Department has developed a reasonable rule that generally provides a method to delist facilities or modify information concerning facilities on the inventory. We offer the following comments as suggestions to improve the consistency of the decision-making process.

1. Section 340-122-330(1)

   In addition to the two items mentioned, it is important that delisting decisions be consistent and equitable. For this reason, the Director should also consider previous delisting actions and information regarding similar sites. We recommend adding a Subsection C as follows:
   "any previous delisting actions under similar circumstances."

2. Section 340-122-330(2)

   Subsection 2 of 340-122-330 provides considerable discretion to the Director regarding assurance that the facility protects the present and future public health, safety, welfare, and the environment. Waste Management believes it is important to establish defendable criteria to make this determination. The Department should develop cleanup standards for the various media and hazardous substances that are considered adequate to assure public safety and environmental protection. Such standards would permit the facility owner to design appropriate remedial actions or determine the potential for delisting a site. Such standards would reduce the subjective nature of the delisting process and contribute to a technically valid and defendable decision.

3. Attachment II, Fiscal and Economic Impact

The $5,000 estimate of the direct costs for preparing a delisting and transactional costs is low. In addition to the background investigations which may be required, costs will include preparing a delisting petition, communication with the Department regarding the information required, preparation of testimony and attendance at public hearings, and review of the public record by the facility owner. Also, the petitioner will apparently be required to pay for the costs of public hearings and any agency costs. Depending on the size and complexity of the site, such costs may run $50,000 to $100,000.

Waste Management, Inc. appreciates the opportunity to review and comment on the proposed rules. We look forward to reviewing the draft final rules as they become available.

Sincerely,

Joseph L. Suchecki
Manager, Regulatory Affairs

JLS:jf

cc: D. Coenen-WMNA(NW)
T. Virnig-Chem Waste Mgmt. (Oregon)

Attachment 4
Agenda Item H
January 20, 1989
EQC Meeting

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

In The Matter Of:

Proposed Delisting and Modification Rules, OAR 340-122-310 Through OAR 340-122-340	))))	COMMENTS OF TELEDYNE WAH CHANG ALBANY ON PROPOSED DELISTING RULES

Oregon's environmental clean-up, or "superfund," law directs the Department of Environmental Quality ("DEQ") to compile an Inventory of facilities within the state where releases of hazardous substances are confirmed. ORS 466.557. The statute provides a limited right of appeal to owners of sites proposed to be included on the Inventory. The statute does not, however, provide a mechanism for delisting a site after it has been finally placed on the Inventory. In order to provide for such a process, the DEQ has developed proposed rules which would permit entities which have been designated as owners of facilities listed on the Inventory to petition DEQ to delist sites or to modify information contained in the Inventory.

Teledyne Wah Chang Albany ("Teledyne") manufactures zirconium and other rare metals at a plant located in Millersburg, near Albany, Oregon. The plant site has been incorporated in the Environmental Protection Agency's ("EPA") national priority list of hazardous waste sites ("NPL"). 40 CFR Part 300, App A. More recently, the DEQ has proposed listing the Teledyne facility on its Inventory of hazardous waste sites.

Teledyne submits the following comments on these proposed rules.

1. Delisting Federal Superfund Sites.

The State's superfund program, including the Hazardous Waste Inventory, is modeled on the federal program, and in many instances imposes duplicate liabilities and obligations on the regulated community. Teledyne believes that duplicative agency actions at individual facilities not only impose unnecessary burdens on potentially responsible parties, but waste scarce agency resources. Further, the listing of a facility on the NPL notifies the public that a release has occurred. Since the purpose of the Inventory is to "provid[e] public information," ORS 466.557(1), the inclusion of a facility on the NPL renders listing on the Inventory unnecessary to the statutory purposes.

For these reasons, Teledyne suggests that the Commission modify Section 340-122-330(2) of the proposed rules to provide for mandatory delisting of any site which is currently on the NPL and the subject of a remedial effort under the federal superfund statute. Such a provision would save the DEQ's administrative resources without compromising the purpose of the Inventory, yet would preserve the agency's option to proceed with listing in the event the EPA abandons its remedial effort, or completes a remedial effort which the State finds unacceptable.

Teledyne suggests that the following subparagraph be added to proposed OAR 340-122-330(2):

(d) the facility has been placed on the Environmental Protection Agency's National Priorities List pursuant to the Comprehensive Environmental Response Compensation and Liability Act, 42 USC § 9601 et seq.

2. Continuing Environmental Controls.

Proposed Rule 340-122-330(3) purports to forbid delisting in circumstances where "continuing environmental controls or restrictions are necessary to assure protection of the present and future public health, safety, welfare and the environment." While Teledyne supports what it believes to be the underlying intent of this rule, Teledyne believes that it is overbroad. As written, the proposed rule appears to have the effect of forbidding delisting in circumstances where remedial action has taken place at an industrial plant which continues to operate under such routine "environmental controls" as air and water effluent discharge permits.

This rule should be modified to make clear that the "continuing environmental controls" which would prevent delisting must be related to remediation of the specific release of hazardous substances which resulted in the facility's placement on the Inventory in the first place.

Teledyne suggests that the language of proposed OAR 340-122-330 (3) be modified as follows:

> The Director shall not delist a facility listed on the Inventory if continuing environmental controls or restrictions are necessary to assure protection of the present and future public health, safety, welfare and the environment, provided such controls or restrictions are directly related to

remediation of the release or releases responsible for the facility's placement on the Inventory.

3. Threshold Criteria for "Confirmed Releases."

The DEQ's proposed rules concern delisting procedures, and do not discuss the listing process itself. As such, the DEQ is left with the simple terms of the statute ("all facilities where a release is confirmed") to guide its listing decisions. Consequently, the fact that a "facility" has been completely cleaned up may not prevent the agency from listing the facility. This is so even though the agency must (under the proposed rules) delist that facility upon petition by an interested party. See proposed OAR 340-122-330(2)(a). Teledyne submits that this is an inefficient and unfair approach to the issue of past remediation.

Teledyne encourages the Commission to consider adding to its delisting rules provisions which would clarify the meaning of the term "confirmed release" to incorporate an exemption for sites which have been the subject of successful remediation. Such a rule would add a measure of finality and fairness to the remedial action process, and would further the DEQ's goals of administrative efficiency.

The suggested modification might be made by adding a sentence to the "Purposes" section, 340-122-310, as follows:

> These rules also define the term "confirmed release," as that term is used in ORS 466.557(1).

and by adding an additional definition to proposed

Section 340-122-315 as follows:

> (2) "Confirmed Release" for the purposes of ORS 466.557 does not include a release which has, by virtue of prior remedial actions or other processes, attained a degree of clean-up of the hazardous substance and control of further release of the hazardous substance that assures protection of present and future public health, safety, welfare and the environment.

Respectfully submitted,

SPEARS, LUBERSKY, BLEDSOE,
ANDERSON, YOUNG & HILLIARD

By: Ian Whitlock 12/15/88

Richard H. Williams
Ian K. Whitlock

Counsel to TELEDYNE WAH CHANG
ALBANY, a division of
Teledyne Industries, Inc.
1600 N.E. Old Salem Road
Albany, Oregon 97321

Attachment 5
Agenda Item H
January 20, 1989
EQC Meeting

OREGON ENVIRONMENTAL COUNCIL

2637 S.W. Water Avenue, Portland, Oregon 97201
Phone: 503/222-1963

Comments Submitted by the
Oregon Environmental Council
on Proposed Environmental Cleanup Rules
Regarding Delisting of Facilities Listed on the
Inventory and a Process to Modify Information
OAR 340-122-310 to 340

The Oregon Environmental Council suggests that leaking underground storage tanks should be subject to the public hearing opportunity as part of a public notice upon delisting. There are numerous LUST sites on the Inventory, indicating that these sites can represent significant potential for environmental contamination. Inasmuch as petitions to delist a site are likely to occur after remedial action, expedited clean-up is not at stake here. We can see no reason to exempt such sites.

We also suggest that these rules should include some procedure for public petitions to add sites to the Inventory. These rules address delisting and modifications, but fail to clarify the process which would occur between that outlined in ORS 466.560, "Comprehensive state-wide identification program" and the Department's decision to include a site on the inventory pursuant to ORS 466.557. Such rules could specify what information a petitioner should provide, such as:

1) The petitioner's name, address, phone, signature;

2) A description of the location of the release or threatened release, including a marked map if possible; and

3) How the petitioner is, or may be, affected by the release or threatened release.

Such rules could also specify the Departmental procedures necessary to determine whether and how the Environmental Cleanup Division or a Regional office will respond to such a petition.

Thank you for the opportunity to offer these comments.

Sincerely,

John A. Charles
Executive Director

MIRIAM FEDER
ATTORNEY AT LAW
The BROADWAY BLDG., 930
621 SW ALDER STREET
PORTLAND, OREGON 97205
(503) 241-1673

Agenda Item H
January 20, 1989
EQC Meeting

Ms. Sara Laumann
Environmental Cleanup Division
Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, OR 97204

December 14, 1988

re: Proposed Rules Regarding Delisting Facilities on the DEQ's Release Inventory. OAR 340-122-310 to 340.

Dear Ms. Laumann;

Tektronix would like to take this opportunity to comment on the proposed rules regarding delisting from and modification to DEQ's Inventory of facilities at which confirmed releases have occurred. Tektronix supports the develpment of these rules. Inclusion on the DEQ's Inventory has serious implications for an owner of property. Therefore, it is important that an owner have a means to correct any errors that may have resulted in listing on the Inventory. The owner must also be able to alleviate any barriers to use or disposition of the property that may be caused by listing, when that listing is no longer necessary.

Tektronix agrees with the Department that provisions for delisting will improve the accuracy, timeliness and therefore, the usefulness of the inventory. This is important for at least two reasons: the Inventory serves an important function in alerting the public to certain conditions and the Inventory represents sites that may result in state expenditure for cleanup.

Tektronix is concerned that transactions in and use of property included on the Inventory may be greatly impeded by the simple fact of listing. At the same time, there is nothing to be gained by including on the Inventory properties that are in the process of cleanup or are about to be cleaned up under other programs administered by the Department. Inclusion of these properties on the Inventory does not tell the public anything more about these properties than they already know, since cleanup and closure plans are subject to public notice and comment. Inclusion of properties destined for cleanup under other programs is also potentially misleading to the public and the legislature, since these properties will not result in state payment for cleanup. Furthermore, such listing may lead to a wasteful duplication of state efforts.

The proposed rules would require the Director to delist a facility upon reaching certain determinations that would accomodate public safety and preserve the public fisc. Tektronix proposes an additional criterion for delisting be added to proposed rule 340-122-330 (2), as follows:

The Director shall delist a facility if:

(d) the Director determines that cleanup of the hazardous substance and control of further release of the hazardous substance, or other actions that assure protection of present and future public health, safety, welfare and the environment, will be accomplished by an owner or operator pursuant to Departmental order, permit or program.

This provision for delisting will encourage owner/operators to move ahead with their remediation plans pursuant to these other Departmental programs. By cooperating fully and efficiently with these other programs, thereby keeping their properties off of the Department's Inventory, owner/operators will be able to use the property and dispose of it subject only to the strictures of the remediation and without the additional barriers brought about by listing on the Inventory.

Tektronix believes that the Inventory, absent those sites that will achieve cleanup under other DEQ programs, will be more informative to the public. It will more accurately reflect those sites that may require public funding. It will have the intended effect of informing the public about those sites that were not previously recognized as facilities, within the meaning of ORS 466.540(6). In the meantime, the public will continue to have visibility of releases and the opportunity to follow the progress of their cleanup through the usual public notice surrounding Department orders and permits.

This provision for delisting will also act to prevent needless duplication of resources among state programs and to diminish the chance that owners are subject to demands that vary from program to program. Tektronix strongly urges the Department to amend its proposed rule 340-122-330(2) to include this additional criterion for delisting.

Respectfully submitted,

Miriam Feder
of Attorneys for Tektronix, Inc.

cc: Frank Deaver
Ed Lewis

NORTHWEST PULP&PAPER

Attachment 7
Agenda Item H
January 20, 1989
EQC Meeting

December 14, 1988

Sara Laumann
Environmental Cleanup Division
Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, OR 97204

Dear Ms. Laumann:

Enclosed are our comments on the proposed rules regarding delisting facilities on DEQ's release inventory. The Northwest Pulp and Paper Association represents the majority of pulp and paper manufacturers in Oregon.

NWPPA has reviewed a number of other comments submitted to DEQ on these same rules. Rather than reiterate those comments, we would like to state our agreement with and hereby incorporate by reference the comments of James C. Brown, Bogle & Gates; Richard D. Bach, Stoel Rives Boley Jones & Grey; and Miriam Feder, on behalf of Tektronix.

We appreciate the opportunity to comment and for the extension of time to comment. Thank you for your consideration.

Sincerely,

Douglas S. Morrison
Legislative/Public Affairs Analyst

Enclosure

NORTHWEST PULP & PAPER ASSOCIATION 1300 114TH AVENUE SOUTHEAST, SUITE 110 BELLEVUE, WASHINGTON 98004 (206) 455-1323

December 14, 1988

Comments of the Northwest Pulp and Paper Association

PROPOSED ENVIRONMENTAL CLEANUP RULES
REGARDING DELISTING OF FACILITIES AND
MODIFICATION OF INFORMATION ON THE INVENTORY
OAR 340 DIV 122

COMMENT 1: NWPPA supports establishing procedures for delisting of facilities from the inventory and for modification of information regarding facilities on the inventory

The listing of a facility on an inventory of sites where releases of hazardous substances are confirmed can have serious repercussions for the owner or operator of the facility. The costs of remedial action can bankrupt a company. Public companies may have to disclose the listing to financial regulators, investors and lenders. In many ways, the sheer act of listing a facility can affect the viability of a company independent of the nature of the release or extent of contamination. Therefore, it is particularly important for the Department to give serious attention first to proposing to list a facility and second to maintaining an accurate and current list.

Obviously, a party that receives a certificate of completion based on remedial actions according to an agreement with the Department should be delisted. There are, however, other reasons why a facility previously listed should be removed from the list and saved from the possible repercussions discussed above. For instance, if a facility on the list completed a corrective action under the Resource Conservation and Recovery Act as delegated to the Department they would have mitigated the concerns addressed by the Environmental Cleanup Program under SB 122. Further, a facility with a spill or release may complete a remedial action under the Spill Response and Cleanup Program and no longer be a concern to the Department. New information gained by the Department after listing a facility may indicate that the confirmed release does not pose a threat to health or the environment and will not be subject to remedial action by the Environmental Cleanup Division. These are a few examples identifying the need for rules regarding delisting and modification of information on a site inventory.

Should you decide to list facilities with cleanups underway under this program or other programs then you must also provide for delisting when the cleanup is complete, regardless of which program supervises the cleanup.

COMMENT 2: NWPPA suggests that delistings and modifications to information be conducted without public notice and participation because of the limited resources of the department to devote to such participation and because the legislature carefully considered whether public involvement was appropriate and did not provide for public participation in the inventory and listing process.

Without question the participation of the public in activities and decisions of the Department are necessary and valued by the Department, the public, and the regulated community. This participation, however, does not come without cost. Public

participation must be orderly and therefore requires prior publication of notice and preparation of materials for distribution to interested parties. Staff must attend hearings when requested and must read and analyze testimony provided by the public. Department staff has estimated it takes about forty hours for one person to administer a public hearing.

The resources of the Environmental Cleanup Division are limited and a reasoned decision must be made as to how those resources will be allocated. Is staff time spent administering public notice and hearings for perhaps insignificant proposals the best use of that time in furtherance of the Department's charge to protect human health, welfare and the environment? We think not. Indeed, Mr. Mike Downs, Administrator of the Environmental Cleanup Division, spoke recently before the regulated community and indicated that the reason the ECD did not go to rulemaking on the Voluntary Cleanup Policy–precluding public notice and participation–was the lack of funds to staff this effort. At this time the Department should not commit its resources (which are yet to be determined) to public participation for delisting and modifications of the Site Inventory.

Furthermore, the Legislature in passing SB 122 carefully considered whether public participation was warranted for a number of steps in the remedial action process. The purpose of the Site Inventory stated in ORS 466.557 is to provide information to the public. Under the Site Discovery Program established by ORS 466.560 the Legislature recognized the need for notice to the public that the program exists and that a mechanism for reporting suspected releases is available. The Legislature specifically provided for notice and comment participation by the public under three separate sections of SB 122:

> ORS 466.575 provides for publication of notice of proposed remedial actions with 30 days for comment and requires the Department to consider any comments before approval of a remedial action.
>
> ORS 466.577(4)(d) provides that the same process as above be provided when the department intends to enter into a consent decree with a responsible party.
>
> ORS 466.577(10)(b) requires notice to the public and an opportunity to comment before the Department may issue a certificate of completion for a remedial action.

Clearly the Legislature generously provided for the participation of the public in this program. The Legislature specifically and thoroughly addressed this issue and impliedly denied such participation except where provided in statute. For the Department to add by rule additional opportunities for public participation runs counter to Legislative intent.

COMMENT 3: <u>The denial of contested case appeals from decisions regarding requests for modification is erroneous and should be amended to provide such appeals such as are available for denial of delisting petitions and as are accorded parties by the Administrative Procedures Act and the Oregon Constitution</u>.

The proposed OAR 340-122-340(3) attempts to deny the right of a party to bring a contested case appeal or to ask for judicial review of decisions of the Director on requests for modification of information on the Site Inventory. Specific rights are provided to parties by statute (Administrative Procedures Act ORS 183.310 *et seq*) and by the Oregon Constitution as to the circumstances under which parties may appeal

decisions of agencies. These rights may not be abrogated by rule. Since the Remedial Action statute (SB 122) is silent as to whether a party could seek EQC or judicial review of a denial of a request to modify information on the Site Inventory, the statutory and constitutional bases for appeal control.

The clarification in the proposed OAR 340-122-335 that denials of delisting petitions are appealable to the EQC and subject to judicial review as provided in the APA is acceptable in that it does not abrogate rights. Proposed OAR 340-122-340(3) on the contrary may abrogate specific rights of appeal granted by higher authority and therefore must be deleted.

BOGLE & GATES

LAW OFFICES

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December 15, 1988

Sara L. Laumann, Esq.
Program Coordinator II
Environmental Cleanup Division
Site Assessment Section
Department of Environmental Quality
811 SW Sixth Avenue
Portland, Oregon 97204

RE: **Proposed Rules Regarding Delisting Facilities on DEQ's Confirmed Release Inventory List: OAR 340-122-310 to 340-122-355**

Dear Ms. Laumann:

On behalf of a number of our clients, Bogle & Gates is taking this opportunity to comment on the Department of Environmental Quality's (DEQ's) Proposed Rules for the Delisting of Facilities on DEQ's Confirmed Release Inventory and the modification of information included in a listing.

We support the development of these rules and complement the DEQ's decision to add a delisting process to the Inventory, because of the serious implications which inclusion on the DEQ's Inventory. This delisting procedure is a needed and necessary aspect of the Inventory program, especially in light of the serious implication which inclusion on the DEQ's Inventory has for a property owner. Furthermore, it is a welcome release from the problems which currently exist with the federal EPA counterpart, the CERCLIS list.

We support the basic structure of the delisting and modification procedures and agree with the Department that provisions for delisting will improve the accuracy, timeliness, and usefulness of the Inventory. Desisting and inventory modification is important from a practical standpoint because the Inventory serves an important function of alerting the public to certain environmental conditions and the Inventory represents sites which may result in the expenditure of State funds for cleanup.

In submitting these comments, we also endorse and incorporate by reference comments previously received by the Department from Richard D. Bach, Stoel, Rives, Boley, Jones & Grey; Miriam Feder, representing Tektronix; and Douglas S. Morrison, Northwest Pulp and Paper Association. In addition, we have the following specific comments and suggestions as follows:

1. OAR 340-122-320: DELISTING PROCESS

A. Subsections (1)(a) and (2). The proposed rules would allow only the owner of a property to petition for delisting. However, this procedure should also be afforded to other parties having an economic interest in the property (e.g., an operator, tenant, mortgagee, or the beneficiary of a Deed of Trust, a contract purchaser, or a prospective purchaser). Therefore, we propose that throughout the proposed rules wherever the term "owner" is utilized, that the term be expanded to include "owner or operator."

B. Subsection (3). In Subsection (3), a litany of the relevant sections is set forth. Inasmuch as OAR 340-122-315 is merely a reference to the definitional section and not a substantive procedural section, we respectfully suggest that this reference be deleted from Subsection (3).

2. OAR 340-122-325: PUBLIC NOTICE AND PARTICIPATION

A. Subsection (1). This general section provides extensive and unprecedented rights for public participation in the delisting process. Our concern is that Subsection (4) of this section would place the liability for the cost of this extensive and unprecedented public notice provision to be borne by the Petitioner, should the delisiting petition be denied. Although we are not opposed per se, to requiring the Petitioner to bear the cost of frivolous or repetitious delisting petitions, especially if unsuccessful, this potential liability will have a significant chilling effect on petitioners to submit a delisting petition. This chilling effect will be significantly increased by the potentially financial liability from the proposed expanded and unprecedented public notification provisions of Subsection (1).

The statute establishes in ORS 466.557(1), that the Inventory list itself is provided for purposes of public information. In addition ORS 466.575, 466.577(4)(d), and 466.577(10)(b) provides significant opportunity for public

participation. We believe the proposed public participation provisions are unreasonable and place a significant and unwarranted potential financial burden on an unsuccessful petitioner by expanding public participation beyond the existing statutory provisions. Furthermore, we believe that it is inequitable for the public to have greater rights to information on the site than does the owner or operator whose property is significantly impaired by being placed on the Inventory. We would remind the Department the owner was only given 15 days to respond to the Department Inventory listing Order. Therefore, we propose that OAR 340-122-325(1)(a)-(d) be modified with proposed deletions ~~struck through~~ and additions shaded, as follows:

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

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

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

(b)~~(c)~~ Provide ~~at least 30~~ 15 days for submission of written of comments regarding the proposed action,

(c)~~(d)~~ Upon written request by 10 or more persons or a group having ten or more members, conduct a public ~~meeting~~ hearing ~~at or near the facility~~ for the purpose of receiving verbal comment regarding the proposed action. 340-122-245;

B. Subsection (1)(e) The word "any" as set forth in Subsection (1)(e) may be construed to connote that the agency may pick or choose among written or verbal comments in its considerations on the delisting petition. We therefore request that the word "any" be replaced with the word "all," so as to clearly indicate that the Department must consider all written or verbal comments prior to making its decision.

C. Subsection (2). This subsection as written is unclear. We respectfully request the Agency to redraft the paragraph to clearly indicate its intentions.

D. Subsection (4). The proposed rule required that persons "liable under the authority used by the Department" must pay for the cost of delisting unless the delisting determination is made by the Department pursuant to OAR 34-122-330(2)(b) or (c).

The clause "liable under the authority used by the Department" is unclear. Although arguably, it includes ORS 466.567. For the sake of clarity, and to avoid any ambiguity, we recommend the rule be revised to provide that the "petitioner or petitioners" pay the costs of the proceeding. Furthermore, we request the Department to set forth with specificity the types of costs included under this liability provision. Inasmuch as this subsection will have a very chilling effect on owners or operators' desire to request a delisting petition, and a petitioning decision to submit a delisting petition must include a weighing of the potential downside costs, it is imperative that the DEQ set forth with particularity what those potential Department costs may be.

3. OAR 340-122-330: DETERMINATION BY DIRECTOR

A. Subsection (3). We are concerned with the provisions of Subsection (3) which would preclude the Director from delisting a facility on the Inventory if the contamination at the facility is being or has been remediated under other applicable statutes, where those remediation efforts were adequate to protect public health, safety, welfare, and the environment. At this time, there is nothing to be gained by including on the Inventory properties that are in the process of cleanup or are about to be cleaned up under other programs administered by the Department. Inclusions of these properties on the Inventory does not tell the public anything more about these properties than they already know, since cleanup and closure plans are subject to public notice and comment. Inclusion on the Inventory of properties destined for cleanup under other programs is also potentially misleading to the public and the legislature, since these properties will not require the use of state funds for cleanup.

The U.S. Environmental Protection Agency (EPA) has recognized this in its recent November 1988 promulgation of the proposed revisions to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This proposal will soon appear in the Federal Register. In discussing the listing of sites on

the National Priorities List (NPL), and EPA's deferral policies relating to NPL listing, the Agency states:

> EPA has in the past deferred the listing of sites on the National Priorities List (NPL) when other authorities were found to exist that were capable of accomplishing needed corrective action. . . .EPA is considering broadening the deferral approach, such that the listing of sites on the NPL would be deferred in cases where a federal authority in its implementing program are found to have corrective action authority. EPA further requests comment on whether to extend this policy as well to states that have implementing programs with corrective action authorities to address CERCLA releases. EPA also requests comment on extending this policy to sites where the potentially responsible parties (PRPs) enter into Federal Enforcement Agreements for site remediation under CERCLA. . . .
>
> There are two primary reasons why EPA is considering expanding its use of NPL deferrals to appropriate federal and state authorities. . . .EPA believes this approach will assist EPA in meeting CERCLA objectives . . . and EPA can direct its CERCLA efforts (and fund monies, if necessary) to those sites where remedial action cannot be achieved by other means. Second, EPA believes where other authorities are in place to achieve corrective action, it may be appropriate to defer to those authorities. . . .
>
> In the past, EPA viewed the NPL as a list compiled for the purpose of informing the public of the most serious hazardous waste sites in the nation, regardless of which law applied. Subsequently, it was viewed as a list for informing the public of hazardous wastes sites that appeared to warrant remedial action under CERCLA. In addition, it may be appropriate to view the non-federal

> section of the NPL merely as a list for informing the public of hazardous waste site that appear to warrant CERCLA funding for remedial action through CERCLA funding alone. EPA believes that one of the latter two approaches would be preferable to the broad approach of listing all potential problem sites. This will allow EPA to make the NPL a more useful management tool. . .and also to provide more meaningful information to the public and states. . .
>
> EPA's interpretation of the NPL as a list that should not include all sites that could potentially be addressed by CERCLA is consistent with the terms of the statute itself. . . .Therefore, although EPA believes it has the authority to list any site where there has been a release of threatened release of a hazardous substance, pollutant, or contaminant, EPA believes that it is no obligated to do so. [Emphasis added] (EPA's Federal Register Notice Submittal, Pages 70-71, November 1988).

We strongly recommend that the DEQ follow this federal precedent, which has arisen after eight long arduous years of attempting to implement the provisions of Superfund, and that the DEQ not try to "reinvent the wheel" at the state level.

We strongly suggest that the proposed rules require the Director to delist a facility upon a showing that the site can be remediated under other applicable law or regulation and that the site remediation plan is protective of human health and the environment.

Therefore, we request that proposed OAR 340-122-330(3) be deleted and that OAR 340-122-330(2) be amended to add as Subsection (d), the following:

> (d) The Director determines that remedial action for the hazardous substances will be accomplished by an owner or operator of the facility pursuant to a Departmental Agreement, Order, Permit or Program and that such remedial action is adequate to assure

protection of public health, safety, welfare and the environment.

These proposed amendments to OAR 340-122-330(2)(d) and the deletion of Subsection (3) will encourage owners or operators to move ahead with their site remediation plans pursuant to these other Departmental programs. Such an approach will encourage owners and operators to cooperate fully and efficiently with these other programs and the owners or operators will be able to use the property and transfer it subject only to the strictures of the remediation and without the additional barriers brought about by listing on the Inventory.

Furthermore, we believe that the Inventory will be more informative to the public, if those sites which will achieve cleanup under other DEQ programs are delisted. It will more accurately reflect those sites that may require public funding. It will have the intended effect of informing the public about those sites of primary concern, it will also act to prevent needless duplication and expenditures of finite state resources and diminish the chance that owners or operator will be subject to demands that vary from program to program.

b. Subsection (4). This section would require the Director to issue an administrative Order "stating the reasons" for granting or denying the petition. We believe the Order should comply with recognized principles and procedures of administrative law and require that the Director state his "Findings of Fact" and "Conclusions of Law" in making his determination. Therefore, we recommend that proposed Subsection (4) be amended as follows:

(4) The Director shall issue and administrative Order stating the ~~reasons for~~ Findings of Fact and Conclusions of Law for granting or denying the petition or proposal for delisting.

4. OAR 340-122-355(1): APPEAL PROCESS

Proposed Subsection (1) provided that only the "owner" may appeal an Administrative Order issued by the Director denying a delisting petition. Reiterating or earlier comments concerning those who may file a petition, we believe that any petitioner who participates in the delisting petition should be allowed to file an appeal.

We want to thank you for considering these comments and more especially to thank the Department and the Environmental Quality Commission for granting the time extension to prepare these comments.

Please contact me if you have any questions or comments regarding this submittal.

Sincerely,

BOGLE & GATES

James C. Brown

gp
Enclosures

cc: Michael Houston, Esq.

REMOVAL OR REMEDIAL ACTION TO ABATE HEALTH HAZARDS

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

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

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

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

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

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

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

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

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

(9) "Hazardous substance" means:

(a) Hazardous waste as defined in ORS 466.005.

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

(c) Oil.

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

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

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

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

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

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

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

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

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

(d) The normal application of fertilizer.

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Therefore, the Legislative Assembly declares that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(E) Long-term maintenance costs;

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

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

(H) The cost effectiveness.

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

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

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

(1) Citizens;

(2) Local governments;

(3) Environmental organizations; and

(4) Industry. [1987 c.735 §5]

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

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

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

(a) A general description of the facility;

(b) Address or location;

(c) Time period during which a release occurred;

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

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

(f) Manner of release of the hazardous substance;

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

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

(i) Other items the director determines necessary.

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

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

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

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

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

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

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

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

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

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

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

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

(a) Sample, inspect, examine and investigate;

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

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

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

(4)(a) Except as provided in paragraphs (b) and (c) of this subsection, the department or its authorized representative shall, upon request by the current owner or operator of the facility or property, provide a portion of any sample obtained from the property or facility to the owner or operator.

(b) The department may decline to give a portion of any sample to the owner or operator if, in the judgment of the department or its authorized representative, apportioning a sample:

(A) May alter the physical or chemical properties of the sample such that the portion of the sample retained by the department would not be representative of the material sampled; or

(B) Would not provide adequate volume to perform the laboratory analysis.

(c) Nothing in this subsection shall prevent or unreasonably hinder or delay the department or its authorized representative in obtaining a sample at any facility or property.

(5) Persons subject to the requirements of this section may make a claim of confidentiality regarding any information, documents or records, in accordance with ORS 466.090. [1987 c.735 §9]

466.567 Strict liability for remedial action costs for injury or destruction of natural resource; limited exclusions. (1) The following persons shall be strictly liable for those remedial action costs incurred by the state or any other person that are attributable to or associated with a facility and for damages for injury to or destruction of any natural resources caused by a release:

(a) Any owner or operator at or during the time of the acts or omissions that resulted in the release.

(b) Any owner or operator who became the owner or operator after the time of the acts or omissions that resulted in the release, and who knew or reasonably should have known of the release when the person first became the owner or operator.

(c) Any owner or operator who obtained actual knowledge of the release at the facility during the time the person was the owner or operator of the facility and then subsequently transferred ownership or operation of the facility to another person without disclosing such knowledge.

(d) Any person who, by any acts or omissions, caused, contributed to or exacerbated the release, unless the acts or omissions were in material compliance with applicable laws, standards, regulations, licenses or permits.

(e) Any person who unlawfully hinders or delays entry to, investigation of or removal or remedial action at a facility.

(2) Except as provided in paragraphs (b) to (e) of subsection (1) of this section and subsection (4) of this section, the following persons shall not be liable for remedial action costs incurred by the state or any other person that are attributable to or associated with a facility, or for damages for injury to or destruction of any natural resources caused by a release:

(a) Any owner or operator who became the owner or operator after the time of the acts or omissions that resulted in a release, and who did not know and reasonably should not have known of the release when the person first became the owner or operator.

(b) Any owner or operator if the facility was contaminated by the migration of a hazardous substance from real property not owned or operated by the person.

(c) Any owner or operator at or during the time of the acts or omissions that resulted in the release, if the release at the facility was caused solely by one or a combination of the following:

(A) An act of God. "Act of God" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(B) An act of war.

(C) Acts or omissions of a third party, other than an employe or agent of the person asserting this defense, or other than a person whose acts or omissions occur in connection with a contractual relationship, existing directly or indirectly, with the person asserting this defense. As used in this subparagraph, "contractual relationship" includes but is not limited to land contracts, deeds or other instruments transferring title or possession.

(3) Except as provided in paragraphs (c) to (e) of subsection (1) of this section or subsection (4) of this section, the following persons shall not be liable for remedial action costs incurred by the state or any other person that are attributable to or associated with a facility, or for damages for injury to or destruction of any natural resources caused by a release:

(a) A unit of state or local government that acquired ownership or control of a facility in the following ways:

(A) Involuntarily by virtue of its function as sovereign, including but not limited to escheat, bankruptcy, tax delinquency or abandonment; or

(B) Through the exercise of eminent domain authority by purchase or condemnation.

(b) A person who acquired a facility by inheritance or bequest.

(4) Notwithstanding the exclusions from liability provided for specified persons in subsections (2) and (3) of this section such persons shall be liable for remedial action costs incurred by the state or any other person that are attributable to or associated with a facility, and for damages for injury to or destruction of any natural resources caused by a release, to the extent that the person's acts or omissions contribute to such costs or damages, if the person:

(a) Obtained actual knowledge of the release and then failed to promptly notify the department and exercise due care with respect to the hazardous substance concerned, taking into consideration the characteristics of the hazardous substance in light of all relevant facts and circumstances; or

(b) Failed to take reasonable precautions against the reasonably foreseeable acts or omissions of a third party and the reasonably foreseeable consequences of such acts or omissions.

(5)(a) No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from any person who may be liable under this section, to any other person, the liability imposed under this section. Nothing in this section shall bar any agreement to insure, hold harmless or indemnify a party to such agreement for any liability under this section.

(b) A person who is liable under this section shall not be barred from seeking contribution from any other person for liability under ORS 466.540 to 466.590 and 466.900.

(c) Nothing in ORS 466.540 to 466.590 and 466.900 shall bar a cause of action that a person liable under this section or a guarantor has or would have by reason of subrogation or otherwise against any person.

(d) Nothing in this section shall restrict any right that the state or any person might have under federal statute, common law or other state statute to recover remedial action costs or to seek any other relief related to a release.

(6) To establish, for purposes of paragraph (b) of subsection (1) of this section or paragraph (a) of subsection (2) of this section, that the person did or did not have reason to know, the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability.

(7)(a) Except as provided in paragraph (b) of this subsection, no person shall be liable under ORS 466.540 to 466.590 and 466.900 for costs or damages as a result of actions taken or omitted in the course of rendering care, assistance or advice in accordance with rules adopted under ORS 466.553 or at the direction of the department or its authorized representative, with respect to an incident creating a danger to public health, safety, welfare or the environment as a result of any release of a hazardous substance. This paragraph shall not preclude liability for costs or damages as the result of negligence on the part of such person.

(b) No state or local government shall be liable under ORS 466.540 to 466.590 and 466.900 for costs or damages as a result of actions taken in response to an emergency created by the release of a hazardous substance generated by or from a facility owned by another person. This paragraph shall not preclude liability for costs or damages as a result of gross negligence or intentional misconduct by the state or local government. For the purpose of this paragraph, reckless, wilful or wanton misconduct shall constitute gross negligence.

(c) This subsection shall not alter the liability of any person covered by subsection (1) of this section. [1987 c.735 §10]

466.570 Removal or remedial action; reimbursement of costs. (1) The director may undertake any removal or remedial action necessary to protect the public health, safety, welfare and the environment.

(2) The director may authorize any person to carry out any removal or remedial action in accordance with any requirements of or directions from the director, if the director determines that the person will commence and complete removal or remedial action properly and in a timely manner.

(3) Nothing in ORS 466.540 to 466.590 and 466.900 shall prevent the director from taking any emergency removal or remedial action necessary to protect public health, safety, welfare or the environment.

(4) The director may require a person liable under ORS 466.567 to conduct any removal or remedial action or related actions necessary to protect the public health, safety, welfare and the environment. The director's action under this subsection may include but need not be limited to issuing an order specifying the removal or remedial action the person must take.

(5) The director may request the Attorney General to bring an action or proceeding for legal or equitable relief, in the circuit court of the county in which the facility is located or in Marion County, as may be necessary:

(a) To enforce an order issued under subsection (4) of this section; or

(b) To abate any imminent and substantial danger to the public health, safety, welfare or the environment related to a release.

(6) Notwithstanding any provision of ORS 183.310 to 183.550, and except as provided in subsection (7) of this section, any order issued by the director under subsection (4) of this section shall not be appealable to the commission or subject to judicial review.

(7)(a) Any person who receives and complies with the terms of an order issued under subsection (4) of this section may, within 60 days after completion of the required action, petition the director for reimbursement from the fund for the reasonable costs of such action.

(b) If the director refuses to grant all or part of the reimbursement, the petitioner may, within 30 days of receipt of the director's refusal, file an action against the director seeking reimbursement from the fund in the circuit court of the county in which the facility is located or in the Circuit Court of Marion County. To obtain reimbursement, the petitioner must establish by a preponderance of the evidence that the petitioner is not liable under ORS 466.567 and that costs for which the petitioner seeks reimbursement are reasonable in light of the action required by the relevant order. A petitioner who is liable under ORS 466.567 may also recover reasonable remedial action costs to the extent that the petitioner can demonstrate that the director's decision in selecting the removal or remedial action ordered was arbitrary and capricious or otherwise not in accordance with law.

(8) If any person who is liable under ORS 466.567 fails without sufficient cause to conduct a removal or remedial action as required by an order of the director, the person shall be liable to the department for the state's remedial action costs and for punitive damages not to exceed three times the amount of the state's remedial action costs.

(9) Nothing in this section is intended to interfere with, limit or abridge the authority of the State Fire Marshal or any other state agency or local unit of government relating to an emergency that presents a combustion or explosion hazard. [1987 c.735 §11]

466.573 Standards for degree of cleanup required; exemption. (1)(a) Any

removal or remedial action performed under the provisions of ORS 466.540 to 466.590 and 466.900 shall attain a degree of cleanup of the hazardous substance and control of further release of the hazardous substance that assure protection of present and future public health, safety, welfare and of the environment.

(b) To the maximum extent practicable, the director shall select a remedial action that is protective of human health and the environment, that is cost effective, and that uses permanent solutions and alternative treatment technologies or resource recovery technologies.

(2) Except as provided in subsection (3) of this section, the director may exempt the onsite portion of any removal or remedial action conducted under ORS 466.540 to 466.590 and 466.900 from any requirement of ORS 466.005 to 466.385 and ORS chapter 459 or 468.

(3) Notwithstanding any provision of subsection (2) of this section, any onsite treatment, storage or disposal of a hazardous substance shall comply with the standard established under subsection (1) of this section. [1987 c.735 §12]

466.575. Notice of cleanup action; receipt and consideration of comment; notice of approval. Except as provided in ORS 466.570 (3), before approval of any remedial action to be undertaken by the department or any other person, or adoption of a certification decision under ORS 466.577, the department shall:

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

(2) Provide at least 30 days for submission of written comments regarding the proposed action, and, upon written request by 10 or more persons or by a group having 10 or more members, conduct a public meeting at or near the facility for the purpose of receiving verbal comment regarding the proposed action.

(3) Consider any written or verbal comments before approving the removal or remedial action.

(4) Upon final approval of the remedial action, publish notice, as provided under subsection (1) of this section, and make copies of the approved action available to the public. [1987 c.735 §13]

466.577 Agreement to perform removal or remedial action; reimbursement; agreement as order and consent decree; effect on liability. (1) The director, in the director's discretion, may enter into an agreement with any person including the owner or operator of the facility from which a release emanates, or any other potentially responsible person to perform any removal or remedial action if the director determines that the actions will be properly done by the person. Whenever practicable and in the public interest, as determined by the director, the director, in order to expedite effective removal or remedial actions and minimize litigation, shall act to facilitate agreements under this section that are in the public interest and consistent with the rules adopted under ORS 466.553. If the director decides not to use the procedures in this section, the director shall notify in writing potentially responsible parties at the facility of such decision. Notwithstanding ORS 183.310 to 183.550, a decision of the director to use or not to use the procedures described in this section shall not be appealable to the commission or subject to judicial review.

(2)(a) An agreement under this section may provide that the director will reimburse the parties to the agreement from the fund, with interest, for certain costs of actions under the agreement that the parties have agreed to perform and the director has agreed to finance. In any case in which the director provides such reimbursement and, in the judgment of the director, cost recovery is in the public interest, the director shall make reasonable efforts to recover the amount of such reimbursement under ORS 466.540 to 466.590 and 466.900 or under other relevant authority.

(b) Notwithstanding ORS 183.310 to 183.550, the director's decision regarding fund financing under this subsection shall not be appealable to the commission or subject to judicial review.

(c) When a remedial action is completed under an agreement described in paragraph (a) of this subsection, the fund shall be subject to an obligation for any subsequent remedial action at the same facility but only to the extent that such subsequent remedial action is necessary by reason of the failure of the original remedial action. Such obligation shall be in a proportion equal to, but not exceeding, the proportion contributed by the fund for the original remedial action. The fund's obligation for such future remedial action may be met through fund expenditures or through payment, following settlement or enforcement action, by persons who were not signatories to the original agreement.

(3) If an agreement has been entered into under this section, the director may take any action under ORS 466.570 against any person who is not a party to the agreement, once the

period for submitting a proposal under paragraph (c) of subsection (5) of this section has expired. Nothing in this section shall be construed to affect either of the following:

(a) The liability of any person under ORS 466.567 or 466.570 with respect to any costs or damages which are not included in the agreement.

(b) The authority of the director to maintain an action under ORS 466.540 to 466.590 and 466.900 against any person who is not a party to the agreement.

(4)(a) Whenever the director enters into an agreement under this section with any potentially responsible person with respect to remedial action, following approval of the agreement by the Attorney General and except as otherwise provided in the case of certain administrative settlements referred to in subsection (8) of this section, the agreement shall be entered in the appropriate circuit court as a consent decree. The director need not make any finding regarding an imminent and substantial endangerment to the public health, safety, welfare or the environment in connection with any such agreement or consent decree.

(b) The entry of any consent decree under this subsection shall not be construed to be an acknowledgment by the parties that the release concerned constitutes an imminent and substantial endangerment to the public health, safety, welfare or the environment. Except as otherwise provided in the Oregon Evidence Code, the participation by any party in the process under this section shall not be considered an admission of liability for any purpose, and the fact of such participation shall not be admissible in any judicial or administrative proceeding, including a subsequent proceeding under this section.

(c) The director may fashion a consent decree so that the entering of the decree and compliance with the decree or with any determination or agreement made under this section shall not be considered an admission of liability for any purpose.

(d) The director shall provide notice and opportunity to the public and to persons not named as parties to the agreement to comment on the proposed agreement before its submittal to the court as a proposed consent decree, as provided under ORS 466.575. The director shall consider any written comments, views or allegations relating to the proposed agreement. The director or any party may withdraw, withhold or modify its consent to the proposed agreement if the comments, views and allegations concerning the agreement disclose facts or considerations which indicate that the proposed agreement is inappropriate, improper or inadequate.

(5)(a) If the director determines that a period of negotiation under this subsection would facilitate an agreement with potentially responsible persons for taking removal or remedial action and would expedite removal or remedial action, the director shall so notify all such parties and shall provide them with the following information to the extent the information is available:

(A) The names and addresses of potentially responsible persons including owners and operators and other persons referred to in ORS 466.567.

(B) The volume and nature of substances contributed by each potentially responsible person identified at the facility.

(C) A ranking by volume of the substances at the facility.

(b) The director shall make the information referred to in paragraph (a) of this subsection available in advance of notice under this subsection upon the request of a potentially responsible person in accordance with procedures provided by the director. The provisions of ORS 466.565 (5) regarding confidential information apply to information provided under paragraph (a) of this subsection.

(c) Any person receiving notice under paragraph (a) of this subsection shall have 60 days from the date of receipt of the notice to submit to the director a proposal for undertaking or financing the action under ORS 466.570. The director may grant extensions for up to an additional 60 days.

(6)(a) Any person may seek contribution from any other person who is liable or potentially liable under ORS 466.567. In resolving contribution claims, the court may allocate remedial action costs among liable parties using such equitable factors as the court determines are appropriate.

(b) A person who has resolved its liability to the state in an administrative or judicially approved settlement shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially responsible persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

(c)(A) If the state has obtained less than complete relief from a person who has resolved its liability to the state in an administrative or

judicially approved settlement, the director may bring an action against any person who has not so resolved its liability.

(B) A person who has resolved its liability to the state for some or all of a removal or remedial action or for some or all of the costs of such action in an administrative or judicially approved settlement may seek contribution from any person who is not party to a settlement referred to in paragraph (b) of this subsection.

(C) In any action under this paragraph, the rights of any person who has resolved its liability to the state shall be subordinate to the rights of the state.

(7)(a) In entering an agreement under this section, the director may provide any person subject to the agreement with a covenant not to sue concerning any liability to the State of Oregon under ORS 466.540 to 466.590 and 466.900, including future liability, resulting from a release of a hazardous substance addressed by the agreement if each of the following conditions is met:

(A) The covenant not to sue is in the public interest.

(B) The covenant not to sue would expedite removal or remedial action consistent with rules adopted by the commission under ORS 466.553 (2).

(C) The person is in full compliance with a consent decree under paragraph (a) of subsection (4) of this section for response to the release concerned.

(D) The removal or remedial action has been approved by the director.

(b) The director shall provide a person with a covenant not to sue with respect to future liability to the State of Oregon under ORS 466.540 to 466.590 and 466.900 for a future release of a hazardous substance from a facility, and a person provided such covenant not to sue shall not be liable to the State of Oregon under ORS 466.567 with respect to such release at a future time, for the portion of the remedial action:

(A) That involves the transport and secure disposition offsite of a hazardous substance in a treatment, storage or disposal facility meeting the requirements of section 3004(c) to (g), (m), (o), (p), (u) and (v) and 3005(c) of the federal Solid Waste Disposal Act, as amended, P.L. 96-482 and P.L. 98-616, if the director has rejected a proposed remedial action that is consistent with rules adopted by the commission under ORS 466.553 that does not include such offsite disposition and has thereafter required offsite disposition; or

(B) That involves the treatment of a hazardous substance so as to destroy, eliminate or permanently immobilize the hazardous constituents of the substance, so that, in the judgment of the director, the substance no longer presents any current or currently foreseeable future significant risk to public health, safety, welfare or the environment, no by-product of the treatment or destruction process presents any significant hazard to public health, safety, welfare or the environment, and all by-products are themselves treated, destroyed or contained in a manner that assures that the by-products do not present any current or currently foreseeable future significant risk to public health, safety, welfare or the environment.

(c) A covenant not to sue concerning future liability to the State of Oregon shall not take effect until the director certifies that the removal or remedial action has been completed in accordance with the requirements of subsection (10) of this section at the facility that is the subject of the covenant.

(d) In assessing the appropriateness of a covenant not to sue under paragraph (a) of this subsection and any condition to be included in a covenant not to sue under paragraph (a) or (b) of this subsection, the director shall consider whether the covenant or conditions are in the public interest on the basis of factors such as the following:

(A) The effectiveness and reliability of the remedial action, in light of the other alternative remedial actions considered for the facility concerned.

(B) The nature of the risks remaining at the facility.

(C) The extent to which performance standards are included in the order or decree.

(D) The extent to which the removal or remedial action provides a complete remedy for the facility, including a reduction in the hazardous nature of the substances at the facility.

(E) The extent to which the technology used in the removal or remedial action is demonstrated to be effective.

(F) Whether the fund or other sources of funding would be available for any additional removal or remedial action that might eventually be necessary at the facility.

(G) Whether the removal or remedial action will be carried out, in whole or in significant part, by the responsible parties themselves.

(e) Any covenant not to sue under this subsection shall be subject to the satisfactory per-

formance by such party of its obligations under the agreement concerned.

(f)(A) Except for the portion of the removal or remedial action that is subject to a covenant not to sue under paragraph (b) of this subsection or de minimis settlement under subsection (8) of this section, a covenant not to sue a person concerning future liability to the State of Oregon:

(i) Shall include an exception to the covenant that allows the director to sue the person concerning future liability resulting from the release or threatened release that is the subject of the covenant if the liability arises out of conditions unknown at the time the director certifies under subsection (10) of this section that the removal or remedial action has been completed at the facility concerned; and

(ii) May include an exception to the covenant that allows the director to sue the person concerning future liability resulting from failure of the remedial action.

(B) In extraordinary circumstances, the director may determine, after assessment of relevant factors such as those referred to in paragraph (d) of this subsection and volume, toxicity, mobility, strength of evidence, ability to pay, litigative risks, public interest considerations, precedential value and the inequities and aggravating factors, not to include the exception referred to in subparagraph (A) of paragraph (f) of this subsection if other terms, conditions or requirements of the agreement containing the covenant not to sue are sufficient to provide all reasonable assurances that public health, safety, welfare and the environment will be protected from any future release at or from the facility.

(C) The director may include any provisions allowing future enforcement action under ORS 466.570 that in the discretion of the director are necessary and appropriate to assure protection of public health, safety, welfare and the environment.

(8)(a) Whenever practicable and in the public interest, as determined by the director, the director shall as promptly as possible reach a final settlement with a potentially responsible person in an administrative or civil action under ORS 466.567 if such settlement involves only a minor portion of the remedial action costs at the facility concerned and, in the judgment of the director, both of the following are minimal in comparison to any other hazardous substance at the facility:

(A) The amount of the hazardous substance contributed by that person to the facility; and

(B) The toxic or other hazardous effects of the substance contributed by that person to the facility.

(b) The director may provide a covenant not to sue with respect to the facility concerned to any party who has entered into a settlement under this subsection unless such a covenant would be inconsistent with the public interest as determined under subsection (7) of this section.

(c) The director shall reach any such settlement or grant a covenant not to sue as soon as possible after the director has available the information necessary to reach a settlement or grant a covenant not to sue.

(d) A settlement under this subsection shall be entered as a consent decree or embodied in an administrative order setting forth the terms of the settlement. The circuit court for the county in which the release or threatened release occurs or the Circuit Court of Marion County may enforce any such administrative order.

(e) A party who has resolved its liability to the state under this subsection shall not be liable for claims for contribution regarding matters addressed in the settlement. The settlement does not discharge any of the other potentially responsible persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

(f) Nothing in this subsection shall be construed to affect the authority of the director to reach settlements with other potentially responsible persons under ORS 466.540 to 466.590 and 466.900.

(9)(a) Notwithstanding ORS 183.310 to 183.550, except for those covenants required under subparagraphs (A) and (B) of paragraph (b) of subsection (7) of this section, a decision by the director to agree or not to agree to inclusion of any covenant not to sue in an agreement under this section shall not be appealable to the commission or subject to judicial review.

(b) Nothing in this section shall limit or otherwise affect the authority of any court to review, in the consent decree process under subsection (4) of this section, any covenant not to sue contained in an agreement under this section.

(10)(a) Upon completion of any removal or remedial action under an agreement under this section, or pursuant to an order under ORS 466.570, the party undertaking the removal or remedial action shall notify the department and request certification of completion. Within 90 days after receiving notice, the director shall determine by certification whether the removal or remedial action is completed in accordance with the applicable agreement or order.

(b) Before submitting a final certification decision to the court that approved the consent

decree, or before entering a final administrative order, the director shall provide to the public and to persons not named as parties to the agreement or order notice and opportunity to comment on the director's proposed certification decision, as provided under ORS 466.575.

(c) Any person aggrieved by the director's certification decision may seek judicial review of the certification decision by the court that approved the relevant consent decree or, in the case of an administrative order, in the circuit court for the county in which the facility is located or in Marion County. The decision of the director shall be upheld unless the person challenging the certification decision demonstrates that the decision was arbitrary and capricious, contrary to the provisions of ORS 466.540 to 466.590 and 466.900 or not supported by substantial evidence. The court shall apply a presumption in favor of the director's decision. The court may award attorney fees and costs to the prevailing party if the court finds the challenge or defense of the director's decision to have been frivolous. The court may assess against a party and award to the state, in addition to attorney fees and costs, an amount equal to the economic gain realized by the party if the court finds the only purpose of the party's challenge to the director's decision was delay for economic gain. [1987 c.735 §14]

466.580 State costs; payment; effect of failure to pay. (1) The department shall keep a record of the state's remedial action costs.

(2) Based on the record compiled by the department under subsection (1) of this section, the department shall require any person liable under ORS 466.567 or 466.570 to pay the amount of the state's remedial action costs and, if applicable, punitive damages.

(3) If the state's remedial action costs and punitive damages are not paid by the liable person to the department within 45 days after receipt of notice that such costs and damages are due and owing, the Attorney General, at the request of the director, shall bring an action in the name of the State of Oregon in a court of competent jurisdiction to recover the amount owed, plus reasonable legal expenses.

(4) All moneys received by the department under this section shall be deposited in the Hazardous Substance Remedial Action Fund established under ORS 466.590 if the moneys received pertain to a removal or remedial action taken at any facility. [1987 c.735 §15]

466.583 Costs as lien; enforcement of lien. (1) All of the state's remedial action costs, penalties and punitive damages for which a person is liable to the state under ORS 466.567, 466.570 or 466.900 shall constitute a lien upon any real and personal property owned by the person.

(2) At the department's discretion, the department may file a claim of lien on real property or a claim of lien on personal property. The department shall file a claim of lien on real property to be charged with a lien under this section with the recording officer of each county in which the real property is located and shall file a claim of lien on personal property to be charged with a lien under this section with the Secretary of State. The lien shall attach and become enforceable on the day of such filing. The lien claim shall contain:

(a) A statement of the demand;

(b) The name of the person against whose property the lien attaches;

(c) A description of the property charged with the lien sufficient for identification; and

(d) A statement of the failure of the person to conduct removal or remedial action and pay penalties and damages as required.

(3) The lien created by this section may be foreclosed by a suit on real and personal property in the circuit court in the manner provided by law for the foreclosure of other liens.

(4) Nothing in this section shall affect the right of the state to bring an action against any person to recover all costs and damages for which the person is liable under ORS 466.567, 466.570 or 466.900. [1987 c.735 §16]

466.585 Contractor liability. (1)(a) A person who is a contractor with respect to any release of a hazardous substance from a facility shall not be liable under ORS 466.540 to 466.590 and 466.900 or under any other state law to any person for injuries, costs, damages, expenses or other liability including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness or loss of or damage to property or economic loss that result from such release.

(b) Paragraph (a) of this subsection shall not apply if the release is caused by conduct of the contractor that is negligent, reckless, wilful or wanton misconduct or that constitutes intentional misconduct.

(c) Nothing in this subsection shall affect the liability of any other person under any warranty under federal, state or common law. Nothing in this subsection shall affect the liability of an

employer who is a contractor to any employe of such employer under any provision of law, including any provision of any law relating to workers' compensation.

(d) A state employe or an employe of a political subdivision who provides services relating to a removal or remedial action while acting within the scope of the person's authority as a governmental employe shall have the same exemption from liability subject to the other provisions of this section, as is provided to the contractor under this section.

(2)(a) The exclusion provided by ORS 466.567 (2)(c)(C) shall not be available to any potentially responsible party with respect to any costs or damages caused by any act or omission of a contractor.

(b) Except as provided in paragraph (d) of subsection (1) of this section and paragraph (a) of this subsection, nothing in this section shall affect the liability under ORS 466.540 to 466.590 and 466.900 or under any other federal or state law of any person, other than a contractor.

(c) Nothing in this section shall affect the plaintiff's burden of establishing liability under ORS 466.540 to 466.590 and 466.900.

(3)(a) The director may agree to hold harmless and indemnify any contractor meeting the requirements of this subsection against any liability, including the expenses of litigation or settlement, for negligence arising out of the contractor's performance in carrying out removal or remedial action activities under ORS 466.540 to 466.590 and 466.900, unless such liability was caused by conduct of the contractor which was grossly negligent, reckless, wilful or wanton misconduct, or which constituted intentional misconduct.

(b) This subsection shall apply only to a removal or remedial action carried out under written agreement with:

(A) The director;

(B) Any state agency; or

(C) Any potentially responsible party carrying out any agreement under ORS 466.570 or 466.577.

(c) For purposes of ORS 466.540 to 466.590 and 466.900, amounts expended from the fund for indemnification of any contractor shall be considered remedial action costs.

(d) An indemnification agreement may be provided under this subsection only if the director determines that each of the following requirements are met:

(A) The liability covered by the indemnification agreement exceeds or is not covered by insurance available, at a fair and reasonable price, to the contractor at the time the contractor enters into the contract to provide removal or remedial action, and adequate insurance to cover such liability is not generally available at the time the contract is entered into.

(B) The contractor has made diligent efforts to obtain insurance coverage.

(C) In the case of a contract covering more than one facility, the contractor agrees to continue to make diligent efforts to obtain insurance coverage each time the contractor begins work under the contract at a new facility.

(4)(a) Indemnification under this subsection shall apply only to a contractor liability which results from a release of any hazardous substance if the release arises out of removal or remedial action activities.

(b) An indemnification agreement under this subsection shall include deductibles and shall place limits on the amount of indemnification to be made available.

(c)(A) In deciding whether to enter into an indemnification agreement with a contractor carrying out a written contract or agreement with any potentially responsible party, the director shall determine an amount which the potentially responsible party is able to indemnify the contractor. The director may enter into an indemnification agreement only if the director determines that the amount of indemnification available from the potentially responsible party is inadequate to cover any reasonable potential liability of the contractor arising out of the contractor's negligence in performing the contract or agreement with the party. In making the determinations required under this subparagraph related to the amount and the adequacy of the amount, the director shall take into account the total net assets and resources of the potentially responsible party with respect to the facility at the time the director makes the determinations.

(B) The director may pay a claim under an indemnification agreement referred to in subparagraph (A) of this paragraph for the amount determined under subparagraph (A) of this paragraph only if the contractor has exhausted all administrative, judicial and common law claims for indemnification against all potentially responsible parties participating in the cleanup of the facility with respect to the liability of the contractor arising out of the contractor's negligence in performing the contract or agreement with the parties. The indemnification agreement

shall require the contractor to pay any deductible established under paragraph (b) of this subsection before the contractor may recover any amount from the potentially responsible party or under the indemnification agreement.

(d) No owner or operator of a facility regulated under the federal Solid Waste Disposal Act, as amended, P.L. 96-482 and P.L. 98-616, may be indemnified under this subsection with respect to such facility.

(e) For the purposes of ORS 466.567, any amounts expended under this section for indemnification of any person who is a contractor with respect to any release shall be considered a remedial action cost incurred by the state with respect to the release.

(5) The exemption provided under subsection (1) of this section and the authority of the director to offer indemnification under subsection (3) of this section shall not apply to any person liable under ORS 466.567 with respect to the release or threatened release concerned if the person would be covered by the provisions even if the person had not carried out any actions referred to in subsection (6) of this section.

(6) As used in this section:

(a) "Contract" means any written contract or agreement to provide any removal or remedial action under ORS 466.540 to 466.590 and 466.900 at a facility, or any removal under ORS 466.540 to 466.590 and 466.900, with respect to any release of a hazardous substance from the facility or to provide any evaluation, planning, engineering, surveying and mapping, design, construction, equipment or any ancillary services thereto for such facility, that is entered into by a contractor as defined in subparagraph (A) of paragraph (b) of this subsection with:

(A) The director;

(B) Any state agency; or

(C) Any potentially responsible party carrying out an agreement under ORS 466.570 or 466.577.

(b) "Contractor" means:

(A) Any person who enters into a removal or remedial action contract with respect to any release of a hazardous substance from a facility and is carrying out such contract; and

(B) Any person who is retained or hired by a person described in subparagraph (A) of this paragraph to provide any services relating to a removal or remedial action.

(c) "Insurance" means liability insurance that is fair and reasonably priced, as determined by the director, and that is made available at the time the contractor enters into the removal or remedial action contract to provide removal or remedial action. [1987 c.735 §17]

466.587 Monthly fee of operators. Beginning on July 1, 1987, every person who operates a facility for the purpose of disposing of hazardous waste or PCB that is subject to interim status or a license issued under ORS 466.005 to 466.385 and 466.890 shall pay a monthly hazardous waste management fee by the 45th day after the last day of each month in the amount of $20 per ton of hazardous waste or PCB brought into the facility for treatment by incinerator or for disposal by landfill at the facility. [1987 c.735 §18]

466.590 Hazardous Substance Remedial Action Fund; sources; uses. (1) The Hazardous Substance Remedial Action Fund is established separate and distinct from the General Fund in the State Treasury.

(2) The following shall be deposited into the State Treasury and credited to the Hazardous Substance Remedial Action Fund:

(a) Fees received by the department under ORS 466.587.

(b) Moneys recovered or otherwise received from responsible parties for remedial action costs.

(c) Any penalty, fine or punitive damages recovered under ORS 466.567, 466.570, 466.583 or 466.900.

(3) The State Treasurer may invest and reinvest moneys in the Hazardous Substance Remedial Action Fund in the manner provided by law.

(4) The moneys in the Hazardous Substance Remedial Action Fund are appropriated continuously to the department to be used as provided in subsection (5) of this section.

(5) Moneys in the Hazardous Substance Remedial Action Fund may be used for the following purposes:

(a) Payment of the state's remedial action costs;

(b) Funding any action or activity authorized by ORS 466.540 to 466.590 and 466.900; and

(c) Providing the state cost share for a removal or remedial action, as required by section 104(c)(3) of the federal Comprehensive Environmental Response, Compensation and Liability Act, P.L. 96-510 and as amended by P.L. 99-499. [1987 c.735 §19]

(b) "State agency" means any officer, board, commission, department, division or institution in the executive or administrative branch of state government. [Formerly 182.065]

183.030 [Repealed by 1971 c.734 §21]

183.040 [Repealed by 1971 c.734 §21]

183.050 [Repealed by 1971 c.734 §21]

183.060 [1957 c.147 §1; repealed by 1969 c.292 §3]

GENERAL PROVISIONS

183.310 Definitions for ORS 183.310 to 183.550. As used in ORS 183.310 to 183.550:

(1) "Agency" means any state board, commission, department, or division thereof, or officer authorized by law to make rules or to issue orders, except those in the legislative and judicial branches.

(2)(a) "Contested case" means a proceeding before an agency:

(A) In which the individual legal rights, duties or privileges of specific parties are required by statute or Constitution to be determined only after an agency hearing at which such specific parties are entitled to appear and be heard;

(B) Where the agency has discretion to suspend or revoke a right or privilege of a person;

(C) For the suspension, revocation or refusal to renew or issue a license where the licensee or applicant for a license demands such hearing; or

(D) Where the agency by rule or order provides for hearings substantially of the character required by ORS 183.415, 183.425, 183.450, 183.460 and 183.470.

(b) "Contested case" does not include proceedings in which an agency decision rests solely on the result of a test.

(3) "Economic effect" means the economic impact on affected businesses by and the costs of compliance, if any, with a rule for businesses, including but not limited to the costs of equipment, supplies, labor and administration.

(4) "License" includes the whole or part of any agency permit, certificate, approval, registration or similar form of permission required by law to pursue any commercial activity, trade, occupation or profession.

(5)(a) "Order" means any agency action expressed orally or in writing directed to a named person or named persons, other than employes, officers or members of an agency. "Order" includes any agency determination or decision issued in connection with a contested case proceeding. "Order" includes:

(A) Agency action under ORS chapter 657 making determination for purposes of unemployment compensation of employes of the state; and

(B) Agency action under ORS chapter 240 which grants, denies, modifies, suspends or revokes any right or privilege of an employe of the state.

(b) "Final order" means final agency action expressed in writing. "Final order" does not include any tentative or preliminary agency declaration or statement that:

(A) Precedes final agency action; or

(B) Does not preclude further agency consideration of the subject matter of the statement or declaration.

(6) "Party" means:

(a) Each person or agency entitled as of right to a hearing before the agency;

(b) Each person or agency named by the agency to be a party; or

(c) Any person requesting to participate before the agency as a party or in a limited party status which the agency determines either has an interest in the outcome of the agency's proceeding or represents a public interest in such result. The agency's determination is subject to judicial review in the manner provided by ORS 183.482 after the agency has issued its final order in the proceedings.

(7) "Person" means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character other than an agency.

(8) "Rule" means any agency directive, standard, regulation or statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of any agency. The term includes the amendment or repeal of a prior rule, but does not include:

(a) Unless a hearing is required by statute, internal management directives, regulations or statements which do not substantially affect the interests of the public:

(A) Between agencies, or their officers or their employes; or

(B) Within an agency, between its officers or between employes.

(b) Action by agencies directed to other agencies or other units of government which do not substantially affect the interests of the public.

(c) Declaratory rulings issued pursuant to ORS 183.410 or 305.105.

(d) Intra-agency memoranda.

(e) Executive orders of the Governor.

(f) Rules of conduct for persons committed to the physical and legal custody of the Department of Corrections, the violation of which will not result in:

(A) Placement in segregation or isolation status in excess of seven days.

(B) Institutional transfer or other transfer to secure confinement status for disciplinary reasons.

(C) Disciplinary procedures adopted pursuant to ORS 421.180.

(9) "Small business" means a corporation, partnership, sole proprietorship or other legal entity formed for the purpose of making a profit, which is independently owned and operated from all other businesses and which has 50 or fewer employes. [1957 c.717 §1; 1965 c.285 §78a; 1967 c.419 §32; 1969 c.80 §37a; 1971 c.734 §1; 1973 c.386 §4; 1973 c.621 §1a; 1977 c.374 §1; 1977 c.798 §1; 1979 c.593 §6; 1981 c.755 §1; 1987 c.320 §141; 1987 c.861 §1]

183.315 Application of ORS 183.310 to 183.550 to certain agencies. (1) The provisions of ORS 183.410, 183.415, 183.425, 183.440, 183.450, 183.460, 183.470 and 183.480 do not apply to local government boundary commissions created pursuant to ORS 199.425 or 199.430, the Department of Revenue, State Accident Insurance Fund Corporation, Public Utility Commission, Department of Insurance and Finance with respect to its functions under ORS chapters 654 and 656, Psychiatric Security Review Board or State Board of Parole.

(2) ORS 183.310 to 183.550 do not apply with respect to actions of the Governor authorized under ORS chapter 240.

(3) The provisions of ORS 183.410, 183.415, 183.425, 183.440, 183.450 and 183.460 do not apply to the Employment Appeals Board or the Employment Division.

(4) The Employment Division shall be exempt from the provisions of ORS 183.310 to 183.550 to the extent that a formal finding of the United States Secretary of Labor is made that such provision conflicts with the terms of the federal law, acceptance of which by the state is a condition precedent to continued certification by the United States Secretary of Labor of the state's law.

(5) The provisions of ORS 183.415 to 183.430, 183.440 to 183.460, 183.470 to 183.485 and 183.490 to 183.500 do not apply to orders issued to persons who have been committed pursuant to ORS 137.124 to the custody of the Department of Corrections. [1971 c.734 §10; 1973 §8; 1973 c.621 §2; 1973 c.691 §1; 1975 c.759 §1; 1977 c.8[illegible]; 1979 c.593 §7; 1981 c.711 §16; 1987 c.320 §142; 1987 c.37[illegible]]

183.317 [1971 c.734 §187; repealed by 1979 c.59[illegible]]

183.320 [1957 c.717 §15; repealed by 1971 c.734 §2]

ADOPTION OF RULES

183.325 Delegation of rulemaking authority to officer or employe. Unless otherwise provided by law, an agency may delegate its rulemaking authority to an officer or employe within the agency. A delegation of authority under this section must be made in writing. Any officer or employe to whom rulemaking authority is delegated under this section is an "agency" for the purposes of the rulemaking requirements of ORS 183.310 to 183.550. [1979 c.593 §10]

183.330 Description of organization; service of order; effect of not putting order in writing. (1) In addition to other rulemaking requirements imposed by law, each agency shall publish a description of its organization and the methods whereby the public may obtain information or make submissions or requests.

(2) An order shall not be effective as to any person or party unless it is served upon the person or party either personally or by mail. This subsection is not applicable in favor of any person or party who has actual knowledge of the order.

(3) An order is not final until it is reduced to writing. [1957 c.717 §2; 1971 c.734 §4; 1975 c.759 §3; 1979 c.593 §8]

183.335 Notice; content; temporary rule adoption, amendment or suspension; substantial compliance required. (1) Prior to the adoption, amendment or repeal of any rule, the agency shall give notice of its intended action:

(a) In the manner established by rule adopted by the agency under ORS 183.341 (4), which provides a reasonable opportunity for interested persons to be notified of the agency's proposed action;

(b) In the bulletin referred to in ORS 183.360 at least 15 days prior to the effective date; and

(c) To persons who have requested notice pursuant to subsection (7) of this section.

(2)(a) The notice required by subsection (1) of this section shall state the subject matter and purpose of the intended action in sufficient detail to inform a person that the person's interests may be affected, and the time, place and manner in which interested persons may present their views on the intended action.

(b) The agency shall include with the notice of intended action given under subsection (1) of this section:

(A) A citation of the statutory or other legal authority relied upon and bearing upon the promulgation of the rule;

(B) A statement of the need for the rule and a statement of how the rule is intended to meet the need;

(C) A list of the principal documents, reports or studies, if any, prepared by or relied upon by the agency in considering the need for and in preparing the rule, and a statement of the location at which those documents are available for public inspection. The list may be abbreviated if necessary, and if so abbreviated there shall be identified the location of a complete list; and

(D) A statement of fiscal impact identifying state agencies, units of local government and the public which may be economically affected by the adoption, amendment or repeal of the rule and an estimate of that economic impact on state agencies, units of local government and the public. In considering the economic effect of the proposed action on the public, the agency shall utilize available information to project any significant economic effect of that action on businesses which shall include a cost of compliance effect on small businesses affected.

(c) The Secretary of State may omit the information submitted under paragraph (b) of this subsection from publication in the bulletin referred to in ORS 183.360.

(3) When an agency proposes to adopt, amend or repeal a rule, it shall give interested persons reasonable opportunity to submit data or views. Opportunity for oral hearing shall be granted upon request received from 10 persons or from an association having not less than 10 members within 15 days after agency notice. An agency holding a hearing upon a request made under this subsection is not required to give additional notice of the hearing in the bulletin referred to in ORS 183.360 if the agency gives notice in compliance with its rules of practice and procedure other than a requirement that notice be given in the bulletin. The agency shall consider fully any written or oral submission.

(4) Upon request of an interested person received within 15 days after agency notice pursuant to subsection (1) of this section, the agency shall postpone the date of its intended action no less than 10 nor more than 90 days in order to allow the requesting person an opportunity to submit data, views or arguments concerning the proposed action. Nothing in this subsection shall preclude an agency from adopting a temporary rule pursuant to subsection (5) of this section.

(5) Notwithstanding subsections (1) to (4) of this section, an agency may adopt, amend or suspend a rule without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, if the agency prepares:

(a) A statement of its findings that its failure to act promptly will result in serious prejudice to the public interest or the interest of the parties concerned and the specific reasons for its findings of prejudice;

(b) A citation of the statutory or other legal authority relied upon and bearing upon the promulgation of the rule;

(c) A statement of the need for the rule and a statement of how the rule is intended to meet the need; and

(d) A list of the principal documents, reports or studies, if any, prepared by or relied upon by the agency in considering the need for and in preparing the rule, and a statement of the location at which those documents are available for public inspection.

(6)(a) A rule adopted, amended or suspended under subsection (5) of this section is temporary and may be effective for a period of not longer than 180 days. The adoption of a rule under this subsection does not preclude the subsequent adoption of an identical rule under subsections (1) to (4) of this section.

(b) A rule temporarily suspended shall regain effectiveness upon expiration of the temporary period of suspension unless the rule is repealed under subsections (1) to (4) of this section.

(7) Any person may request in writing that an agency mail to the person copies of its notices of intended action given pursuant to subsection (1) of this section. Upon receipt of any request the agency shall acknowledge the request, establish a mailing list and maintain a record of all mailings made pursuant to the request. Agencies may establish procedures for establishing and maintaining the mailing lists current and, by rule, establish fees necessary to defray the costs of mailings and maintenance of the lists.

(8) This section does not apply to rules establishing an effective date for a previously effective rule or establishing a period during which a provision of a previously effective rule will apply.

(9) This section does not apply to ORS 279.025 to 279.031 and 279.310 to 279.990 relating to public contracts and purchasing.

(10)(a) No rule is valid unless adopted in substantial compliance with the provisions of this section in effect on the date the rule is adopted.

(b) In addition to all other requirements with which rule adoptions must comply, no rule adopted after October 3, 1979, is valid unless submitted to the Legislative Counsel under ORS 183.715.

(11) Notwithstanding the provisions of subsection (10) of this section, an agency may correct its failure to substantially comply with the requirements of subsections (2) and (5) of this section in adoption of a rule by an amended filing, so long as the noncompliance did not substantially prejudice the interests of persons to be affected by the rule. However, this subsection does not authorize correction of a failure to comply with subparagraph (D) of paragraph (b) of subsection (2) of this section requiring inclusion of a fiscal impact statement with the notice required by subsection (1) of this section.

(12) Unless otherwise provided by statute, the adoption, amendment or repeal of a rule by an agency need not be based upon or supported by an evidentiary record. [1971 c.734 §3; 1973 c.612 §1; 1975 c.136 §11; 1975 c.759 §4; 1977 c.161 §1; 1977 c.344 §6; 1977 c.394 §1a; 1977 c.798 §2; 1979 c.593 §11; 1981 c.755 §2; 1987 c.861 §2]

183.337 Procedure for agency adoption of federal rules. (1) Notwithstanding ORS 183.335, when an agency is required to adopt rules or regulations promulgated by an agency of the Federal Government and the agency has no authority to alter or amend the content or language of those rules or regulations prior to their adoption, the agency may adopt those rules or regulations under the procedure prescribed in this section.

(2) Prior to the adoption of a federal rule or regulation under subsection (1) of this section, the agency shall give notice of the adoption of the rule or regulation, the effective date of the rule or regulation in this state and the subject matter of the rule or regulation in the manner established in ORS 183.335 (1).

(3) After giving notice the agency may adopt the rule or regulation by filing a copy with the Secretary of State in compliance with ORS 183.355. The agency is not required to conduct a public hearing concerning the adoption of the rule or regulation.

(4) Nothing in this section authorizes an agency to amend federal rules or regulations or adopt rules in accordance with federal requirements without giving an opportunity for hearing as required by ORS 183.335. [1979 c.593 §15]

183.340 [1957 c.717 §3 (3); 1971 c.734 §6, repealed by 1975 c.759 §5 (183.341 enacted in lieu of 183.340)]

183.341 Model rules of procedure; establishment; compilation; publication; agencies required to adopt procedural rules. (1) The Attorney General shall prepare model rules of procedure appropriate for use by as many agencies as possible. Any agency may adopt all or part of the model rules by reference without complying with the rulemaking procedures under ORS 183.335. Notice of such adoption shall be filed with the Secretary of State in the manner provided by ORS 183.355 for the filing of rules. The model rules may be amended from time to time by an adopting agency or the Attorney General after notice and opportunity for hearing as required by rulemaking procedures under ORS 183.310 to 183.550.

(2) All agencies shall adopt rules of procedure to be utilized in the adoption of rules and conduct of proceedings in contested cases or, if exempt from the contested case provisions of ORS 183.310 to 183.550, for the conduct of proceedings.

(3) The Secretary of State shall publish in the Oregon Administrative Rules:

(a) The Attorney General's model adopted under subsection (1) of this section.

(b) The procedural rules of all agencies that have not adopted the Attorney General's model rules; and

(c) The notice procedures required by ORS 183.335 (1).

(4) Agencies shall adopt rules of procedure which will provide a reasonable opportunity for interested persons to be notified of the agency's intention to adopt, amend or repeal a rule. Rules adopted or amended under this subsection shall be approved by the Attorney General.

(5) No rule adopted after September 13, 1975 is valid unless adopted in substantial compliance with the rules adopted pursuant to subsection (4) of this section. [1975 c.759 §6 (enacted in lieu of 183.34 1979 c.593 §12]

183.350 [1957 c.717 §3 (1), (2); repealed by 1971 c.7 §21]

183.355 Filing and taking effect of rules; filing of executive orders; copies. (1)(a) Each agency shall file in the office of the Secretary of State a certified copy of each rule adopted by it.

(b) Notwithstanding the provisions of paragraph (a) of this subsection, an agency adopting

rule incorporating published standards by reference is not required to file a copy of those standards with the Secretary of State if:

(A) The standards adopted are unusually voluminous and costly to reproduce; and

(B) The rule filed with the Secretary of State identifies the location of the standards so incorporated and the conditions of their availability to the public.

(2) Each rule is effective upon filing as required by subsection (1) of this section, except that:

(a) If a later effective date is required by statute or specified in the rule, the later date is the effective date.

(b) A temporary rule becomes effective upon filing with the Secretary of State, or at a designated later date, only if the statement required by ORS 183.335 (5) is filed with the rule. The agency shall take appropriate measures to make temporary rules known to the persons who may be affected by them.

(3) When a rule is amended or repealed by an agency, the agency shall file a certified copy of the amendment or notice of repeal with the Secretary of State who shall appropriately amend the compilation required by ORS 183.360 (1).

(4) A certified copy of each executive order issued, prescribed or promulgated by the Governor shall be filed in the office of the Secretary of State.

(5) No rule of which a certified copy is required to be filed shall be valid or effective against any person or party until a certified copy is filed in accordance with this section. However, if an agency, in disposing of a contested case, announces in its decision the adoption of a general policy applicable to such case and subsequent cases of like nature the agency may rely upon such decision in disposition of later cases.

(6) The Secretary of State shall, upon request, supply copies of rules, or orders or designated parts of rules or orders, making and collecting therefor fees prescribed by ORS 177.130. All receipts from the sale of copies shall be deposited in the State Treasury to the credit of the General Fund. [1971 c.734 §5; 1973 c.612 §2; 1975 c.759 §7; 1977 c.798 §2b; 1979 c.593 §13]

183.360 Publication of rules and orders; exceptions; requirements; bulletin; judicial notice; citation. (1) The Secretary of State shall compile, index and publish all rules adopted by each agency. The compilation shall be supplemented or revised as often as necessary and at least once every six months. Such compilation supersedes any other rules. The Secretary of State may make such compilations of other material published in the bulletin as is desirable.

(2)(a) The Secretary of State has discretion to omit from the compilation rules the publication of which would be unduly cumbersome or expensive if the rule in printed or processed form is made available on application to the adopting agency, and if the compilation contains a notice summarizing the omitted rule and stating how a copy thereof may be obtained. In preparing the compilation the Secretary of State shall not alter the sense, meaning, effect or substance of any rule, but may renumber sections and parts of sections of the rules, change the wording of headnotes, rearrange sections, change reference numbers to agree with renumbered chapters, sections or other parts, substitute the proper subsection, section or chapter or other division numbers, change capitalization for the purpose of uniformity, and correct manifest clerical or typographical errors.

(b) The Secretary of State may by rule prescribe requirements, not inconsistent with law, for the manner and form for filing of rules adopted or amended by agencies. The Secretary of State may refuse to accept for filing any rules which do not comply with those requirements.

(3) The Secretary of State shall publish at least at monthly intervals a bulletin which:

(a) Briefly indicates the agencies that are proposing to adopt, amend or repeal a rule, the subject matter of the rule and the name, address and telephone number of an agency officer or employe from whom information and a copy of any proposed rule may be obtained;

(b) Contains the text or a brief description of all rules filed under ORS 183.355 since the last bulletin indicating the effective date of the rule; and

(c) Contains executive orders of the Governor.

(4) Courts shall take judicial notice of rules and executive orders filed with the Secretary of State.

(5) The compilation required by subsection (1) of this section shall be titled Oregon Administrative Rules and may be cited as "O.A.R." with appropriate numerical indications. [1957 c.717 §4 (1), (2), (3); 1961 c.464 §1; 1971 c.734 §7; 1973 c.612 §4; 1975 c.759 §7a; 1977 c.394 §2; 1979 c.593 §16]

183.370 Distribution of published rules. The bulletins and compilations may be distributed by the Secretary of State free of

charge as provided for the distribution of legislative materials referred to in ORS 171.236. Other copies of the bulletins and compilations shall be distributed by the Secretary of State at a cost determined by the Secretary of State. Any agency may compile and publish its rules or all or part of its rules for purpose of distribution outside of the agency only after it proves to the satisfaction of the Secretary of State that agency publication is necessary. [1957 c.717 §4 (4); 1959 c.260 §1; 1969 c.174 §4; 1975 c.759 §8; 1977 c.394 §3]

183.380 [1957 c.717 §4 (5); repealed by 1971 c.734 §21]

183.390 Petitions requesting adoption of rules. An interested person may petition an agency requesting the promulgation, amendment or repeal of a rule. The Attorney General shall prescribe by rule the form for such petitions and the procedure for their submission, consideration and disposition. Not later than 30 days after the date of submission of a petition, the agency either shall deny the petition in writing or shall initiate rulemaking proceedings in accordance with ORS 183.335. [1957 c.717 §5; 1971 c.734 §8]

183.400 Judicial determination of validity of rule. (1) The validity of any rule may be determined upon a petition by any person to the Court of Appeals in the manner provided for review of orders in contested cases. The court shall have jurisdiction to review the validity of the rule whether or not the petitioner has first requested the agency to pass upon the validity of the rule in question, but not when the petitioner is a party to an order or a contested case in which the validity of the rule may be determined by a court.

(2) The validity of any applicable rule may also be determined by a court, upon review of an order in any manner provided by law or pursuant to ORS 183.480 or upon enforcement of such rule or order in the manner provided by law.

(3) Judicial review of a rule shall be limited to an examination of:

(a) The rule under review;

(b) The statutory provisions authorizing the rule; and

(c) Copies of all documents necessary to demonstrate compliance with applicable rulemaking procedures.

(4) The court shall declare the rule invalid only if it finds that the rule:

(a) Violates constitutional provisions;

(b) Exceeds the statutory authority of the agency; or

(c) Was adopted without compliance with applicable rulemaking procedures.

(5) In the case of disputed allegations of irregularities in procedure which, if proved, would warrant reversal or remand, the Court of Appeals may refer the allegations to a Master appointed by the court to take evidence and make findings of fact. The court's review of the Master's findings of fact shall be de novo on the evidence.

(6) The court shall not declare a rule invalid solely because it was adopted without compliance with applicable rulemaking procedures after a period of two years after the date the rule was filed in the office of the Secretary of State, if the agency attempted to comply with those procedures and its failure to do so did not substantially prejudice the interests of the parties. [1957 c.717 §6; 1971 c.734 §9; 1975 c.759 §9; 1979 c.593 §17; 1985 c.861 §3]

183.410 Agency determination of applicability of rule or statute to petitioner; effect; judicial review. On petition of any interested person, any agency may in its discretion issue a declaratory ruling with respect to the applicability to any person, property, or state of facts of any rule or statute enforceable by it. A declaratory ruling is binding between the agency and the petitioner on the state of facts alleged, unless it is altered or set aside by a court. However, the agency may, where the ruling is adverse to the petitioner, review the ruling and alter it if requested by the petitioner. Binding rulings provided by this section are subject to review in the Court of Appeals in the manner provided in ORS 183.480 for the review of orders in contested cases. The Attorney General shall prescribe by rule the form for such petitions and the procedure for their submission, consideration and disposition. The petitioner shall have the right to submit briefs and present oral argument at any declaratory ruling proceeding held pursuant to this section. [1957 c.717 §7; 1971 c.734 §10; 1973 c.612 §5]

CONTESTED CASES

183.413 Notice to party before hearing of rights and procedure; failure to provide notice. (1) The Legislative Assembly finds that the citizens of this state have a right to be informed as to the procedures by which contested cases are heard by state agencies, their rights in hearings before state agencies, the import and effect of hearings before state agencies and their rights and remedies with respect to actions taken by state agencies. Accordingly, it is the purpose of subsections (2) to (4) of this section to set forth certain requirements of state agencies so that

citizens shall be fully informed as to these matters when exercising their rights before state agencies.

(2) Prior to the commencement of a contested case hearing before any agency including those agencies identified in ORS 183.315, the agency shall inform each party to the hearing of the following matters:

(a) If a party is not represented by an attorney, a general description of the hearing procedure including the order of presentation of evidence, what kinds of evidence are admissible, whether objections may be made to the introduction of evidence and what kind of objections may be made and an explanation of the burdens of proof or burdens of going forward with the evidence.

(b) Whether a record will be made of the proceedings and the manner of making the record and its availability to the parties.

(c) The function of the record-making with respect to the perpetuation of the testimony and evidence and with respect to any appeal from the determination or order of the agency.

(d) Whether an attorney will represent the agency in the matters to be heard and whether the parties ordinarily and customarily are represented by an attorney.

(e) The title and function of the person presiding at the hearing with respect to the decision process, including, but not limited to, the manner in which the testimony and evidence taken by the person presiding at the hearing are reviewed, the effect of that person's determination, who makes the final determination on behalf of the agency, whether the person presiding at the hearing is or is not an employe, officer or other representative of the agency and whether that person has the authority to make a final independent determination.

(f) In the event a party is not represented by an attorney, whether the party may during the course of proceedings request a recess if at that point the party determines that representation by an attorney is necessary to the protection of the party's rights.

(g) Whether there exists an opportunity for an adjournment at the end of the hearing if the party then determines that additional evidence should be brought to the attention of the agency and the hearing reopened.

(h) Whether there exists an opportunity after the hearing and prior to the final determination or order of the agency to review and object to any proposed findings of fact, conclusions of law, summary of evidence or recommendations of the officer presiding at the hearing.

(i) A description of the appeal process from the determination or order of the agency.

(3) The information required to be given to a party to a hearing under subsections (2) and (3) of this section may be given in writing or orally before commencement of the hearing.

(4) The failure of an agency to give notice of any item specified in subsections (2) and (3) of this section, shall not invalidate any determination or order of the agency unless upon an appeal from or review of the determination or order a court finds that the failure affects the substantial rights of the complaining party. In the event of such a finding, the court shall remand the matter to the agency for a reopening of the hearing and shall direct the agency as to what steps it shall take to remedy the prejudice to the rights of the complaining party. [1979 c.593 §§37, 38, 39]

183.415 Notice, hearing and record in contested case; informal disposition; hearings officer; ex parte communications. (1) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice, served personally or by registered or certified mail.

(2) The notice shall include:

(a) A statement of the party's right to hearing, or a statement of the time and place of the hearing;

(b) A statement of the authority and jurisdiction under which the hearing is to be held;

(c) A reference to the particular sections of the statutes and rules involved; and

(d) A short and plain statement of the matters asserted or charged.

(3) Parties may elect to be represented by counsel and to respond and present evidence and argument on all issues involved.

(4) Agencies may adopt rules of procedure governing participation in contested cases by persons appearing as limited parties.

(5) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default. Informal settlement may be made in license revocation proceedings by written agreement of the parties and the agency consenting to a suspension, fine or other form of intermediate sanction.

(6) An order adverse to a party may be issued upon default only upon prima facie case made on the record of the agency. When an order is effective only if a request for hearing is not made by the party, the record may be made at the time of

issuance of the order, and if the order is based only on material included in the application or other submissions of the party, the agency may so certify and so notify the party, and such material shall constitute the evidentiary record of the proceeding if hearing is not requested.

(7) At the commencement of the hearing, the officer presiding shall explain the issues involved in the hearing and the matters that the parties must either prove or disprove.

(8) Testimony shall be taken upon oath or affirmation of the witness from whom received. The officer presiding at the hearing shall administer oaths or affirmations to witnesses.

(9) The officer presiding at the hearing shall place on the record a statement of the substance of any written or oral ex parte communications on a fact in issue made to the officer during the pendency of the proceeding and notify the parties of the communication and of their right to rebut such communications.

(10) The officer presiding at the hearing shall insure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the presiding officer in the case.

(11) The record in a contested case shall include:

(a) All pleadings, motions and intermediate rulings.

(b) Evidence received or considered.

(c) Stipulations.

(d) A statement of matters officially noticed.

(e) Questions and offers of proof, objections and rulings thereon.

(f) A statement of any ex parte communications on a fact in issue made to the officer presiding at the hearing.

(g) Proposed findings and exceptions.

(h) Any proposed, intermediate or final order prepared by the agency or a hearings officer.

(12) A verbatim oral, written or mechanical record shall be made of all motions, rulings and testimony. The record need not be transcribed unless requested for purposes of rehearing or court review. The agency may charge the party requesting transcription the cost of a copy of transcription, unless the party files an appropriate affidavit of indigency. However, upon petition, a court having jurisdiction to review under ORS 183.480 may reduce or eliminate the charge upon finding that it is equitable to do so, or that matters of general interest would be determined by review of the order of the agency. [1971 c.734 §15; 1979 c.593 §18; 1985 c.757 §1]

183.418 Interpreter for handicapp person in contested case. (1) When a handicapped person is a party to a contested case, the handicapped person is entitled to a qualified interpreter to interpret the proceedings to the handicapped person and to interpret the testimony of the handicapped person to the agency.

(2)(a) Except as provided in paragraph (b) of this subsection, the agency shall appoint the qualified interpreter for the handicapped person; and the agency shall fix and pay the fees and expenses of the qualified interpreter if:

(A) The handicapped person makes a verified statement and provides other information in writing under oath showing the inability of the handicapped person to obtain a qualified interpreter, and provides any other information required by the agency concerning the inability of the handicapped person to obtain such an interpreter; and

(B) It appears to the agency that the handicapped person is without means and is unable to obtain a qualified interpreter.

(b) If the handicapped person knowingly and voluntarily files with the agency a written statement that the handicapped person does not desire a qualified interpreter to be appointed for [illegible] handicapped person, the agency shall not app[illegible] such an interpreter for the handicapped person.

(3) As used in this section:

(a) "Handicapped person" means a person who cannot readily understand or communicate the English language, or cannot understand the proceedings or a charge made against the handicapped person, or is incapable of presenting or assisting in the presentation of the defense of the handicapped person, because the handicapped person is deaf, or because the handicapped person has a physical hearing impairment or physical speaking impairment.

(b) "Qualified interpreter" means a person who is readily able to communicate with the handicapped person, translate the proceedings for the handicapped person, and accurately repeat and translate the statements of the handicapped person to the agency. [1973 c.386 §6]

183.420 [1957 c.717 §8 (1); repealed by 1971 c.734 §21]

183.425 Depositions or subpena of material witness; discovery. (1) On petition of any party to a contested case, the agency may order that the testimony of any material witness may be taken by deposition in the manner pre-

scribed by law for depositions in civil actions. Depositions may also be taken by the use of audio or audio-visual recordings. The petition shall set forth the name and address of the witness whose testimony is desired, a showing of the materiality of the testimony of the witness, and a request for an order that the testimony of such witness be taken before an officer named in the petition for that purpose. If the witness resides in this state and is unwilling to appear, the agency may issue a subpena as provided in ORS 183.440, requiring the appearance of the witness before such officer.

(2) An agency may, by rule, prescribe other methods of discovery which may be used in proceedings before the agency. [1971 c.734 §14; 1975 c.759 §11; 1979 c.593 §19]

183.430 Hearing on refusal to renew license; exceptions. (1) In the case of any license which must be periodically renewed, where the licensee has made timely application for renewal in accordance with the rules of the agency, such license shall not be deemed to expire, despite any stated expiration date thereon, until the agency concerned has issued a formal order of grant or denial of such renewal. In case an agency proposes to refuse to renew such license, upon demand of the licensee, the agency must grant hearing as provided by ORS 183.310 to 183.550 before issuance of order of refusal to renew. This subsection does not apply to any emergency or temporary permit or license.

(2) In any case where the agency finds a serious danger to the public health or safety and sets forth specific reasons for such findings, the agency may suspend or refuse to renew a license without hearing, but if the licensee demands a hearing within 90 days after the date of notice to the licensee of such suspension or refusal to renew, then a hearing must be granted to the licensee as soon as practicable after such demand, and the agency shall issue an order pursuant to such hearing as required by ORS 183.310 to 183.550 confirming, altering or revoking its earlier order. Such a hearing need not be held where the order of suspension or refusal to renew is accompanied by or is pursuant to, a citation for violation which is subject to judicial determination in any court of this state, and the order by its terms will terminate in case of final judgment in favor of the licensee. [1957 c.717 §8 (3), (4); 1965 c.212 §1; 1971 c.734 §11]

183.435 Period allowed to request hearing for license refusal on grounds other than test or inspection results. When an agency refuses to issue a license required to pursue any commercial activity, trade, occupation or profession if the refusal is based on grounds other than the results of a test or inspection that agency shall grant the person requesting the license 60 days from notification of the refusal to request a hearing. [Formerly 670.285]

183.440 Subpenas in contested cases. (1) The agency shall issue subpenas to any party to a contested case upon request upon a showing of general relevance and reasonable scope of the evidence sought. A party, other than the agency, entitled to have witnesses on behalf of the party may have subpenas issued by an attorney of record of the party, subscribed by the signature of the attorney. Witnesses appearing pursuant to subpena, other than the parties or officers or employes of the agency, shall receive fees and mileage as prescribed by law for witnesses in civil actions.

(2) If any person fails to comply with any subpena so issued or any party or witness refuses to testify on any matters on which the party or witness may be lawfully interrogated, the judge of the circuit court of any county, on the application of the agency or of a designated representative of the agency or of the party requesting the issuance of or issuing the subpena, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpena issued from such court or a refusal to testify therein. [1957 c.717 §8 (2); 1971 c.734 §12; 1979 c.593 §20; 1981 c.174 §4]

183.445 Subpena by attorney of record of party when agency not subject to ORS 183.440. In any proceeding before an agency not subject to ORS 183.440 in which a party, other than the agency, is entitled to have subpenas issued by the agency for the appearance of witnesses on behalf of the party, a subpena may be issued by an attorney of record of the party, subscribed by the signature of the attorney. A subpena issued by an attorney of record may be enforced in the same manner as a subpena issued by the agency. [1981 c.174 §6]

183.450 Evidence; representation of state agency; representation when public assistance involved. In contested cases:

(1) Irrelevant, immaterial or unduly repetitious evidence shall be excluded but erroneous rulings on evidence shall not preclude agency action on the record unless shown to have substantially prejudiced the rights of a party. All other evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs shall be admissible. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made

and shall be noted in the record. Any part of the evidence may be received in written form.

(2) All evidence shall be offered and made a part of the record in the case, and except for matters stipulated to and except as provided in subsection (4) of this section no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position.

(3) Every party shall have the right of cross examination of witnesses who testify and shall have the right to submit rebuttal evidence. Persons appearing in a limited party status shall participate in the manner and to the extent prescribed by rule of the agency.

(4) Agencies may take notice of judicially cognizable facts, and they may take official notice of general, technical or scientific facts within their specialized knowledge. Parties shall be notified at any time during the proceeding but in any event prior to the final decision of material officially noticed and they shall be afforded an opportunity to contest the facts so noticed. Agencies may utilize their experience, technical competence and specialized knowledge in the evaluation of the evidence presented to them.

(5) No sanction shall be imposed or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party, and as supported by, and in accordance with, reliable, probative and substantial evidence.

(6) Agencies may, at their discretion, be represented at hearings by the Attorney General.

(7) Notwithstanding ORS 9.160, 9.320 and ORS chapter 180, and unless otherwise authorized by another law, an agency may be represented at contested case hearings by an officer or employe of the agency if:

(a) The Attorney General has consented to the representation of the agency by an officer or employe in the particular hearing or in the class of hearings that includes the particular hearing; and

(b) The agency, by rule, has authorized an officer or employe to appear on its behalf in the particular type of hearing being conducted.

(8) The agency representative shall not present legal argument in contested case hearings or give legal advice to an agency.

(9) Upon judicial review, no limitation imposed pursuant to subsection (7) of this section on the participation of an officer or employe representing an agency shall be the basis for reversal or remand of agency action unless the limitation resulted in substantial prejudice to a person entitled to judicial review of the agency action.

(10) Notwithstanding any other provision of law, in any contested case hearing before a state agency involving public assistance as defined in ORS 411.010 an applicant or recipient may be represented by an authorized representative who is an employe of a nonprofit legal services program which receives fees pursuant to ORS 21.480 to 21.490 and who is supervised by an attorney also employed by a legal services program. Such representation may include presenting evidence, cross-examining witnesses and presenting factual and legal argument. [1957 c.717 §9; 1971 c.734 §15; 1975 c.759 §12; 1977 c.798 §3; 1979 c.593 §21; 1987 c.833 §1]

183.455 Appearance of person or authorized representative. (1)(a) Notwithstanding ORS 8.690, 9.160, 9.320 and 183.450, and unless otherwise authorized by law, a person participating in a contested case hearing may appear in person, by an attorney, or by an authorized representative subject to the provisions of subsections (2) to (4) of this section.

(b) For the purposes of this section, "authorized representative" means a member of a participating partnership, an authorized officer or employe of a participating corporation, association or organized group, or an authorized officer or employe of a participating governmental authority other than a state agency.

(2) A person participating in a contested case hearing may appear by an authorized representative if:

(a) The State Fire Marshal has determined that appearance of such a person by an authorized representative will not hinder the orderly and timely development of the record in the type of contested case hearing being conducted;

(b) The State Fire Marshal allows, by rule, authorized representatives to appear on behalf of such participants in the type of contested case hearing conducted; and

(c) The officer presiding at the contested case hearing may exercise discretion to limit an authorized representative's presentation of evidence, examination and cross-examination of witnesses, or presentation of factual arguments to insure the orderly and timely development of the hearing record, and shall not allow an authorized representative to present legal arguments.

(3) No provision of this section is intended to require the agency to allow appearance of a per-

son by an authorized representative in a contested case proceeding.

(4) Upon judicial review, no agency denial of permission to appear by an authorized representative, nor any limitation imposed by an agency presiding officer on the participation of an authorized representative, shall be the basis for reversal or remand of agency action unless the denial or limitation clearly resulted in substantial prejudice to development of a complete record at an agency hearing. [1987 c.259 §3]

Note: 183.455 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 183 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Note: Sections 3 and 5, chapter 833, Oregon Laws 1987, provide:

Sec. 3. (1) Notwithstanding ORS 8.690, 9.160 and 9.320, and unless otherwise authorized by another law, a person participating in a contested case hearing conducted by an agency described in this subsection may be represented by an attorney or by an authorized representative subject to the provisions of subsection (2) of this section. The Attorney General shall prepare model rules for proceedings with lay representation that do not have the effect of precluding lay representation. No rule adopted by a state agency shall have the effect of precluding lay representation. The agencies before which an authorized representative may appear are:

(a) The Department of Commerce in the administration of the Landscape Contractors Law.

(b) The Department of Energy and the Energy Facility Siting Council.

(c) The Environmental Quality Commission and the Department of Environmental Quality.

(d) The Department of Insurance and Finance for proceedings in which an insured appears pursuant to ORS 737.505.

(e) The Fire Marshal Division of the Department of Commerce.

(f) The Division of State Lands for proceedings regarding the issuance or denial of fill or removal permits under ORS 541.605 to 541.685.

(g) The Public Utility Commission.

(h) The Water Resources Commission and the Water Resources Department.

(2) A person participating in a contested case hearing as provided in subsection (1) of this section may appear by an authorized representative if:

(a) The agency conducting the contested case hearing has determined that appearance of such a person by an authorized representative will not hinder the orderly and timely development of the record in the type of contested case hearing being conducted;

(b) The agency conducting the contested case hearing allows, by rule, authorized representatives to appear on behalf of such participants in the type of contested case hearing being conducted; and

(c) The officer presiding at the contested case hearing may exercise discretion to limit an authorized representative's presentation of evidence, examination and cross-examination of witnesses, or presentation of factual arguments to insure the orderly and timely development of the hearing record, and shall not allow an authorized representative to present legal arguments.

(3) Upon judicial review, no limitation imposed by an agency presiding officer on the participation of an authorized representative shall be the basis for reversal or remand of agency action unless the limitation resulted in substantial prejudice to a person entitled to judicial review of the agency action.

(4) For the purposes of this section, "authorized representative" means a member of a participating partnership, an authorized officer or regular employe of a participating corporation, association or organized group, or an authorized officer or employe of a participating governmental authority other than a state agency. [1987 c.833 §3]

Sec. 5. Section 3 of this Act is repealed October 1, 1989. [1987 c.833 §5]

183.460 Examination of evidence by agency. Whenever in a contested case a majority of the officials of the agency who are to render the final order have not heard the case or considered the record, the order, if adverse to a party other than the agency itself, shall not be made until a proposed order, including findings of fact and conclusions of law, has been served upon the parties and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the officials who are to render the decision. [1957 c.717 §10; 1971 c.734 §16; 1975 c.759 §13]

183.462 Agency statement of ex parte communications; notice. The agency shall place on the record a statement of the substance of any written or oral ex parte communications on a fact in issue made to the agency during its review of a contested case. The agency shall notify all parties of such communications and of their right to rebut the substance of the ex parte communications on the record. [1979 c.593 §36c]

183.464 Proposed order by hearings officer; amendment by agency; exemptions. (1) Except as otherwise provided in subsections (1) to (4) of this section, unless a hearings officer is authorized or required by law or agency rule to issue a final order, the hearings officer shall prepare and serve on the agency and all parties to a contested case hearing a proposed order, including recommended findings of fact and conclusions of law. The proposed order shall become final after the 30th day following the date of service of the proposed order, unless the agency within that period issues an amended order.

(2) An agency may by rule specify a period of time after which a proposed order will become

final that is different from that specified in subsection (1) of this section.

(3) If an agency determines that additional time will be necessary to allow the agency adequately to review a proposed order in a contested case, the agency may extend the time after which the proposed order will become final by a specified period of time. The agency shall notify the parties to the hearing of the period of extension.

(4) Subsections (1) to (4) of this section do not apply to the Public Utility Commission or the Energy Facility Siting Council.

(5) The Governor may exempt any agency or any class of contested case hearings before an agency from the requirements in whole or part of subsections (1) to (4) of this section by executive order. The executive order shall contain a statement of the reasons for the exemption.

(6) The Governor shall report to the Sixty-first Legislative Assembly identifying those agencies and classes of contested cases that have received exemptions under subsections (5) and (6) of this section and stating the reasons for granting those exemptions. [1979 c.593 §§36, 36b]

183.470 Orders in contested cases. In a contested case:

(1) Every order adverse to a party to the proceeding shall be in writing or stated in the record and may be accompanied by an opinion.

(2) A final order shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the underlying facts supporting the findings as to each contested issue of fact and as to each ultimate fact required to support the agency's order.

(3) The agency shall notify the parties to a proceeding of a final order by delivering or mailing a copy of the order and any accompanying findings and conclusions to each party or, if applicable, the party's attorney of record.

(4) Every final order shall include a citation of the statutes under which the order may be appealed. [1957 c.717 §11; 1971 c.734 §17; 1979 c.593 §22]

JUDICIAL REVIEW

183.480 Judicial review of agency orders. (1) Any person adversely affected or aggrieved by an order or any party to an agency proceeding is entitled to judicial review of a final order, whether such order is affirmative or negative in form. A petition for rehearing or reconsideration need not be filed as a condition of judicial review unless specifically otherwise provided by statute or agency rule.

(2) Judicial review of final orders of agencies shall be solely as provided by ORS 183.482, 183.484, 183.490 and 183.500.

(3) No action or suit shall be maintained in the validity of any agency order except a final order as provided in this section and ORS 183.482, 183.484, 183.490 and 183.500 or except upon showing that the agency is proceeding without probable cause, or that the party will suffer substantial and irreparable harm if interlocutory relief is not granted.

(4) Judicial review of orders issued pursuant to ORS 813.410 shall be as provided by ORS 813.410. [1957 c.717 §12; 1963 c.449 §1; 1971 c.734 §18; 1971 c.759 §14; 1979 c.593 §23; 1983 c.338 §901; 1985 c.757 §4]

183.482 Jurisdiction for review of contested cases; procedure; scope of court authority. (1) Jurisdiction for judicial review of contested cases is conferred upon the Court of Appeals. Proceedings for review shall be instituted by filing a petition in the Court of Appeals. The petition shall be filed within 60 days only following the date the order upon which the petition is based is served unless otherwise provided by statute. If a petition for rehearing has been filed, then the petition for review shall be filed within 60 days only following the date the order denying the petition for rehearing is served. If the agency does not otherwise act, a petition for rehearing or reconsideration shall be deemed denied the 60th day following the date the petition was filed, and in such cases, petition for judicial review shall be filed within 60 days only following such date. Date of service shall be the date on which the agency delivered or mailed its order in accordance with ORS 183.470.

(2) The petition shall state the nature of the order the petitioner desires reviewed, and shall state whether the petitioner was a party to the administrative proceeding, was denied status as a party or is seeking judicial review as a person adversely affected or aggrieved by the agency order. In the latter case, the petitioner shall, by supporting affidavit, state the facts showing how the petitioner is adversely affected or aggrieved by the agency order. Before deciding the issues raised by the petition for review, the Court of Appeals shall decide, from facts set forth in the affidavit, whether or not the petitioner is entitled to petition as an adversely affected or aggrieved person. Copies of the petition shall be served by registered or certified mail upon the agency, and all other parties of record in the agency proceeding.

(3)(a) The filing of the petition shall not stay enforcement of the agency order, but the agency may do so upon a showing of:

(A) Irreparable injury to the petitioner; and

(B) A colorable claim of error in the order.

(b) When a petitioner makes the showing required by paragraph (a) of this subsection, the agency shall grant the stay unless the agency determines that substantial public harm will result if the order is stayed. If the agency denies the stay, the denial shall be in writing and shall specifically state the substantial public harm that would result from the granting of the stay.

(c) When the agency grants a stay it may impose such reasonable conditions as the giving of a bond or other undertaking and that the petitioner file all documents necessary to bring the matter to issue before the Court of Appeals within specified reasonable periods of time.

(d) Agency denial of a motion for stay is subject to review by the Court of Appeals under such rules as the court may establish.

(4) Within 30 days after service of the petition, or within such further time as the court may allow, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review, but, by stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record when deemed desirable. Except as specifically provided in this subsection, the cost of the record shall not be taxed to the petitioner or any intervening party. However, the court may tax such costs and the cost of agency transcription of record to a party filing a frivolous petition for review.

(5) If, on review of a contested case, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good and substantial reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon such conditions as the court deems proper. The agency may modify its findings and order by reason of the additional evidence and shall, within a time to be fixed by the court, file with the reviewing court, to become a part of the record, the additional evidence, together with any modifications or new findings or orders, or its certificate that it elects to stand on its original findings and order, as the case may be.

(6) At any time subsequent to the filing of the petition for review and prior to the date set for hearing the agency may withdraw its order for purposes of reconsideration. If an agency withdraws an order for purposes of reconsideration, it shall, within such time as the court may allow, affirm, modify or reverse its order. If the petitioner is dissatisfied with the agency action after withdrawal for purposes of reconsideration, the petitioner may file an amended petition for review and the review shall proceed upon the revised order. If an agency withdraws an order for purposes of reconsideration and modifies or reverses the order in favor of the petitioner, the court shall allow the petitioner costs, but not attorney fees, to be paid from funds available to the agency.

(7) Review of a contested case shall be confined to the record, the court shall not substitute its judgment for that of the agency as to any issue of fact or agency discretion. In the case of disputed allegations of irregularities in procedure before the agency not shown in the record which, if proved, would warrant reversal or remand, the Court of Appeals may refer the allegations to a Master appointed by the court to take evidence and make findings of fact upon them. The court shall remand the order for further agency action if it finds that either the fairness of the proceedings or the correctness of the action may have been impaired by a material error in procedure or a failure to follow prescribed procedure.

(8)(a) The court may affirm, reverse or remand the order. If the court finds that the agency has erroneously interpreted a provision of law and that a correct interpretation compels a particular action, it shall:

(A) Set aside or modify the order; or

(B) Remand the case to the agency for further action under a correct interpretation of the provision of law.

(b) The court shall remand the order to the agency if it finds the agency's exercise of discretion to be:

(A) Outside the range of discretion delegated to the agency by law;

(B) Inconsistent with an agency rule, an officially stated agency position, or a prior agency practice, if the inconsistency is not explained by the agency; or

(C) Otherwise in violation of a constitutional or statutory provision.

(c) The court shall set aside or remand the order if it finds that the order is not supported by substantial evidence in the record. Substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a

reasonable person to make that finding. [1975 c.759 §15; 1977 c.798 §4; 1979 c.593 §24; 1985 c.757 §2]

183.484 Jurisdiction for review of orders other than contested cases; procedure; scope of court authority. (1) Jurisdiction for judicial review of orders other than contested cases is conferred upon the Circuit Court for Marion County and upon the circuit court for the county in which the petitioner resides or has a principal business office. Proceedings for review under this section shall be instituted by filing a petition in the Circuit Court for Marion County or the circuit court for the county in which the petitioner resides or has a principal business office.

(2) Petitions for review shall be filed within 60 days only following the date the order is served, or if a petition for reconsideration or rehearing has been filed, then within 60 days only following the date the order denying such petition is served. If the agency does not otherwise act, a petition for rehearing or reconsideration shall be deemed denied the 60th day following the date the petition was filed, and in such case petition for judicial review shall be filed within 60 days only following such date. Date of service shall be the date on which the agency delivered or mailed its order in accordance with ORS 183.470.

(3) The petition shall state the nature of the petitioner's interest, the facts showing how the petitioner is adversely affected or aggrieved by the agency order and the ground or grounds upon which the petitioner contends the order should be reversed or remanded. The review shall proceed and be conducted by the court without a jury.

(4)(a) The court may affirm, reverse or remand the order. If the court finds that the agency has erroneously interpreted a provision of law and that a correct interpretation compels a particular action, it shall:

(A) Set aside or modify the order; or

(B) Remand the case to the agency for further action under a correct interpretation of the provision of law.

(b) The court shall remand the order to the agency if it finds the agency's exercise of discretion to be:

(A) Outside the range of discretion delegated to the agency by law;

(B) Inconsistent with an agency rule, an officially stated agency position, or a prior agency practice, if the inconsistency is not explained by the agency; or

(C) Otherwise in violation of a constitutional or statutory provision.

(c) The court shall set aside or remand t order if it finds that the order is not supported substantial evidence in the record. Subs evidence exists to support a finding of fact the record, viewed as a whole, would perm reasonable person to make that finding.

(5) In the case of reversal the court sh make special findings of fact based upon t evidence in the record and conclusions of l indicating clearly all aspects in which t agency's order is erroneous. [1975 c.759 §16; 1979 c §121; 1979 c.593 §25a; 1985 c.757 §3]

183.485 Decision of court on review contested case. (1) The court having jurisdi tion for judicial review of contested cases sh direct its decision, including its judgment, to t agency issuing the order being reviewed and m direct that its judgment be delivered to the circ court for any county designated by the prevaili party for entry in the circuit court's judgme docket.

(2) Upon receipt of the court's decisio including the judgment, the clerk of the circ court shall enter a judgment or decree in t register and docket it pursuant to the direction the court to which the appeal is made. [1979 c §7;1981 c.178 §11; 1985 c.540 §39]

183.486 Form and scope of reviewi court's decision. (1) The reviewing court's de sion under ORS 183.482 or 183.484 may b datory, prohibitory, or declaratory in form. shall provide whatever relief is appropriate ir spective of the original form of the petition. T court may:

(a) Order agency action required by l order agency exercise of discretion when requi by law, set aside agency action, remand the c for further agency proceedings or decide rights, privileges, obligations, requirements procedures at issue between the parties; and

(b) Order such ancillary relief as the c finds necessary to redress the effects of offi action wrongfully taken or withheld.

(2) If the court sets aside agency action remands the case to the agency for further p ceedings, it may make such interlocutory orde the court finds necessary to preserve the inter of any party and the public pending fur proceedings or agency action.

(3) Unless the court finds a ground for set aside, modifying, remanding, or ordering age action or ancillary relief under a specified pr sion of this section, it shall affirm the ag action. [1979 c.593 §27]

183.490 Agency may be compelle act. The court may, upon petition as describe

ORS 183.484, compel an agency to act where it has unlawfully refused to act or make a decision or unreasonably delayed taking action or making a decision. [1957 c.717 §13; 1979 c.593 §28]

183.495 [1975 c.759 §16a; repealed by 1985 c.757 §7]

183.497 Awarding costs and attorney fees when finding for petitioner. (1) In a judicial proceeding designated under subsection (2) of this section the court:

(a) May, in its discretion, allow a petitioner reasonable attorney fees and costs if the court finds in favor of the petitioner.

(b) Shall allow a petitioner reasonable attorney fees and costs if the court finds in favor of the petitioner and determines that the state agency acted without a reasonable basis in fact or in law; but the court may withhold all or part of the attorney fees from any allowance to a petitioner if the court finds that the state agency has proved that its action was substantially justified or that special circumstances exist that make the allowance of all or part of the attorney fees unjust.

(2) The provisions of subsection (1) of this section apply to an administrative or judicial proceeding brought by a petitioner against a state agency, as defined in ORS 291.002, for:

(a) Judicial review of a final order as provided in ORS 183.480 to 183.484;

(b) Judicial review of a declaratory ruling provided in ORS 183.410; or

(c) A judicial determination of the validity of a rule as provided in ORS 183.400.

(3) Amounts allowed under this section for reasonable attorney fees and costs shall be paid from funds available to the state agency whose final order, declaratory ruling or rule was reviewed by the court. [1981 c.871 §1; 1985 c.757 §5]

Note: 183.497 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 183 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

APPEALS FROM CIRCUIT COURTS

183.500 Appeals. Any party to the proceedings before the circuit court may appeal from the decree of that court to the Court of Appeals. Such appeal shall be taken in the manner provided by law for appeals from the circuit court in suits in equity. [1957 c.717 §14; 1969 c.198 §76]

183.510 [1957 c.717 §16; repealed by 1971 c.734 §21]

RULES EFFECTS ON BUSINESS

183.540 Reduction of economic impact on small businesses. When the economic effect analysis shows that the rule has a significant adverse effect upon small business and, to the extent consistent with the public health and safety purpose of the rule, the agency shall reduce the economic impact of the rule on small business by:

(1) Establishing differing compliance or reporting requirements or time tables for small business;

(2) Clarifying, consolidating or simplifying the compliance and reporting requirements under the rule for small business;

(3) Utilizing objective criteria for standards; or

(4) Exempting small businesses from any or all requirements of the rule. [1981 c.755 §4]

183.545 Review of rules to minimize economic effect on businesses. Each agency periodically, but not less than every three years, shall review all rules that have been issued by the agency. The review shall include an analysis to determine whether such rules should be continued without change or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize the economic effect on businesses and the effect due to size and type of business. [1981 c.755 §5]

183.550 Public comment; factors to be considered in review. (1) As part of the review required by ORS 183.545, the agency shall invite public comment upon the rules.

(2) In reviewing the rules described in subsection (1) of this section, the agency shall consider:

(a) The continued need for the rule;

(b) The nature of complaints or comments received concerning the rule from the public;

(c) The complexity of the rule;

(d) The extent to which the rule overlaps, duplicates or conflicts with other state rules or federal regulations and, to the extent feasible, with local governmental regulations;

(e) The degree to which technology, economic conditions or other factors have changed in the subject area affected by the rule; and

(f) The statutory citation or legal basis for each rule. [1981 c.755 §6]

REVIEW OF STATE AGENCY RULES

183.710 Definitions for ORS 183.710 to 183.725. As used in ORS 183.710 to 183.725, unless the context requires otherwise:

(1) "Committee" means the Legislative Counsel Committee.

Attachment H
Agenda Item H
January 20, 1989
EQC Meeting

REMEDIAL ACTION ADVISORY COMMITTEE MEMBERS

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Jim Montieth
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Eugene, OR 97401

Attachment I
Agenda Item H
January 20, 1988
EQC Meeting

DELISTING RULES WRITTEN COMMENTS RECEIVED FROM:

1. Stoel, Rives, Boley, Jones & Grey
   Dick Bach
   12/5/88

2. Oregon State Public Interest Research Group
   Quincy Sugarman
   12/6/88

3. Waste Management of North America, Inc.
   Joseph L. Suchecki
   12/6/88

4. Teledyne Wah Chang Albany
   Spears, Lubersky, Bledsoe, Anderson, Young & Hilliard
   Richard H. Williams, Ian K. Whitlock
   12/14/88

5. Oregon Environmental Council
   John A. Charles
   12/14/88

6. Tektronix
   Miriam Feder
   12/14/88

7. Northwest Pulp & Paper
   Douglas S. Morrison
   12/15/88

8. Bogle & Gates
   James C. Brown
   12/15/88

PUBLIC TESTIMONY PROVIDED BY:

1. John L. Shurts
   Stoel Rives Boley Jones & Grey
   12/6/88

2. Frank Parisi
   Spears, Lubersky, Bledsoe, Anderson, Young & Hilliard
   12/6/88

3. Miriam Feder
   Tektronix
   12/14/88

4. James C. Brown
   Bogle & Gates
   12/14/88

Sara Laumann:sll
229-6704
comments
January 7, 1989

Attachment J
Agenda Item H
January 20, 1989
EQC Meeting

MEMORANDUM

TO: Environmental Quality Commission

FROM: Sara Laumann (for Hearings Officer Mike Rosen)

SUBJECT: Agenda Item H, January 20, 1989, EQC Meeting

Hearings Officer's Report on Proposed Rules Regarding Delisting of Facilities Listed on the Inventory and Establishing a Process to Modify Information Regarding Facilities Listed on the Inventory.

A public hearing was held at 1:10 pm on December 6, 1988 and reconvened at 2 pm on December 14, 1988 to consider proposed rules providing procedures for delisting facilities from the Inventory and modifying information contained in the Inventory.

John L. Shurts, Stoel Rives Boley Jones & Gray, spoke in favor of the proposed rules. He submitted a letter with written comments. He asked that a provision be added to clarify that if an owner does not submit a contested case appeal on an original Inventory listing that that does not bar one from filing a delisting or modification request at some point in the future.

Frank Parisi, Spears, Lubersky, Bledsoe, Anderson Young & Hilliard, asked if owners recently notified should wait until delisting rules are adopted or should they request a contested case appeal within the 15 days.

Miriam Feder, Tektronix, Inc., submitted written comments and provided a summary of those comments. She said Tektronix views being listed on the Inventory as a very serious matter and undesirable. She said Tektronix supports the proposed rules.

Jim Brown, Bogle & Gates, submitted written comments and supported the proposed rules. He suumarized the comments provided in his written statement.

Attachments:

1. Written Statement provided by John L. Shurts, Stoel Rives Boley Jones & Grey
2. Written Statement provided by Miriam Feder, Tektronix, Inc.
3. Written Statement provided by James C. Brown, Bogle & Gates

Sara Laumann:sll
229-6704
January 6, 1989
hearing

STOEL RIVES BOLEY
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Attachment 1
Agenda Item H
January 20, 1989
EQC Meeting

December 1, 1988

Sara Laumann, Esq.
Environmental Cleanup Division
811 SW Sixth Avenue
Portland, OR 97204

Re: Proposed Rules Regarding Delisting Facilities on DEQ's Confirmed Release Inventory: OAR 340-122-310 to -340

Dear Ms. Laumann:

On behalf of a number of our clients, we hereby submit the following comments and suggestions with respect to the Department of Environmental Quality's (DEQ's) proposed rules for the delisting of facilities on DEQ's Confirmed Release Inventory and for the modification of information included in a listing. We heartily applaud DEQ's decision to add a delisting process to the Inventory, a welcome contrast to the black hole that its federal counterpart--CERCLIS--has become.

We also support the basic structure of the delisting and modification procedures, and most of the specific provisions of the proposed rules. We do, however, have a few specific comments and suggestions, as follows:

1. OAR 340-122-320: Delisting Process

The proposed rules would allow only the owner of the property to petition for delisting. We recommend that any party having an economic interest in the property (such as a tenant, a mortgagee or the beneficiary of a deed of trust, a contract purchaser, or a prospective purchaser) as well as the owner be allowed to petition to delist a facility. If the Department is concerned about receiving too many delisting petitions with respect to the same property, the rules could provide that all petitions in connection with the same facility be consolidated for review and hearing. The rules could also provide that anyone other than the owner filing the petition be charged with the

responsibility of providing notice to the owner, affording it an opportunity to join.

2. OAR 340-122-325(4): Public Notice and Participation (Cost of Delisting)

The proposed rule requires that persons "liable under the authority used by the Department" must pay for the cost of delisting unless the delisting determination is made by the Department pursuant to OAR 340-122-330(2)(b) or (c) (i.e., delisting is appropriate because no release occurred or because no action is required to assure protection of the public).

First, the term "liable under the authority used by the Department" is not clear, although we assume this refers to liability under ORS 466.567. To avoid any ambiguity and for the sake of simplicity, we recommend that the rule be revised to provide that the "petitioner or petitioners" pay the costs of the proceeding.

Second, depending on how the "costs" involved in the review of a delisting petition are calculated, the actual cost to the petitioner could range from minimal to exorbitant. For example, are the wages and salaries of DEQ personnel that review the request to be included in the calculation of costs for which the petitioner is to be liable? The rule should specify what costs the petitioner will be liable for, or at least give some examples of the type of costs involved.

3. OAR 340-122-330: Determination by Director

a. Subsection (1)(c): Information relied upon. Proposed OAR 340-122-330(1) would provide that in making a determination, the Director shall consider the petition, any public comments received and, under subsection (c), "any other available relevant information." We recommend that this subsection also state that if the Director relies on other available relevant information in making this determination, the Director must explain the nature of such other information in the Order, and the information itself should be placed in the record.

b. Subsection (4): Administrative order. This section would provide that the Director must issue an administrative order "stating the reasons" for granting or denying the petition. We believe the Order must also state the facts relied upon by the Director in making this determination. Thus, we recommend that the proposed rule be revised to require the

Director to issue "an administrative order stating the reasons and the facts relied upon" for granting or denying a petition.

c. Subsection (5): Immediate effect of decision. This section states that "delistings and modifications" to the Inventory shall be made immediately upon the Director's determination. The reference to "modifications" at this point seems inappropriate, coming as it does in a section relating only to delisting determinations. We recommend that the reference to modifications in OAR 340-122-330(5) be deleted, and that a new subsection (4) be added to OAR 340-122-340 (Modification Process) stating that "Modifications to the Inventory shall be made immediately upon the Director's determination."

4. OAR 340-122-335(1): Appeal Process (Who May Appeal)

OAR 340-122-335(1) provides that only the "owner" may appeal an administrative order issued by the Director denying a delisting petition. Repeating our comment concerning those who may file a petition, we believe that any petitioner who participates in the delisting petition should be allowed to file an appeal.

5. OAR 340-122-340: Modification Process

a. Subsection (2): Items subject to modification. We realize that ORS 466.557(3) provides a list of information that must be in the Inventory, and that proposed OAR 340-122-340(2) simply repeats the list and states that these items are subject to modifications. However, some additional explanation as to the types of modifications possible may be useful, as follows:

(i) Subsection (a): General description of facility. We propose that this section recognize that a facility description may be modified to "carve out" unaffected portions of a facility or a large parcel of real property. That is, if it can be determined that the release affects only a portion of a facility or only a portion of a tract of land, the Inventory information should be modified to describe only the portion affected.

(ii) Subsection (d): Names of owners and operators. This proposed subsection permits modifications in the names of the owners and operators "during the time period of a release." Additional explanation should be added to ensure that the section may be modified to acknowledge the existence of

continuous releases over a period of time, so as to name those owners or operators connected to the facility during that period of time, even if these owners and operators did not contribute any additional hazardous substances during their time of ownership or operation.

b. Subsection (3): Lack of judicial review. While the Commission has the authority to prohibit internal appeals of a modification decision by the Director, it does not have the authority to preclude judicial review of that decision. The Director's modification decision presumably will be a final action on that petition, and if that decision adversely affects the petitioner, that person should have a right to file a petition for review in circuit court pursuant to ORS 183.480 and 183.484. Whether that person is in fact adversely affected will, of course, be an issue in the court case; however, the agency cannot arbitrarily divest anyone of his, her or its right to judicial review in an agency rule. We recommend that DEQ delete the reference to "judicial review" in this proposed rule.

6. Subsequent Petition for Delisting or Modification

The proposed rules do not state whether a petitioner who is unsuccessful in obtaining a requested delisting or modification may file another petition with the same request. We recommend that a new section be added stating that an unsuccessful petitioner must wait at least six months before DEQ will consider a new petition, and that any new petition must be based on new information or changed circumstances.

Thank you for considering these comments. Please contact me if you have any questions or comments.

Sincerely,

Richard D. Bach

cc: Michael Houston

MIRIAM FEDER
ATTORNEY AT LAW
The BROADWAY BLDG., 930
621 SW ALDER STREET
PORTLAND, OREGON 97205
(503) 241-1673

Attachment 2
Agenda Item H
January 20, 1989
EQC Meeting

DEC 14 1988

Environmental Cleanup Division

Ms. Sara Laumann
Environmental Cleanup Division
Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, OR 97204

December 14, 1988

re: Proposed Rules Regarding Delisting Facilities on the DEQ's Release Inventory. OAR 340-122-310 to 340.

Dear Ms. Laumann;

Tektronix would like to take this opportunity to comment on the proposed rules regarding delisting from and modification to DEQ's Inventory of facilities at which confirmed releases have occurred. Tektronix supports the develpment of these rules. Inclusion on the DEQ's Inventory has serious implications for an owner of property. Therefore, it is important that an owner have a means to correct any errors that may have resulted in listing on the Inventory. The owner must also be able to alleviate any barriers to use or disposition of the property that may be caused by listing, when that listing is no longer necessary.

Tektronix agrees with the Department that provisions for delisting will improve the accuracy, timeliness and therefore, the usefulness of the inventory. This is important for at least two reasons: the Inventory serves an important function in alerting the public to certain conditions and the Inventory represents sites that may result in state expenditure for cleanup.

Tektronix is concerned that transactions in and use of property included on the Inventory may be greatly impeded by the simple fact of listing. At the same time, there is nothing to be gained by including on the Inventory properties that are in the process of cleanup or are about to be cleaned up under other programs administered by the Department. Inclusion of these properties on the Inventory does not tell the public anything more about these properties than they already know, since cleanup and closure plans are subject to public notice and comment. Inclusion of properties destined for cleanup under other programs is also potentially misleading to the public and the legislature, since these properties will not result in state payment for cleanup. Furthermore, such listing may lead to a wasteful duplication of state efforts.

The proposed rules would require the Director to delist a facility upon reaching certain determinations that would accomodate public safety and preserve the public fisc. Tektronix proposes an additional criterion for delisting be added to proposed rule 340-122-330 (2), as follows:

The Director shall delist a facility if:

(d) the Director determines that cleanup of the hazardous substance and control of further release of the hazardous substance, or other actions that assure protection of present and future public health, safety, welfare and the environment, will be accomplished by an owner or operator pursuant to Departmental order, permit or program.

This provision for delisting will encourage owner/operators to move ahead with their remediation plans pursuant to these other Departmental programs. By cooperating fully and efficiently with these other programs, thereby keeping their properties off of the Department's Inventory, owner/operators will be able to use the property and dispose of it subject only to the strictures of the remediation and without the additional barriers brought about by listing on the Inventory.

Tektronix believes that the Inventory, absent those sites that will achieve cleanup under other DEQ programs, will be more informative to the public. It will more accurately reflect those sites that may require public funding. It will have the intended effect of informing the public about those sites that were not previously recognized as facilities, within the meaning of ORS 466.540(6). In the meantime, the public will continue to have visibility of releases and the opportunity to follow the progress of their cleanup through the usual public notice surrounding Department orders and permits.

This provision for delisting will also act to prevent needless duplication of resources among state programs and to diminish the chance that owners are subject to demands that vary from program to program. Tektronix strongly urges the Department to amend its proposed rule 340-122-330(2) to include this additional criterion for delisting.

Respectfully submitted,

Miriam Feder
of Attorneys for Tektronix, Inc.

cc: Frank Deaver
Ed Lewis

Attachment 3
Agenda Item H
January 20, 1989
EQC Meeting

BOGLE & GATES

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December 15, 1988

99999/00004

Sara L. Laumann, Esq.
Program Coordinator II
Environmental Cleanup Division
Site Assessment Section
Department of Environmental Quality
811 SW Sixth Avenue
Portland, Oregon 97204

RE: **Proposed Rules Regarding Delisting Facilities on DEQ's Confirmed Release Inventory List: OAR 340-122-310 to 340-122-355**

Dear Ms. Laumann:

On behalf of a number of our clients, Bogle & Gates is taking this opportunity to comment on the Department of Environmental Quality's (DEQ's) Proposed Rules for the Delisting of Facilities on DEQ's Confirmed Release Inventory and the modification of information included in a listing.

We support the development of these rules and complement the DEQ's decision to add a delisting process to the Inventory, because of the serious implications which inclusion on the DEQ's Inventory. This delisting procedure is a needed and necessary aspect of the Inventory program, especially in light of the serious implication which inclusion on the DEQ's Inventory has for a property owner. Furthermore, it is a welcome release from the problems which currently exist with the federal EPA counterpart, the CERCLIS list.

We support the basic structure of the delisting and modification procedures and agree with the Department that provisions for delisting will improve the accuracy, timeliness, and usefulness of the Inventory. Desisting and inventory modification is important from a practical standpoint because the Inventory serves an important function of alerting the public to certain environmental conditions and the Inventory represents sites which may result in the expenditure of State funds for cleanup.

In submitting these comments, we also endorse and incorporate by reference comments previously received by the Department from Richard D. Bach, Stoel, Rives, Boley, Jones & Grey; Miriam Feder, representing Tektronix; and Douglas S. Morrison, Northwest Pulp and Paper Association. In addition, we have the following specific comments and suggestions as follows:

1. OAR 340-122-320: DELISTING PROCESS

A. Subsections (1)(a) and (2). The proposed rules would allow only the owner of a property to petition for delisting. However, this procedure should also be afforded to other parties having an economic interest in the property (e.g., an operator, tenant, mortgagee, or the beneficiary of a Deed of Trust, a contract purchaser, or a prospective purchaser). Therefore, we propose that throughout the proposed rules wherever the term "owner" is utilized, that the term be expanded to include "owner or operator."

B. Subsection (3). In Subsection (3), a litany of the relevant sections is set forth. Inasmuch as OAR 340-122-315 is merely a reference to the definitional section and not a substantive procedural section, we respectfully suggest that this reference be deleted from Subsection (3).

2. OAR 340-122-325: PUBLIC NOTICE AND PARTICIPATION

A. Subsection (1). This general section provides extensive and unprecedented rights for public participation in the delisting process. Our concern is that Subsection (4) of this section would place the liability for the cost of this extensive and unprecedented public notice provision to be borne by the Petitioner, should the delisiting petition be denied. Although we are not opposed per se, to requiring the Petitioner to bear the cost of frivolous or repetitious delisting petitions, especially if unsuccessful, this potential liability will have a significant chilling effect on petitioners to submit a delisting petition. This chilling effect will be significantly increased by the potentially financial liability from the proposed expanded and unprecedented public notification provisions of Subsection (1).

The statute establishes in ORS 466.557(1), that the Inventory list itself is provided for purposes of public information. In addition ORS 466.575, 466.577(4)(d), and 466.577(10)(b) provides significant opportunity for public

participation. We believe the proposed public participation provisions are unreasonable and place a significant and unwarranted potential financial burden on an unsuccessful petitioner by expanding public participation beyond the existing statutory provisions. Furthermore, we believe that it is inequitable for the public to have greater rights to information on the site than does the owner or operator whose property is significantly impaired by being placed on the Inventory. We would remind the Department the owner was only given 15 days to respond to the Department Inventory listing Order. Therefore, we propose that OAR 340-122-325(1)(a)-(d) be modified with proposed deletions ~~struck through~~ and additions shaded, as follows:

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

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

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

(b) ~~(c)~~ Provide ~~at least 30~~ 15 days for submission of written of comments regarding the proposed action,

(c) ~~(d)~~ Upon written request by 10 or more persons or a group having ten or more members, conduct a public ~~meeting~~ hearing ~~at or near the facility~~ for the purpose of receiving verbal comment regarding the proposed action. 340-122-245;

B. Subsection (1)(e) The word "any" as set forth in Subsection (1)(e) may be construed to connote that the agency may pick or choose among written or verbal comments in its considerations on the delisting petition. We therefore request that the word "any" be replaced with the word "all," so as to clearly indicate that the Department must consider all written or verbal comments prior to making its decision.

C. Subsection (2). This subsection as written is unclear. We respectfully request the Agency to redraft the paragraph to clearly indicate its intentions.

D. Subsection (4). The proposed rule required that persons "liable under the authority used by the Department" must pay for the cost of delisting unless the delisting determination is made by the Department pursuant to OAR 34-122-330(2)(b) or (c).

The clause "liable under the authority used by the Department" is unclear. Although arguably, it includes ORS 466.567. For the sake of clarity, and to avoid any ambiguity, we recommend the rule be revised to provide that the "petitioner or petitioners" pay the costs of the proceeding. Furthermore, we request the Department to set forth with specificity the types of costs included under this liability provision. Inasmuch as this subsection will have a very chilling effect on owners or operators' desire to request a delisting petition, and a petitioning decision to submit a delisting petition must include a weighing of the potential downside costs, it is imperative that the DEQ set forth with particularity what those potential Department costs may be.

3. OAR 340-122-330: DETERMINATION BY DIRECTOR

A. Subsection (3). We are concerned with the provisions of Subsection (3) which would preclude the Director from delisting a facility on the Inventory if the contamination at the facility is being or has been remediated under other applicable statutes, where those remediation efforts were adequate to protect public health, safety, welfare, and the environment. At this time, there is nothing to be gained by including on the Inventory properties that are in the process of cleanup or are about to be cleaned up under other programs administered by the Department. Inclusions of these properties on the Inventory does not tell the public anything more about these properties than they already know, since cleanup and closure plans are subject to public notice and comment. Inclusion on the Inventory of properties destined for cleanup under other programs is also potentially misleading to the public and the legislature, since these properties will not require the use of state funds for cleanup.

The U.S. Environmental Protection Agency (EPA) has recognized this in its recent November 1988 promulgation of the proposed revisions to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This proposal will soon appear in the Federal Register. In discussing the listing of sites on

the National Priorities List (NPL), and EPA's deferral policies relating to NPL listing, the Agency states:

> EPA has in the past deferred the listing of sites on the National Priorities List (NPL) when other authorities were found to exist that were capable of accomplishing needed corrective action. . . .EPA is considering broadening the deferral approach, such that the listing of sites on the NPL would be deferred in cases where a federal authority in its implementing program are found to have corrective action authority. EPA further requests comment on whether to extend this policy as well to states that have implementing programs with corrective action authorities to address CERCLA releases. EPA also requests comment on extending this policy to sites where the potentially responsible parties (PRPs) enter into Federal Enforcement Agreements for site remediation under CERCLA. . . .
>
> There are two primary reasons why EPA is considering expanding its use of NPL deferrals to appropriate federal and state authorities. . . .EPA believes this approach will assist EPA in meeting CERCLA objectives . . . and EPA can direct its CERCLA efforts (and fund monies, if necessary) to those sites where remedial action cannot be achieved by other means. Second, EPA believes where other authorities are in place to achieve corrective action, it may be appropriate to defer to those authorities. . . .
>
> In the past, EPA viewed the NPL as a list compiled for the purpose of informing the public of the most serious hazardous waste sites in the nation, regardless of which law applied. Subsequently, it was viewed as a list for informing the public of hazardous wastes sites that appeared to warrant remedial action under CERCLA. In addition, it may be appropriate to view the non-federal

> section of the NPL merely as a list for informing the public of hazardous waste site that appear to warrant CERCLA funding for remedial action through CERCLA funding alone. EPA believes that one of the latter two approaches would be preferable to the broad approach of listing all potential problem sites. This will allow EPA to make the NPL a more useful management tool. . .and also to provide more meaningful information to the public and states. . .
>
> EPA's interpretation of the NPL as a list that should not include all sites that could potentially be addressed by CERCLA is consistent with the terms of the statute itself. . . .Therefore, although EPA believes it has the authority to list any site where there has been a release of threatened release of a hazardous substance, pollutant, or contaminant, EPA believes that it is no obligated to do so. [Emphasis added] (EPA's Federal Register Notice Submittal, Pages 70-71, November 1988).

We strongly recommend that the DEQ follow this federal precedent, which has arisen after eight long arduous years of attempting to implement the provisions of Superfund, and that the DEQ not try to "reinvent the wheel" at the state level.

We strongly suggest that the proposed rules require the Director to delist a facility upon a showing that the site can be remediated under other applicable law or regulation and that the site remediation plan is protective of human health and the environment.

Therefore, we request that proposed OAR 340-122-330(3) be deleted and that OAR 340-122-330(2) be amended to add as Subsection (d), the following:

> (d) The Director determines that remedial action for the hazardous substances will be accomplished by an owner or operator of the facility pursuant to a Departmental Agreement, Order, Permit or Program and that such remedial action is adequate to assure

protection of public health, safety, welfare and the environment.

These proposed amendments to OAR 340-122-330(2)(d) and the deletion of Subsection (3) will encourage owners or operators to move ahead with their site remediation plans pursuant to these other Departmental programs. Such an approach will encourage owners and operators to cooperate fully and efficiently with these other programs and the owners or operators will be able to use the property and transfer it subject only to the strictures of the remediation and without the additional barriers brought about by listing on the Inventory.

Furthermore, we believe that the Inventory will be more informative to the public, if those sites which will achieve cleanup under other DEQ programs are delisted. It will more accurately reflect those sites that may require public funding. It will have the intended effect of informing the public about those sites of primary concern, it will also act to prevent needless duplication and expenditures of finite state resources and diminish the chance that owners or operator will be subject to demands that vary from program to program.

b. Subsection (4). This section would require the Director to issue an administrative Order "stating the reasons" for granting or denying the petition. We believe the Order should comply with recognized principles and procedures of administrative law and require that the Director state his "Findings of Fact" and "Conclusions of Law" in making his determination. Therefore, we recommend that proposed Subsection (4) be amended as follows:

(4) The Director shall issue and administrative Order stating the ~~reasons for~~ Findings of Fact and Conclusions of Law for granting or denying the petition or proposal for delisting.

4. OAR 340-122-355(1): APPEAL PROCESS

Proposed Subsection (1) provided that only the "owner" may appeal an Administrative Order issued by the Director denying a delisting petition. Reiterating or earlier comments concerning those who may file a petition, we believe that any petitioner who participates in the delisting petition should be allowed to file an appeal.

We want to thank you for considering these comments and more especially to thank the Department and the Environmental Quality Commission for granting the time extension to prepare these comments.

Please contact me if you have any questions or comments regarding this submittal.

Sincerely,

BOGLE & GATES

James C. Brown

gp
Enclosures

cc: Michael Houston, Esq.

REQUEST FOR EQC ACTION

Meeting Date: 1/20/89
Agenda Item: I
Division: HSW
Section: WR

SUBJECT:

Permanent rules for certification of recycling programs, and amendments to existing recycling rules.

PURPOSE:

To preserve resources and reduce the amount of waste disposed in Oregon landfills.

ACTION REQUESTED:

___ Work Session Discussion
- ___ General Program Background
- ___ Program Strategy
- ___ Proposed Policy
- ___ Potential Rules
- ___ Other: (specify)

___ Authorize Rulemaking Hearing

Proposed Rules (Draft)	Attachment ___
Rulemaking Statements	Attachment ___
Fiscal and Economic Impact Statement	Attachment ___
Draft Public Notice	Attachment ___

_x_ Adopt Rules

Proposed Rules (Final Recommendation)	Attachment B
Rulemaking Statements	Attachment C
Fiscal and Economic Impact Statement	Attachment C
Public Notice	Attachment E

___ Issue Contested Case Decision/Order

Proposed Order	Attachment ___

___ Other: (specify)

AUTHORITY/NEED FOR ACTION:

x	Pursuant to Statute: ORS 459.305	Attachment F
	Enactment Date: 1987 (HB 2619)	
x	Pursuant to Statute: ORS 459.165-200 and 250	Attachment ___
	Enactment Date: 1983 (SB 405)	
x	Amendment of Existing Rule: OAR 340-60-010,045 and 080	
___	Implement Delegated Federal Program: _____	Attachment ___
___	Department Recommendation:	Attachment ___
___	Other:	Attachment ___

x Time Constraints:
Rules should be adopted before temporary rule OAR 340-60-100 expires in March 1989. If the temporary rule expires before a permanent rule is adopted, the authority of the existing regional disposal site in Benton County might be subject to challenge, possibly disrupting solid waste management for Linn and Polk Counties.

DESCRIPTION OF REQUESTED ACTION:

The significant elements of the rules and amendments proposed are:

1. Require certification of recycling programs for local government units both within and outside of Oregon that dispose of waste at regional landfills.

2. Local governments in Oregon would automatically be certified if they are included in an approved or conditionally-approved wasteshed recycling report.

3. For out-of-state jurisdictions, the regional disposal site that is to receive the waste would be responsible for gathering and reporting sufficient information for the Department to certify the recycling program. In-state jurisdictions are already required by present rules to submit this information.

4. Amendments are proposed to clarify recycling collectors' responsibility for gathering and submitting required data, and to clarify what collectors must do with source-separated materials that have not been correctly prepared.

5. No new fees or changes to existing fee structures are proposed, pending potential legislative action this session to fund recycling and solid waste programs in Oregon.

DEVELOPMENTAL BACKGROUND:

_x_	Department Report (Background/Explanation)	Attachment _A_
___	Advisory Committee Report/Recommendation	Attachment ___
_x_	Hearing Officer's Report/Recommendations	Attachment _G_
___	Response to Testimony/Comments	Attachment ___
_x_	Prior EQC Agenda Items: (list) Agenda Item E, 9/9/88 EQC Meeting	Attachment _D_
___	Other Related Reports/Rules/Statutes:	Attachment ___

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

Implements statutory requirement regarding the opportunity to recycle and certification of recycling programs for jurisdictions sending waste to an Oregon regional landfill. Is consistent with state hierarchy for waste management.

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

Oregon Waste Systems (OWS), the owner of the regional landfill under construction in Gilliam County, has expressed concern that this and future rulemaking by the Department might discriminate against out-of-state waste. OWS also believes that the Department should guarantee a certification decision in 25 days rather than 90 days as originally proposed or 60 days as proposed here, and that the exemption level for out-of-state waste should be 4,000 tons rather than 1,000 tons per year before certification is necessary. Linn County is concerned that counties which cooperate to dispose at a regional landfill may be penalized by increased fees and regulatory requirements. See Hearing Officer's report for more information (Attachment G).

PROGRAMMATIC CONSIDERATIONS:

Oregon Waste Systems estimates that approximately 15 out-of-state jurisdictions are expected to apply to send waste to Oregon regional landfills in the coming five years. Each approval or denial could take 1-2 months of staff time. The first request is expected in the spring of 1989 from Clark County, Washington. The Department proposes to use existing resources to perform recycling certifications for the next six months, and to consider possible certification fees at the end of the legislative session.

POLICY ISSUES FOR COMMISSION TO RESOLVE:

The main issue remaining is the source of funds for the work involved in certification. The Department does not propose any fees for certification at this time, since such fees would require legislative review and would be relatively small compared to other potential funding to be debated in the Legislature this session as part of the Department's solid waste legislative concept.

COMMISSION ALTERNATIVES:

1. Adopt rules as proposed in Attachment A.

2. Adopt rules as proposed in Attachment A, and adopt amendments to the annual recycling program implementation fee schedule for disposal sites (OAR 340-61-120, authorized under ORS 459.170). Under the present fee schedule, the Department would lose revenue from permit fees that presently fund activities required by the Recycling Opportunity Act if a number of local governments close existing landfills and begin to use the large regional disposal sites under construction in Gilliam County or proposed in Morrow County. However, it is unlikely that there will be a significant number of landfill closures in Oregon until 1990 or later, so there is no pressing need to adopt a new fee schedule prior to the upcoming legislative session.

3. Adopt rules as proposed in Attachment A, with a certification application fee to pay for the Department's costs of certifying that local government units are providing the opportunity to recycle. A certification fee adopted under the authority of ORS 459.305 requires legislative review before implementation. Rather than take a proposed new (and relatively small) fee to the Legislature at this time, the

Department recommends that efforts be concentrated on passage of the legislative concept for solid waste/recycling funding.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

For the reasons discussed above, the Department recommends Alternative 1: Commission adoption of new rules for certification of recycling programs and amendments to existing recycling rules.

INTENDED FOLLOWUP ACTIONS:

File new and amended rules with the Secretary of State within five days of adoption.

Approved:

Section: David K Rzell

Division: Stephanie Hallock

Director: Lydia Taylor

Contact: Peter H. Spendelow

Phone: 229-5253

\WORDP\CERTRUL4.D91
January 4, 1989

Departmental Report: Background and Summation Concerning Proposed Adoption of New and Amended Recycling Rules and Certification Rules.

BACKGROUND

This rule package contains new rules and amendments to implement the requirements of ORS 459.305, adopted in the 1987 legislative session. The new rules and amendments pertain to certification of recycling programs for local jurisdictions within and outside of Oregon that dispose of waste at regional landfills, reporting requirements for recycling collectors, and clarification of how collectors are to deal with source-separated recyclable materials that have not been properly prepared.

BACKGROUND: Recycling Certification

Under ORS 459.305, a regional disposal site is prohibited from accepting solid waste from any local or regional government unit located within the State of Oregon after July 1, 1988, or from outside the State of Oregon after July 1, 1990, unless the Department certifies that the government unit has implemented a sufficient opportunity to recycle. The proposed Eastern Oregon landfills in Gilliam and Morrow Counties and the existing Coffin Butte landfill are the only Oregon landfills that currently meet the definition of "regional disposal site" and are affected by this law. The Commission implemented requirements of the law by temporary rule and is now considering permanent rules and amendments.

A number of legal and program issues have been considered in drafting the proposed rules. Many of these issues were discussed and alternatives considered in the September 9, 1988 staff report (Attachment D). The key elements are as follows:

1. The recycling requirements would not discriminate against out of state jurisdictions, so as to not conflict with the interstate commerce clause of the United States Constitution. All of the legal options that are available to Oregon jurisdictions, including variances and alternative methods, would also be made available to out of state jurisdictions.

2. A regional disposal site that proposes to accept waste from an out-of-state jurisdiction would be responsible for supplying information to the Department which demonstrates that a sufficient opportunity to recycle is being provided in the out-of-state jurisdiction.

3. Any out-of-state jurisdiction sending less than 1,000 tons of waste per year to an Oregon regional disposal site would be exempt from the certification requirement.

4. Existing rules would be used wherever possible to specify recycling requirements. New rules are proposed as necessary to deal with issues such as the out-of-state equivalent to Oregon's urban growth boundaries of cities.

5. The September 9, 1988 staff report also proposed modifications to the disposal site annual permit fee schedule for recycling implementation.

Based on the testimony received at public hearing and staff evaluation, the Department has revised the proposed rules. Other than elimination of the fee schedule (discussed below), proposed changes are only minor clarification of the rules and are discussed briefly here and further in the hearings officer's report (Attachment G).

The Department is proposing to postpone adoption of certification and other recycling fees because it is expected that the 1989 Legislature will take actions that will shortly require the Commission to reconsider its present fee schedule and adopt new and amended fees. The Governor and the Department are proposing a legislative concept to provide needed funds for solid waste and recycling programs in Oregon. This funding may take the form of a $2/ton surcharge on the disposal of municipal waste in Oregon, or an increase to the solid waste disposal permit fees. Rather than make small changes in the fee schedules now, only to return and make major changes in another six months, the Department prefers to wait until the Legislature has reviewed and acted on the entire funding issue.

Recycling Report Rule

Rules adopted by the Commission in March, 1987 require that the number of setouts collected on-route during the months of January, April, July, and October, and the total quantity of recyclable material collected each year, be included in the annual wasteshed recycling report. A "setout" is any amount of recyclable material placed in front of a residence for recycling collection.

The Department proposes to have the quarterly setout data forms returned directly to the Department soon after the end of each reporting month, so that we can provide a timely response if data are not collected and reported properly. Also, the existing rule does not specify who is to gather and report the data, only that the data be reported. Amendments proposed by the Department clarify that it is the collector providing a required recycling program and not the city or county that is responsible for gathering and reporting the recycling data. No testimony was received on this issue at the October 19th hearing.

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 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 proposed amendment clarifies that although collectors can refuse to accept improperly-prepared material, any material that is accepted must be recycled and not disposed. No testimony was received on this item at the October 19, 1988 hearing.

SUMMATION

1. The rules proposed here are designed to implement the requirement in 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.

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 60 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 this 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 the disposal site's immediate service area.

6. No certification or additional recycling implementation fees are proposed at this time. The Department is proposing a legislative concept regarding the level and source of funding of recycling and solid waste programs in Oregon, and expects the 1989 Oregon Legislature to consider this issue closely. The Department will review the action of the Legislature, and may propose fees as appropriate afterwards.

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.

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(Vertical bars to the left of text indicate areas where the proposed new rules and rule amendments have been changed from the proposal of 9/9/88.)

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 that 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 an initial 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 by 60 days after receipt of a completed initial recycling report or by July 1, 1989, whichever is later, 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 this time limit, 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, but not to other smaller geographic units referred to in section (6) of this rule.

(6) For the purposes of OAR 340-60-090 to 110, the term "local government unit" shall include smaller geographic units such as individual franchise or contract areas if a regional disposal site requests that the Department certify the recycling programs in the smaller geographic unit. The Department will certify the recycling programs in the smaller geographic unit if it determines that the opportunity to recycle is provided to all residents and businesses within the unit, as provided in section (1) of this rule, and that the boundaries of the unit were not drawn for the purpose of excluding potential recycling opportunities.

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, subject to the requirements and right of appeal set forth in ORS 183.310 to 550.

(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 Required for Certification
OAR 340-60-105

(1) Before a regional disposal site can accept waste from a local government unit not previously certified under OAR 340-60-095, an initial recycling report consisting of the following information for the local government unit 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) If the regional disposal site proposes to receive waste from just a single facility or business within a local government unit, the regional disposal site can substitute for all the requirements of section (1) of this rule a list that shows the expected quantity and general type of waste proposed to be accepted at the regional disposal site from that facility or business, and the recycling opportunities available and considered for recycling that waste.

(3) In order to maintain certification for local government units, 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. If, in the Department's estimation, data submitted in compliance with this paragraph indicate that the participation in the on-route recycling collection program offered in a local government unit has exceeded 60% for the previous two years, the Department may allow quarterly data on the amount of material collected and recycled on-route to be substituted for the quarterly setout data reporting required by OAR 340-60-045 (2) for the purposes of certification.

(4) The regional disposal site permittee shall be responsible for submitting, or causing to be submitted, all of the information required by sections (1), (2), and (3) of this rule for out-of-state local government units, and shall serve as wasteshed representative for the out-of-state local government units served by the disposal site.

(5) 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 have substantially the same character, with respect to minimum population density and commercial and industrial density, as urbanized areas within the State of 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, Indian reservations, and metropolitan service districts, but not including sewer districts, fire districts, or other political subdivisions that do not regulate solid waste. If a county regulates solid waste collection within unincorporated areas of the county but not within one or more incorporated cities or municipalities, then the county local government unit shall be considered as only those areas where the county directly regulates solid waste collection.

[(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 some place where the opportunity to recycle is required in a wasteshed 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 S[s]tate of Oregon having a common solid waste disposal system or designated by the C[c]ommission as an appropriate area of the state within which to develop a common recycling program. Outside of the State of Oregon, "wasteshed" means the local government units that have jointly submitted an initial recycling report required by OAR 340-60-095 (1) for certification.

[(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.

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Before the Environmental Quality Commission
of the State of Oregon

In the Matter of Adoption of Recycling Certification Rules: OAR 340-60-090 to 110, and Amend Recycling Rules OAR 340-60-010, 045, and 080	))))	Statement of Need for Rule for a Recycling Certification Program and Recycling Rules Amendments

1. Statutory Authority

The proposed recycling certification program rules and the recycling rules 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 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 125, 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

No new fees or changes in fee structure are proposed. Jurisdictions in Oregon are already required to provide the opportunity to recycle. Jurisdicitions outside of Oregon will need to provide the opportunity to recycle if they want to dispose of more than 1,000 tons of waste per year after July 1, 1990.

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.

CERTRUL4.C

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

EXECUTIVE SUMMARY

To: Environmental Quality Commission

From: Director Fred Hansen

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.

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item E, 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 at 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 wasteshed recycling reports detailed how the wasteshed 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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Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Proposed Recycling Certification Rules, Amendments, and Fees
OAR 340-60-010, 045, 080, 090 to 110, and OAR 340-61-120

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. DEQ also proposes to amend OAR 340-60-010, 045, and 080 to clarify the existing rules regarding recycling reports and the prohibition on disposal of source-separated recyclable material.

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 (OAR 340-61-120). 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 December, 1988.

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

CERTRULE.2

Attachment F
Agenda Item I
1/20/89, EQC Meeting

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 c.876 §6]

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

To: Environmental Quality Commission

From: Hearings Officer

Regarding: Report on Public Hearing held October 19, 1988 Regarding Proposed Recycling and Certification Rules: OAR 340-60-010 through 125, and Permit Fee Schedule for Recycling Implementation, OAR 340-61-120.

Summary of Procedure

A public hearing was held on October 19, 1988 from 2:00 to 3:00 pm in Portland to accept testimony on the proposed new rules for implementing a recycling certification program under ORS 459.305 and adopting amendments to existing recycling rules. Peter Spendelow of the Hazardous and Solid Waste Division presided as hearings officer.

The following persons presented formal oral testimony:

David K Luneke, Oregon Waste Systems
Jerry Morse, Clark County Solid Waste
Dale E. Sherbourne, Concerned Citizens for Waste Water Management

Also in attendance at the hearing were:

Dean Kampfer, Kampfer Sanitary Service
Diana Godwin, representing Oregon Sanitary Service Institute
Dick DiCesare, Clark County Recycling Program

Richard Partipilo, Benton/Linn Wasteshed Representative, made oral comments by phone prior to the hearing. Written comments were received from David Luneke of Oregon Waste Systems and Dave Thies of White Salmon, Washington.

Summary of Testimony

David Luneke, Oregon Waste Systems (OWS), made ten separate comments:

1. OWS supports the development of the rule, and commended the Department on the fairness of the rule. OWS did caution DEQ against adopting any rule that discriminates against out of state waste generators. OWS stated that any monies collected should be collected equally from in-state and out-of-state

generators, and that the use or distribution of funds collected should also be equal in proportion for in-state and out-of-state.

2. OWS believes the time period of 90 days to complete evaluation is too long, and would not allow sufficient time for OWS to be able to successfully bid for wastes from other jurisdictions. OWS instead would like the completed application to be acknowledged within five working days, a preliminary approval or denial in the next ten working days, and a final approval in the next ten working days. OWS commented that as many as 15 jurisdictions could consider sending their wastes to Oregon in the next five years, with quantities ranging from 5,000 to 1,000,000 tons per year.

3. OWS believes that the exemption level, below which there would be no requirement to demonstrate that the opportunity to recycle is provided, should be set at 4,000 tons per year rather than 1,000 tons per year. OWS states that 4,000 tons per year is the amount of waste generated by a city of population 4,000, and that smaller communities could not economically justify setting up a recycling depot at their disposal site.

4. OWS feels that the regular recording of setout data is an unnecessary burden after the first few years. OWS believes they will be bidding on 20 year contracts, and that if a program is successful, there will be no need to continue gathering setout data after the success of the program has been demonstrated. Instead, OWS proposes reporting the number of households served and the total tonnage of each material recovered quarterly.

5. OWS believes that setting new higher levels for the recycling implementation fee is not justified based on the recycling certification law. OWS also believes that the fee should not be directly proportional to the amount of waste generated, but instead be proportional to the work involved in certification. OWS recommends that an initial certification fee be based on the cost to DEQ of five weeks of staff time, and that a lower annual fee be set dependent on the work involved in annual review. OWS also recommends that DEQ consider having a consultant on line to prepare the approvals, and that a fee be based on the consultant's fees.

6. OWS was unsure of the meaning of "wasteshed" as related to proposed OAR 340-60-095 (2). OWS also asked whether if waste is accepted from only part of a local government unit, if the entire local government unit or only that portion of the local government unit needs to be certified.

7. OWS believes that the Commission should be required to issue explicit findings and conclusions if a local government unit is to be decertified (OAR 340-60-100(1)(f))

8, 9, and 10. OWS made recommendations to make more understandable the meaning of such terms as "urbanized area" and "wasteshed", and to clarify the geographic area from which certain information reporting would be required.

A copy of the written testimony from Oregon Waste Systems is attached.

Jerry Morse of Clark County Solid Waste commented briefly that he perceived the rules to be fair, but that he was concerned that potential future legislation or rules on this subject could create requirements that would be virtually impossible for a local government unit outside of Oregon to comply with (such as if Oregon required other jurisdictions to implement a deposit system), and could unfairly discriminate against out-of-state waste.

Dale E. Sherbourne of Concerned Citizens for Waste Water Management commented that he does not believe either the proposed rules or the requirements under the Recycling Opportunity Act go far enough, and that the Department should require mandatory recycling and build recycling into the infrastructure of our society.

Dave Thies of White Salmon, Washington submitted written testimony that addressed the general nature of the issue rather than the specifics of the proposed rule. Mr. Thies believes that allowing the regionalization of waste disposal would handicap recycling efforts, since municipalities can then economically dump their trash far away from home. Mr. Thies believes that for serious waste reduction and recycling to occur requires 1) legislation restricting the production of goods not easily recycled, 2) adopt legislation that would result in at least a 50% drop in the amount of waste produced, and 3) only use the regional disposal site to take care of the residual.

Rick Partipilo, of the Linn County Health Department and co-Wasteshed Representative for the Benton/Linn Wasteshed, stated that he believes the law, in singling out regional disposal sites, provides a disincentive for counties to work together to arrive at solutions for solid waste. Benton, Linn, and Polk counties have reached an agreement to jointly dispose of their waste in the Coffin Butte Landfill in Benton County. The legal definition of regional disposal site makes Coffin Butte the only regional disposal site currently in operation. Mr. Partipilo believes that the three counties made an environmentally sound choice by closing their smaller landfills and using just one centrally-located landfill. However, because of the definition of regional disposal site, the Coffin Butte landfill faces additional requirements and Linn and Polk Counties face the possibility of losing access to the disposal site if the opportunity to recycle is not provided.

Departmental Response

The Department believes that with the exception of the OWS testimony, most of the comments received were general in nature, and intended to caution the Department and the Legislature regarding potential future action, rather than specific suggestions concerning the proposed rules. OWS did address specific points. The numbers for the responses below correspond to the numbers preceding the OWS comments.

2. The Department agrees that the 90 day time period could cause difficulty to a disposal site that wants to resolve the recycling issues involved prior to bidding on accepting wastes. However, the Department believes that the proposed 25 working day period suggested by OWS is too short to ensure adequate time for review, particularly if a number of certification requests are

received at the same time. The Department proposes to change the time period involved to 60 days, allowing sufficient time to review while reducing the disposal site's scheduling conflicts in the bidding procedure.

3. The Department still believes the figure of 1,000 tons is appropriate. The Department currently requires recycling at a number of small disposal sites that serve less than 2000 people (for example, the Powers site in Coos County), and requires recycling in small local government units that lie within urbanized areas (for example, Maywood Park and King City). If a community is small and distant from markets, the present rules would result in either its disposal site having a very short list of recyclable materials, or the disposal site be exempt from collecting recyclables under OAR 340-60-070.

4. The Department agrees that successful programs with high participation should not be required to continue to collect setout data indefinitely. A change is proposed that would allow the reporting of just quantity of materials if recycling participation has exceeded 60 percent in the previous two years.

5. The Department now proposes to postpone this fee (and any certification fee) until after the 1989 Legislature has further examined the issue of funding recycling and solid waste activities in Oregon. However, the Department does expect to propose appropriate fees after the legislature has given its guidance and taken action on this issue. The main legislative authority for the particular fee that was proposed was not ORS 459.305, but instead ORS 459.170, which gives the Commission authority to adopt "an annual or permit fee or both" to carry out the provisions of the Recycling Opportunity Act. The services that the Department provides in implementing the Act are for the most part general in nature, and include such activities as rule-writing, tracking recycling and disposal conditions, help with publicity, and other forms of assistance and compliance-checking. The existing recycling fee schedule has been reviewed by the Legislature as part of the budget process. The new fee schedule originally proposed would not have affected any existing permit fee, but would have help guard against future loss of revenue if cities and counties in Oregon decide to close their existing landfills and ship all their wastes to one or two large regional landfills.

6. The Department is proposing new language for OAR 340-60-095 that would allow the Department, at the request of a regional disposal site, to certify geographic areas that are not parts of local government units, such as franchise areas or areas covered by a solid waste collection contract. If the regional disposal site wishes to accept more than 1,000 tons of waste per year from one or a limited number of businesses, but not from other sources within the local government unit, a simplified application procedure is proposed that substitutes a list of known recycling possibilities for all the other requirements of the initial recycling report. Also, the definition of "local government unit" has been changed to include Indian reservations

7-10. Wording changes have been made to clarify the rules and terms involved.

Oregon Waste Systems, Inc.
P.O. Box 11227
Portland, Oregon 97211
(503) 281-2722

A Waste Management Company

October 21, 1988

Peter Spendelow
DEQ Waste Reduction Program
Hazardous and Solid Waste Division
811 S.W. Sixth
Portland, OR 97204

Re: Recycling Rules for the Certification of Out of State Jurisdictions

Please find attached a formal copy of our written comments on the subject rule.

It is our position that General Revenue funds should continue to be the source of environmental program funding. If the State is intent on the establishment of "user fees" to fund environmental programs, the "user fees" should apply to all of the regulatory agency's programs, not just solid or hazardous waste programs. That is, air pollution control, water pollution control, public water supply, or other programs should all be subject to "user fees," not only waste programs.

We look forward to working with the Department of Environmental Quality through out the development and implementation of this program.

OREGON WASTE SYSTEMS, INC.

David K. Luneke, P.E.
Engineering Manager

DKL:klr

Attachments

CC: Rick Daniels
Jim Benedict
Mark Okey
Richard Howsley
Greg Forge
Don Kneass
Bill Moore
Dianna Godwin

Hazardous & Solid Waste Division
Dept. of Environmental Quality
RECEIVED
OCT 21 1988

CONTAINS RECYCLED MATERIALS

Comments on Proposed Recycling Certification Rules: OAR 340-60-010 through 125, and Permit Fee Schedule for Recycling Implementation: OAR 340-61-120.

Submitted by Oregon Waste Systems, Incorporated

COMMENT 1:

Oregon Waste Systems is pleased to see the development of this rule. We were an active participant in the crafting of the concept and intent of this bill during the last legislative session. We feel that this rule reflects the recognition of the drafters of this bill that there would be out of state waste coming to Oregon and that the generators of that waste should be as concerned about recycling as Oregonians. This rule will document that commitment and insure that all generators of waste that is disposed of in Oregon will be provided an opportunity to recycle.

Oregon Waste Systems would like to caution the DEQ against any portions of this rule or subsequent rules that treat out of state generators of waste in any fashion that could be construed as discriminatory. If monies are collected they should be collected from in state and out of state generators equally. If monies are distributed they should be distributed to in state and out of state generators in the same fashion.

The DEQ is correct in their recognition of the existence of a variety of programs that can accomplish the same goal. The rules establish a variance clause that allows that every community is different and as a result there will be some differences in programs that are developed to achieve reductions in the amount of waste that is landfilled.

COMMENT 2: ORS 340-60-095(3) Application Review

The proposed rule stipulates that the certification process will be completed within 90 days of the receipt of the certification application. This lengthy process would not conform to the bid processes that will be used to select long haul and export solid waste disposal vendors.

We recommend a process that issues a letter acknowledging receipt of a completed application packet within five working days. This would be followed by a letter of preliminary approval or denial within 10 working days of the previous letter and final approval within another 10 working days. The total process would occur within a five (5) week period.

We are concerned that the overall time frame will be extended so that we will not be able to respond requests for proposals from out of state jurisdictions . If we are awarded a contract in a jurisdiction it will require 60 to 90 days to research and develop the certification application on opportunity to recycle programs that are comparable with Oregon Law. To follow this with a lengthy review process would prohibit us from meeting the four to six month start up deadlines that we expect after contract award. A clear process that encourages thorough information preparation and submittal should be rewarded with an expedient evaluation.

It is currently proposed that the entire process could be handled with forms rather than reports with the DEQ review consisting of an administrative review of the forms submitted. It may be useful for the DEQ to solicit comments on the clarity and applicability of the forms from the operators who will be using them. Also, in developing the

instructional paperwork the DEQ staff might select a sample out of state jurisdiction and fill out a certification application that provides the necessary information. This would serve as an example and would test the effectiveness of the forms. The reason for this is that the DEQ is developing a process that will require annual review and may involve quite a few jurisdictions with similar waste reduction and recycling systems. By developing a streamlined system at the beginning the entire process will be more responsive over time.

We would expect that as many as 15 jurisdictions could consider the export of solid waste to Oregon over the next five years with quantities ranging from 5,000 to 1,000,000 tons per year.

COMMENT 3: ORS 340-60-095(4)(b) Certification Exemptions

The proposed rules set the out of state certification exemption at 1,000 tons per year. This should be raised to at least 4,000 tons per year. The current Oregon rules require that the curbside opportunity to recycle be provided to cities with populations greater than 4,000. A general rule of thumb indicates that 4,000 people will generate 4,000 tons per year. The general justification that communities of 1,000 to 2,000 people could economically support a small recycling depot can not be made unless the community has ready access to material markets. In most cases only the communities along the I-5 corridor have reasonable access to markets.

COMMENT 4: ORS 340-60-045(2)(f) Participation Data

We feel that the regular recording of the number of set outs or participation is an unnecessary economic burden on an industry that operates on such a close budget. The garbage

collection industry is not required to report such data for solid waste collection and as a result collection is complicated rather than simplified with the addition of recyclables and recycling data keeping.

We will be bidding on 20 year contracts and do not feel that the collection of participation information will serve a useful purpose beyond the next few years. As an alternative we would report the number of households served and the total tonnage of each material recovered quarterly. If a recycling collector chooses to conduct occasional participation surveys courtesy would dictate that the DEQ receive that information. This would achieve the overall goal of documenting material recovery and waste reduction.

COMMENT 5: ORS 340-61-120(4)(a through k) Implementation Fees

There is no clear authority in the existing law for the establishment of an "Implementation Fee" regarding recycling and the certification of out of state jurisdictions. ORS 459.305(4) clearly states that the DEQ may establish a certification fee in accordance with ORS 468.065. ORS 468.065 dictates that fees be related to the services rendered which in this case is the certification and annual review or recertification.

The proposed fee schedule is inappropriate and does not accurately reflect the manner in which the certification work would be generated or reviewed. The total tonnage of a facility is not a direct measure of the recycling certification needs. For instance a large city could contract for a large amount of waste with just two collection companies and 80 percent of the waste being commercially generated. It would be relatively simple to research and document the recycling for this situation despite the rather large annual waste generation.

Conversely a county with several small towns and a variety of hauling companies could require more research and documentation for less tonnage.

The fee should be based upon a one time certification fee that compensates the DEQ for the staff time required for the five week certification review. During the certification evaluation the DEQ could set an annual review fee based upon the complexity of the annual reporting and the staff time required.

To better accomplish the intermittent staff work this program may require, the DEQ might consider placing a consultant or accounting firm on standby to review and verify the information in the applications and reports that are submitted. The DEQ would then base its decision on the consultants review of the submittals. This could also be used as a basis for setting certification and review fees.

COMMENT 6: OAR 340-60-095(2)--Date of Approval of Recycling Report.

This regulation is unclear. It appears that the regulation could be clarified by putting a period at the end of the work "Department" in the third line> However, doing so raises a question as to the intent of the balance of the sentence. What is "wastesheds or areas that include the entire local government unit" in the context of an out-of-state local government. Is the DEQ to identify the out-of-state wasteshed or is the disposal site operator to do so? From the balance of the regulation it does not appear that the DEQ will designate wastesheds for out-of-state. This subsection should be clarified.

If the disposal site operator is to designate a wasteshed that coincides with the contract that is being presented for

certification it would be useful to clearly state this.

This regulation and others [proposed OAR 340-60-105] also raise the question of the scope of the recycling report for a jurisdiction or a local government that does not send all of its waste to a regional disposal site. Must the recycling report that the disposal site operator is to submit for certification cover the entire local government? E.G. Seattle? If we receive some portion of Seattle's or King County's waste must the DEQ certify that the opportunity to recycle has been provided in the entire City of Seattle or King County?

Good question!

COMMENT 7: OAR 340-60-100(1)(f)--Decertification Procedure.

The Environmental Quality Commission determines whether to decertify a local government unit based upon the information provided by the Department and public hearing if requested. The present rule makes no provision for the Commission to prepare findings and conclusions supporting its decision. These findings and conclusions must, under administrative law, be provided and the rule should so specify. A local government that is decertified will want to know clearly the basis for the decertification and will need findings and conclusions in order for it to base an appeal, if it chooses to do so.

COMMENT 8: OAR 340-60-105--Recycling Reports for Out-of-State Certification.

This section should be clarified as to the geographic scope of the information required to be submitted. The information to be submitted should only be for the local government unit that is to send the waste to a regional disposal site. This could be accomplished by inserting after the word "information" in subparagraph (1), second

line, the words "for the local government unit" so that portion of the clause would read "the following information for the local government unit must be submitted . . .". Otherwise, there is a potential ambiguity.

Under ORS 459.180 the recycling report applies to the entire wasteshed. Without some limitation it could appear that the information required under proposed 340-60-105(1) would apply to each city in the wasteshed and whether or not they all send to the disposal site.

COMMENT 9: OAR 340-60-110(2) and OAR 340-60-010--Definition of Urbanized Area.

The definition of "urbanized area" for jurisdictions out of the State of Oregon used in these two regulations differ slightly and should be made consistent. In particular, the last sentence of 340-60-110(2) should be made consistent with the definition 340-60-010(28). They convey substantially the same thought but use different wording which can cause potential ambiguities or confusion.

COMMENT 10: OAR 340-60-045--Standards for Recycling.

This section should be made clear that for out-of-state jurisdictions only the local government unit sending waste to a regional disposal site need to be included in the recycling report. There are several references to the "wasteshed" in the regulation that should be qualified for out-of-state local government units. For example, sections (3)(a), (4), (6)(a) and (7)(a).

REQUEST FOR EQC ACTION

Meeting Date: 1/20/89
Agenda Item: J
Division: HSW
Section: WR

SUBJECT:

Environmental Quality Commission's report to the legislature on the Oregon Recycling Opportunity Act and Department's report to the legislature on local government solid waste reduction programs.

PURPOSE:

Increase and improve recycling and waste reduction opportunities in Oregon.

ACTION REQUESTED:

___ Work Session Discussion
- ___ General Program Background
- ___ Program Strategy
- ___ Proposed Policy
- ___ Potential Rules
- ___ Other: (specify)

___ Authorize Rulemaking Hearing

Proposed Rules (Draft)	Attachment ___
Rulemaking Statements	Attachment ___
Fiscal and Economic Impact Statement	Attachment ___
Draft Public Notice	Attachment ___

___ Adopt Rules

Proposed Rules (Final Recommendation)	Attachment ___
Rulemaking Statements	Attachment ___
Fiscal and Economic Impact Statement	Attachment ___
Public Notice	Attachment ___

___ Issue Contested Case Decision/Order

Proposed Order	Attachment ___

_x_ Other: (specify)
Authorize two reports to the legislature. Attachment A,B

AUTHORITY/NEED FOR ACTION:

_x_ Pursuant to Statute: ORS 459.168(3) and ORS 459.055(4)
Enactment Date: SB 405 (1983) and SB 925 (1979)
___ Amendment of Existing Rule: _____ Attachment ___
___ Implement Delegated Federal Program: _____ Attachment ___
___ Department Recommendation: Attachment ___
___ Other: Attachment ___

_x_ Time Constraints:

Staff recommends that these reports be presented to the 1989 legislative session as early as possible.

DESCRIPTION OF REQUESTED ACTION:

The report to the legislature contains the following information:

Background summary of the Oregon Opportunity to Recycle Act;
Present status of wasteshed recycling reports, recycling depots, on-route recycling, recycling promotion, and recycling education;
Identification of problems associated with implementation of the Act;
Summary of proposed legislative concepts related to the Act.

DEVELOPMENTAL BACKGROUND:

___ Department Report (Background/Explanation) Attachment ___
___ Advisory Committee Report/Recommendation Attachment ___
___ Hearing Officer's Report/Recommendations Attachment ___
___ Response to Testimony/Comments Attachment ___
___ Prior EQC Agenda Items: (list) Attachment ___
___ Other Related Reports/Rules/Statutes: Attachment ___

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The report satisfies a legislative mandate and provides background information to support proposed new legislation.

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

Local governments and recycling service providers may object to the content of the report because it portrays slow development and inefficient operation of recycling programs in some areas of the state.

PROGRAMMATIC CONSIDERATIONS:

None

POLICY ISSUES FOR COMMISSION TO RESOLVE:

None

COMMISSION ALTERNATIVES:

1. Adopt the reports as presented by staff.

2. Expand or modify the reports.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends that the Commission adopt the reports as presented.

INTENDED FOLLOWUP ACTIONS:

The Department will submit the reports to the 1989 Legislative Assembly.

Approved:

Section: David Rozell

Division: Stephanie Hallock

Director: Lydia Taylor

Contact: David K. Rozell

Phone: 229-6165

WRB:wrb
EQC01
12/13/88

OREGON RECYCLING OPPORTUNITY ACT

A REPORT

TO THE

OREGON LEGISLATURE

Department of Environmental Quality

Hazardous and Solid Waste Division

Waste Reduction Section

December, 1988

REPORT TO THE LEGISLATURE

Executive Summary

ORS 459.168(3) requires the Environmental Quality Commission to submit a report to each regular session of the Legislative Assembly regarding compliance with and implementation of the provisions of the Oregon Recycling Opportunity Act, ORS 459.005, 459.015, 459.035, 459.165 to 459.250, 459.992 and 459.995.

This report, prepared by the Waste Reduction Section staff of DEQ, provides a summary of compliance with and implementation of the Opportunity to Recycle Act. Some important findings are:

On-route Recycling Collection

- The Department has received recycling reports from all of the 38 wastesheds in Oregon.
- 31 of the recycling reports have been approved by the Department.
- On-route recycling collection is available in 67 of the 69 Oregon cities where it is required.
- On-route recycling collection is available in a total of 106 Oregon cities and in a significant amount of unincorporated area.
- Nearly 75% of Oregonians live in areas where on-route recycling collection service is available.
- Public participation in on-route recycling collection varies from as low as 1% to as high as 56%. Statewide, the average participation rate is around 14%.

Promotion and Education

- The level of recycling promotion activities varies dramatically between wastesheds. Wastesheds with major commitments to promotion have above average public participation in on-route collection.
- Lack of adequate notice and promotion is a major reason for the delay in approval of most of the conditionally approved or unapproved recycling reports. Lack of promotion is also the major reason for lower than average public participation rates.

OREGON RECYCLING OPPORTUNITY ACT
ORS 459.165 to 459.220

BACKGROUND:

During the 1983 session, the 62nd Oregon Legislative Assembly passed the Oregon Recycling Opportunity Act (SB405). This Act requires that every Oregonian be provided with the "opportunity to recycle". This "opportunity" includes, at a minimum:

a recycling depot at every solid waste landfill and transfer station;

monthly on-route collection of source separated recyclable material offered to collection service customers within the urban growth boundaries of cities of more than 4,000 population, or within the urban growth boundaries of the Metropolitan Service District; and

a public education and promotion program that gives notice to each person of the opportunity to recycle and encourages source separation of recyclable material.

The Act also set solid waste management priorities to:

Reduce the amount of solid waste generated;

Reuse material for the purpose for which it was first intended;

Recycle material which can not be reused;

Recover energy from material which can not be reused or recycled; and

Dispose, by landfilling or using some other method approved by the Department, solid waste that can not be reused or recycled or from which energy cannot be recovered.

In 1984 the Environmental Quality Commission (Commission) adopted rules to guide the implementation of the Recycling Act. These rules (OAR 340-60-005 through OAR 340-60-125) included the following elements: identification of recycling planning areas called wastesheds; identification of the principal recyclable materials in each wasteshed; and, standards for wasteshed recycling reports, education and promotion programs and recycling services. Since initial adoption, the recycling rules have been amended on different occasions to modify the list of principal recyclable materials, require quarterly on-route collection data reporting and annual wasteshed reporting, and to require yard

debris recycling planning and implementation in the Portland Metropolitan area.

Local governments, recyclers, garbage collectors and landfill operators share responsibility for providing the recycling opportunities called for in the Act. These "affected persons" were required to submit a recycling report to the Department of Environmental Quality (Department) by July 1, 1986, explaining how the opportunity to recycle was being provided. The Department has the responsibility to review each recycling report to determine whether the opportunity to recycle is adequately provided. If the opportunity is not being adequately provided the Department may grant a variance or extension of time for correcting deficiencies. However, if the deficiencies are not corrected within a reasonable period of time, the Commission must be notified.

After appropriate hearings and findings, the Commission can order the opportunity to recycle to be provided. The order may specify the material to be recycled, designate who is to provide specific service, and establish an implementation schedule.

The Recycling Opportunity Act requires that every person in Oregon be provided the opportunity to recycle, providing citizens a chance to help solve Oregon's solid waste problems. The law does not require the public to participate; however, it does provide that if a large percentage of persons do not recycle voluntarily the Commission can mandate participation.

PRESENT STATUS:

Wasteshed Recycling Reports

The Department has received recycling reports from all of the 38 wastesheds. The Department has approved 33 wasteshed recycling reports. Five additional wastesheds have recycling reports undergoing final consideration.(see Table A) The Department continues to work with these wastesheds to correct deficiencies which range from inadequate promotion and notification about recycling opportunities to failure to provide on-route collection.

The Department views each wasteshed as a unique area of Oregon and has addressed each recycling report accordingly. Variances, alternative methods and extensions were granted to wastesheds based on individual characteristics such as geography and population density.

Six Central and Eastern Oregon wastesheds (Gilliam, Jefferson, Morrow, Sherman, Wasco, and Wheeler) received variances from a portion of the education and promotion requirements. These wastesheds were concerned that the cost of promotion and education program required by the Department's rules was out of proportion when compared to the limited recycling opportunities in

TABLE A

Status of the Recycling Reports and On-Route Collection Programs

I WASTESHED	II WASTESHED REPORT STATUS	III WASTESHED POPULATION	IV** ON-ROUTE COLLECTION POPULATION	V*** ON-ROUTE RECOVERY (LBS/CAP/YR)	VI ON-ROUTE PARTICIPATION RATE (APPROX)
Baker	Approved	15500	9405	7.6	8.0%
Benton-Linn	Approved	150503	111870	17.0	17.5%
Clackamas	Approved	235765	235765	9.4	11.0%
Clatsop	Approved	32900	16460	13.2	21.5%
Columbia	Approved	36100	9215	3.4	
Coos	Under Review	57500	27245	0.4	1.0%
Crook	Approved	13500	10400	8.8	7.5%
Curry	Approved	16900	6300*	0.2	
Deschutes	Approved	65400	39880	6.6	7.0%
Douglas	Approved	92700	44000	3.0	5.0%
Gilliam	Approved	1800	0		
Grant	Approved	8350	0		
Harney	Approved	7100	0		
Hood River	Approved	16200	6470	7.2	8.0%
Jackson	Under Review	138400	100750	9.0	9.5%
Jefferson	Approved	12000	0		
Josephine	Approved	61450	21800	1.2	10.5%
Klamath	Approved	56700	33000	0.6	11.5%
Lake	Under Review	7300	0		
Lane	Approved	261650	217000	9.0	11.0%
Lincoln	Approved	36900	18590	9.4	9.5%
Malheur	Approved	26200	10822	1.6	1.5%
Marion	Approved	222876	178250	19.6	20.5%
Milton-Freewater	Approved	5850	5850	2.4	8.5%
Morrow	Approved	7800	0		
Multnomah	Approved	86059	75700	8.6	11.0%
Polk	Approved	32691	19790	11.6	9.5%
Portland	Approved	480130	480130	14.4	21.5%
Sherman	Approved	2100	0		
Tillamook	Approved	21300	4430*	1.6	1.5%
Umatilla	Approved	52850	14900	1.6	2.5%
Union	Approved	23000	0		
Wallowa	Under Review	7200	0		
Wasco	Approved	21600	13600	11.8	13.0%
Washington	Approved	272615	236650	14.4	13.5%
West Linn	Approved	13130	13130	66.0	56.0%
Wheeler	Under Review	1500	0		
Yamhill	Approved	57680	37125	8.6	8.0%
Total (Average)		2659199	1998527	(12.1)	(13.8%)

* On-route collection is provided but not required in this wasteshed.

** On-route collection population is the number of residents within the area of the wasteshed where on-route collection is available. This figure includes some apartment dwellers or individuals without garbage service who may not have on-route collection service. This figure has an accuracy of + or - 25%.

*** On-route recovery rate is calculated by dividing the total pounds of material collected for residential on-route collection by the total population in the on-route collection area. The total per capita waste generation rate is estimated to be 1500 pounds. This figure has an accuracy of + or - 25%.

their wastesheds. The Department agreed that requiring a full promotion program was not warranted in the rural areas of these wastesheds.

Four wastesheds (Douglas, Josephine, Malheur and Marion) requested and received approval of alternative methods for providing portions of the opportunity to recycle. The alternative method in the Douglas Wasteshed was a drop-off depot for glass and more frequent than normal on route collection of other materials substituted for inclusion of glass in normal on-route collection service. The Josephine alternative was recycling depots in several small communities substituted for on-route collection in a small portion of the area within the urban growth boundary but outside of the city limits of Grants Pass. In the Malheur Wasteshed a program to pick recyclable cardboard out of the waste at the disposal site was substituted for on-route collection of cardboard from commercial accounts in Ontario. In the Marion Wasteshed the City of Stayton was served by a single convenient drop-off depot as a substitute for monthly on-route collection. The Department determined that, considering the individual characteristics of each wasteshed, these alternative methods provided a better opportunity to recycle than regular monthly on-route collection in these areas. More material is being recovered through the use of these alternative methods than could be expected through curbside collection in each of the wastesheds.

Three wastesheds (Douglas, Milton Freewater, and Portland) were granted formal extensions for providing part of the opportunity to recycle. The opportunity to recycle was provided with a time extension in all three of these wastesheds. In the case of the Portland Wasteshed the EQC ordered the City to provide the opportunity to recycle. The City of Portland's recycling program now meets all the requirements of the statute and administrative rules. Several wastesheds were granted informal extensions on the deadline for submittal of their reports or portions of program implementation. The Department is working with each wasteshed to help develop better programs to provide the opportunity to recycle in these areas.

On-route Collection

There are 69 cities in Oregon where on-route collection of recyclable materials is required. All but two of these cities are providing on-route collection or an approved alternative method of recycling service. La Grande and Hermiston are the only exceptions. These local governments felt that the economics of on-route collection were marginal and have proposed continued operation of existing recycling depots as an alternative to on-route collection. The Department is working closely with these cities in developing acceptable alternative methods. These programs should be approved by January 1, 1989.

In total, 106 Oregon cities and a significant amount of unincorporated areas are now provided with at least monthly on-route collection. Of the 202 collection companies which provide on-route recycling in Oregon, 76 provide weekly service for all recyclable materials and 155 provide weekly service for at least some recyclable material. Nearly 75% of Oregonians (2 million of Oregon's 2.66 million population) live in areas where on-route recycling collection service is available. Unfortunately, not all residents within an on-route collection area actually have on-route recycling service available. In many cases apartment dwellers and residents who do not subscribe to regular garbage collection service are not offered on-route collection of recyclables.

The recycling reports and on-route collection reports received since July 1986 show that there is a great variation in public participation in recycling programs. The average participation rates for on-route recycling in different wastesheds vary from as low as 1% to 2% up to as high as 45% to 67%. Even higher participation rates have been reported in some communities. (See Table A)

Actual residential on-route recycling recovery rates vary more than participation rates. The average total waste generation rate in Oregon is estimated at 1500 pounds per person per year. The average residential on-route recovery rate is just over 12 pounds per person per year. This figure varies by wasteshed from less than 1 pound to over 66 pounds. For standard residential recyclable materials, excluding scrap metal and yard debris, which are reviewed under the Opportunity to Recycle Act, 2/3 are recovered by on-route collection and 1/3 by recycling depots at disposal sites. The total amount of residential recyclable material recovered under the Opportunity to Recycle Act is less than 5% of all of the material recycled from Oregon sources.

Recycling Depots

Almost one half of the combined residential and commercial recycling which takes place under the Opportunity to Recycle Act occurs through recycling depots at disposal sites. All of the permitted solid waste landfills and transfer stations in Oregon are required to either have multi-material recycling depots available on site or refer site users to the nearest available recycling center. Many of these recycling depots handle large volumes of paper and scrap metal. Recycling depots may not be feasible at some of the small rural disposal sites. Exemptions from on-site recycling requirements have been granted to some of the almost 100 small rural sites in Oregon. These sites are still required to notify users of the closest recycling opportunity.

Recycling Promotion

The Opportunity to Recycle Act requires a "public education and promotion program that gives notice to each person of the opportunity to recycle and encourages source separation of recyclable material". Some communities have made a major commitment to promotion of recycling opportunities by hiring recycling coordinators. These individuals are employed, on either a full-time or part-time basis, to set up programs which promote recycling in the community. Some of the communities with recycling coordinators are the cities of Astoria, Newport, Portland and West Linn and Clackamas, Columbia, Douglas, Klamath, Lane, Tillamook and Washington Counties. This effort is eventually reflected in above average public participation in on-route collection. However, in some communities such as the cities of La Grande and Medford the level of recycling promotion and education has been nowhere near balanced to the need or potential for increased participation in recycling. This lack of adequate notice and public education is a major reason for lower than anticipated participation rates in many communities.

Inadequate notice and public education has been a major reason for delay in approval of some of the recycling reports. Local governments and private collectors have been reluctant to spend money on recycling promotion, and the minimum requirement of an initial notice and semi-annual reminders to on-route collection customers has not been adequate to promote recycling opportunities in most communities. There is presently no requirement for more extensive efforts. Variances from specific notice and public education requirements have been granted to some communities, mostly in Eastern and Central Oregon, where notice and public education requirements appear inappropriate to the levels of recycling offered.

Recycling Education

Along with recycling education in the community, some wastesheds such as Benton-Linn, Columbia, Deschutes, Klamath, Lane, Portland, West Linn, and Yamhill have also taken recycling education into the school system. In these and other wastesheds the recycling collectors and community coordinators have been visiting school classes. Also, the recycling curriculum developed by the Department has been well received by teachers and is being used in classrooms throughout Oregon. The curriculum is designed to teach recycling essentials in such a way that children will take these concepts home and practice recycling with their families. More than 1500 copies of the curriculum have been distributed to Oregon schools, educators and recyclers. Since its development 18 months ago, it has also been presented at over 25 curriculum in-service and teachers training conferences.

Other Recycling Activities

Oregon has a variety of successful recycling programs which are not directly related to the Opportunity to Recycle Act. Many of these programs were in operation before passage of the Act. These programs include the following: the Oregon Bottle Bill; commercial and industrial recycling with Oregon industries and brokers; community, nonprofit and charitable paper drives like the Lions and Rotary; community and environmental recycling organizations like BRING and Portland Recycling; and local government waste reduction programs. These programs account for over 90% of the estimated 500,000 tons of material recycled annually in Oregon.

PROBLEM IDENTIFICATION:

Effective implementation of on-route collection is crucial to the success of the Opportunity to Recycle Act. The amount of public participation in on-route collection and the quantity of recyclable material being recovered has not caused the substantial increase in waste reduction that was originally anticipated. This lack of success can be attributed to the following problems in many wastesheds:

1) Promotion and education programs have not been as effective as necessary. Notice and promotion activities have not been frequent enough to develop a strong public understanding of and ongoing participation in new recycling programs.

2) There has been a lack of commitment to recycling on the part of some local government regulators and private industry service providers. This is partially due to the original design of the Act, which did not assign direct responsibility for implementation of opportunity to recycle programs.

3) The lack of an adequate source of funding for implementation of the Act has greatly limited the promotion/education and recycling service aspects of the opportunity to recycle. This lack of funding for implementation of new recycling programs has resulted in delayed and often minimal implementation efforts in many wastesheds. It has also limited the Department's ability to provide education through such basic tools as brochures and increased distribution of recycling curriculum.

4) The existing statutes and administrative rules set no goals or performance standards with which to judge the adequacy of the recycling programs. Recycling service providers and local governments need more guidance on how to provide the opportunity to recycle beyond the minimum requirements set out in the Act.

5) Some service providers have had difficulty designing recycling programs and preparing,shipping and selling recyclable materials. Equipment and techniques for on-route collection of recyclable materials are still in the

developmental stage. Major changes in equipment and handling have occurred in the last two years. Over the same time period market conditions have also changed significantly. Price fluctuations and restrictions of potentially hazardous materials from the marketplace have made processing and selling recyclable material more difficult. Many small recyclers and local governments do not have the experience in dealing with markets. A lack of technical assistance and market information from the Department has resulted in slow development and inefficient operation of some recycling programs.

6) Implementation of the Opportunity to Recycle Act has only had a small impact on recycling of materials generated from commercial activities or by apartment house dwellers. The Department has not had the resources to provide the technical assistance or regulatory overview to encourage the expansion of the opportunity to recycle from residential to commercial waste generators. Commercial recycling is presently, with a few exceptions, limited to the most profitable recyclable materials and the large commercial facilities. The opportunity to recycle for apartment house dwellers is dependent upon the willingness for the owner or manager to set up a recycling depot on-site. The Department has no clear authority to require that apartment dwellers have recycling available.

PROPOSED LEGISLATIVE CHANGES:

In response to the problems identified above, the Department has developed legislation that would provide a funding base for recycling of up to $2 million/year to local jurisdictions for the following recycling activities: promotion and education programs; improved recycling services, (e.g. purchasing containers); assistance in increasing the markets for recycled material; and any other activities that would enhance recycling activities under the Opportunity to Recycle Act.

In addition, the proposed legislation would provide resources at the Department to assist in market development and to provide technical assistance to local jurisdictions for improving recycling activities.

In regard to the need for recycling standards, the Department, after evaluating the 1988 recycling data, plans on modifying the rules to develop standards for recycling promotion and education activities, as well as standards related to recycling rates and/or participation levels.

These activities should go a long way to remedying the shortcomings of the first two years of providing the opportunity to recycle to Oregonians.

LOCAL GOVERNMENT SOLID WASTE REDUCTION PROGRAMS

A REPORT

TO THE

OREGON LEGISLATURE

Department of Environmental Quality

Hazardous and Solid Waste Division

Waste Reduction Section

December, 1988

REPORT TO THE LEGISLATURE

Executive Summary

ORS 459.055(4) requires the Department to report to each Legislative Assembly on the use made of ORS 459.055, the level of compliance with solid waste reduction programs and recommendations for future legislation.

This report, prepared by the Waste Reduction Section staff, provides a summary of compliance with solid waste reduction programs and recommendations for future legislation. Some important findings are:

- In 1988, landfills were sited in exclusive farm use zones in Gilliam and Morrow Counties. Each county will implement its Department approved solid waste reduction program when the landfills begin operation.

- In 1988 the Metropolitan Service District resubmitted its 1986 solid waste reduction program to the Department. The Department is working with Metro on the implementation of this solid waste reduction program.

- The Department is not aware of plans by any other local governments to use the provisions of ORS 459.055 for landfill siting in an exclusive farm use zone.

- The Department is not proposing changes or new legislation relating to local government solid waste reduction programs.

LOCAL GOVERNMENT SOLID WASTE REDUCTION PROGRAMS
ORS 459.055 and ORS 468.220

Background:

The original landfill siting act, passed by the 1979 legislative assembly, amended ORS 459.055 and required local governments to establish a solid waste reduction program in order to site a landfill in an exclusive farm use zone. The provision was not used until 1988 when landfills were sited in exclusive farm use zones in Gilliam and Morrow Counties.

The 1979 act also amended ORS 468.220 and required local governments to establish a solid waste reduction program in order to receive financial assistance from the Pollution Control Bond Fund, which is administered by the Department. There have been no new solid waste reduction programs developed under these provisions since the Department's last report to the Legislature.

Present Status:

In 1988 the first two landfills were sited in exclusive farm use zones. In accordance with the provisions of ORS 459.055, Gilliam and Morrow Counties have submitted solid waste reduction plans to the Department. These two plans have been reviewed and approved by the Department and are now being implemented.

The Gilliam Solid Waste Reduction Plan calls for a recycling program which meets the minimum requirements of the Opportunity to Recycle Act. On-route recycling will be offered in the towns of Condon and Arlington in addition to a recycling depot at the proposed landfill. Recycling services will be promoted through the use of direct mail advertisement.

The Morrow Solid Waste Reduction Plan is similar to the Gilliam plan except that recycling opportunities in Heppner and Boardman will be provided through dropoff depots rather than on-route collection. A recycling depot will also be established at the proposed landfill. Recycling education and promotion will meet the requirements of the Opportunity to Recycle Act.

In both of these plans, recycling services are to be provided and funded by the landfill operator. The programs, therefore, will continue as long as the regional landfills are in operation.

In addition to these two solid waste reduction plans, in 1988 the Metropolitan Service District (Metro) prepared a solid waste

reduction plan to allow waste from the district to be delivered to the new Gilliam County disposal site. This was Metro's third solid waste reduction plan. The first Metro Solid Waste Reduction Plan was produced in 1980 under the provisions of ORS 468.220. The 1988 Metro Solid Waste Reduction Plan was a resubmittal, without any changes, of the 1986 Metro Solid Waste Reduction Plan prepared under the requirements of ORS 459.168. The Department is working with Metro on implementation of this solid waste reduction program and will present a separate report to the legislature on the status of these efforts.

Anticipated Future Use:

The Department is not aware of plans by any additional local government to use the provisions of ORS 459.055 for landfill siting in an exclusive farm use zone.

Problem Identification and Proposed Legislative Changes:

Except in the case of the Metro, implementation of the Opportunity to Recycle Act has replaced local government solid waste reduction programs as the primary method for providing recycling service. The Department is seeking no changes or new legislation in the general area of solid waste reduction. The Department intends to continue to place major emphasis on the implementation of the Opportunity to Recycle Act.

10/26/88

REQUEST FOR EQC ACTION

Meeting Date: 1/20/89
Agenda Item: K
Division: HSW
Section: WR

SUBJECT:

Report to the Legislature on the Metro Waste Reduction Program.

PURPOSE:

To provide the Legislature with information as to the implementation by Metro of the Metro Waste Reduction Program.

ACTION REQUESTED:

___ Work Session Discussion
- ___ General Program Background
- ___ Program Strategy
- ___ Proposed Policy
- ___ Potential Rules
- ___ Other: (specify)

___ Authorize Rulemaking Hearing

Proposed Rules (Draft)	Attachment ___
Rulemaking Statements	Attachment ___
Fiscal and Economic Impact Statement	Attachment ___
Draft Public Notice	Attachment ___

___ Adopt Rules

Proposed Rules (Final Recommendation)	Attachment ___
Rulemaking Statements	Attachment ___
Fiscal and Economic Impact Statement	Attachment ___
Public Notice	Attachment ___

___ Issue Contested Case Decision/Order

Proposed Order	Attachment ___

_x_ Other: (specify)

Review and comment on a report from the Department to the Legislature	Attachment B

AUTHORITY/NEED FOR ACTION:

x	Pursuant to Statute: ORS 459.340 - 355 Enactment Date: 1987 (HB 2619)	Attachment A
___	Amendment of Existing Rule: _____	Attachment ___
___	Implement Delegated Federal Program: _____	Attachment ___
___	Department Recommendation:	Attachment ___
___	Other:	Attachment ___

x Time Constraints: (explain)
Staff recommends that this report be presented to the 1989 legislative session as early as possible.

DESCRIPTION OF REQUESTED ACTION:

This report to the legislature contains information on:

- Background summary of the Metro Waste Reduction Program.
- Current recycling and disposal of waste in the Metro Region.
- Summary of Metro's progress in implementing its waste reduction program.
- Intended action by the Commission to ensure compliance with the Metro Waste Reduction Program.

DEVELOPMENTAL BACKGROUND:

___	Department Report (Background/Explanation)	Attachment ___
___	Advisory Committee Report/Recommendation	Attachment ___
___	Hearing Officer's Report/Recommendations	Attachment ___
___	Response to Testimony/Comments	Attachment ___
___	Prior EQC Agenda Items: (list)	Attachment ___
___	Other Related Reports/Rules/Statutes:	Attachment ___

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

This report satisfies the legislative mandate for a report under ORS 459.355

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

None

PROGRAMMATIC CONSIDERATIONS:

None

POLICY ISSUES FOR COMMISSION TO RESOLVE:

None

COMMISSION ALTERNATIVES:

1. Adopt the report as presented by staff

2. Direct staff to expand or modify the report

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends that the Commission review and comment on the report.

INTENDED FOLLOWUP ACTIONS:

The Department will submit the report, as approved or modified based on Commission comment, to the 1989 Legislative Assembly.

Approved:

Section: David K. Rull

Division: Stephanie Hallock

Director: Lydia Taylor

Contact: Peter Spendelow

Phone: 229-5253

\WORDP\METRO\METRORP2.D91
January 3, 1989

Attachment A

ORS 459.055 and ORS 459.340 to 355

459.055 Landfills in farm use areas; waste reduction programs. (1) Before issuing a permit for a landfill disposal site to be established after October 3, 1979, in any area zoned for exclusive farm use, the department shall determine that the site can and will be reclaimed for uses permissible in the exclusive farm use zone. A permit issued for a disposal site in such an area shall contain requirements that:

(a) Assure rehabilitation of the site to a condition comparable to its original use at the termination of the use for solid waste disposal;

(b) Protect the public health and safety and the environment;

(c) Minimize the impact of the facility on adjacent property;

(d) Minimize traffic; and

(e) Minimize rodent and vector production and sustenance.

(2) Before issuing a permit for a landfill disposal site established under ORS 459.047 or 459.049, or for a disposal site established as a conditional use in an area zoned for exclusive farm use, the department shall require the local government unit responsible for solid waste disposal pursuant to statute or agreement between governmental units to prepare a waste reduction program and shall review that program in the manner provided in subsection (5) of this section. Such program shall provide for:

(a) A commitment by the local government unit to reduce the volume of waste that would otherwise be disposed of in a landfill through techniques such as source reduction, recycling, reuse and resource recovery;

(b) A timetable for implementing each portion of the waste reduction program;

(c) Energy efficient, cost-effective approaches for waste reduction;

(d) Procedures commensurate with the type and volume of solid waste generated in the area; and

(e) Legal, technical and economical feasibility.

(3) If a local government unit has failed to implement the waste reduction program required pursuant to this section, the commission may, by order, direct such implementation.

(4) The department shall report to each Legislative Assembly on the use made of this section, the level of compliance with waste reduction programs and recommendations for further legislation.

(5) A waste reduction program prepared under subsection (2) of this section shall be reviewed by the department and shall be accepted by the department if it meets the criteria prescribed therein.

(6) Notwithstanding ORS 459.245 (1), if the department fails to act on an application subject to the requirements of this section within 60 days, the application shall not be considered granted. [1979 c.773 §8a]

459.340 Implementation of the solid waste reduction program by metropolitan service district. (1) The metropolitan service district shall implement the provisions of the solid waste reduction program as adopted by the metropolitan service district.

(2) After September 27, 1987, before the metropolitan service district council adopts an amendment to the district's solid waste reduction program, the district shall submit the proposed amendment to the Department of Environmental Quality for review and comment. The department shall review the proposed amendment to determine whether the amendment meets the requirements of section 8, chapter 679, Oregon Laws 1985. [1987 c.876 §13]

459.345 Metropolitan service district biennial report to commission. (1) Not later than July 1, 1988, and every two years thereafter, the metropolitan service district shall report to the commission on the implementation of its solid waste reduction program approved under section 8, chapter 679, Oregon Laws 1985, or as amended in accordance with ORS 459.340.

(2) The report submitted by the metropolitan service district under this section shall be in writing and shall include, but need not be limited to:

(a) A summary of the progress of the metropolitan service district in acquiring property and permits for the site selected under chapter 679, Oregon Laws 1985.

(b) The current status of implementation of the metropolitan service district's solid waste reduction program including the use of landfill disposal sites, recycling opportunities and the use of resource recovery technologies.

(c) A summary of the amount and percent of solid waste that is currently reused, recycled or disposed of in a solid waste disposal site and a comparison of such amounts and percentages to the district's existing and projected annual goals for the next two years for:

(A) The amount and percent of solid waste that will be reused, recycled or disposed of in a solid waste disposal site operated by the metropolitan service district or in a solid waste disposal site that the district has entered into an agreement to use; and

(B) The amount in tons by which solid waste disposed of annually in a landfill operated by the district or which the district has entered into an agreement to use will be reduced.

(d) A summary of the metropolitan service district's solid waste budget. [1987 c.876 §14]

459.350 Commission review of metropolitan service district report. The commission shall review the report submitted by the metropolitan service district submitted under ORS 459.345 to determine:

(1) Whether the district's activities related to solid waste disposal comply with the district's solid waste reduction program and any goals established by the district in previous reports submitted under ORS 459.345; and

(2) Whether the program and all disposal sites operated by or used by the district continue to meet the criteria established under ORS 459.015. [1987 c.876 §15]

459.355 Reports by Department of Environmental Quality to legislature. Not later than September 1, 1988, the Department of Environmental Quality shall make a preliminary report to the President of the Senate and the Speaker of the House of Representatives and to the appropriate legislative interim committee. The preliminary report shall address the criteria required in the metropolitan service district report under ORS 459.345. The department shall submit a full report to the Legislative Assembly on or before January 1, 1989, and every two years thereafter, to correspond with the report submitted to the commission under ORS 459.345. [1987 c.876 §16]

IMPLEMENTATION OF THE METRO WASTE REDUCTION PROGRAM

A REPORT
TO THE
OREGON LEGISLATURE
SUBMITTED
PURSUANT TO
ORS 459.355

Department of Environmental Quality
Hazardous and Solid Waste Division
Waste Reduction Section

December 1988

IMPLEMENTATION OF THE METRO WASTE REDUCTION PROGRAM

Background

The 1985 Landfill Siting Act (Chapter 679, Oregon Laws 1985) required Metro to adopt a waste reduction program. ORS 459.345, passed as HB 2619 by the 1987 Oregon Legislature, requires Metro to report to the Department of Environmental Quality every two years starting July 1, 1988 on implementation of the waste reduction program required under the 1985 Act. ORS 459.355 requires the Department to then report to each Legislative Assembly beginning in 1989 on Metro's implementation. The report shall cover:

A. progress in acquiring property and permits for the site selected under chapter 679, Oregon Laws 1985 (SB 662, the 1985 Landfill Siting Bill);

B. the status of implementation of Metro's waste reduction program;

C. a summary of the amount of waste recycled and disposed in the Metro region; and

D. a summary of Metro's solid waste budget.

A. New disposal site

Metro has informed the Department that it will not be requiring the landfill site selected under the 1985 Landfill Siting Act. Instead, Metro has contracted to send Portland area wastes in the future to the Oregon Waste Systems landfill under construction in Gilliam County.

B. Metro's waste reduction program and implementation

The Metro Waste Reduction Program was required by SB 662, the 1985 Landfill Siting Act. Under that Act, if the Environmental Quality Commission determined that the Metro waste reduction program did not meet the criteria of the Act, then all of Metro's solid waste authority would, as of July 1, 1986, pass to and become vested in the Department of Environmental Quality. The Commission approved the program on June 27, 1986.

The Department believes that the 1986 Metro waste reduction program is strong and ambitious, calling for 43 separate waste reduction activities to be carried out in 11 key program areas. An additional six waste reduction activities are listed in the program as optional.

Metro's 1988 report on the implementation of the waste reduction program was received by the Department on schedule. The Department has sought and received review and comment on the report by individuals representing local governments, recyclers, the solid waste industry, and environmental

groups, and has held a public hearing on the report. Based on this review, the Department has concluded that only part of the Metro Waste Reduction Program has been implemented. Metro has shown particular success with the recycling education and promotion aspects of the program, with all education activities being either completed or progressing on schedule. Other major aspects of the program have not, however, been completed, or have not been pursued at all. These activities include waste auditing and consulting services, certification of local recycling collection, rate incentives to ensure compliance with recycling standards, development of a salvage program for building materials and reusable items at disposal sites, and development of materials recovery facilities in Clackamas and Washington Counties. One reason some of these activities were not pursued is that Metro began a major new planning process in early 1987. This new planning process and additional activities diverted Metro staff and resources away from implementing the waste reduction program approved just the year before.

One program element that Metro initially pursued strongly but has since discontinued or delayed is alternative technology for waste disposal. Metro's program called for 48% of Metro-area wastes to be dedicated to alternative technology, which includes energy recovery and mixed solid waste composting. For energy recovery, Metro had selected a vendor and a site in St. Helens for a 350,000 ton per year facility to burn mixed solid waste. Two events caused Metro to suspend negotiations with the vendor. First, the voters of the City of St. Helens voted against allowing an energy-recovery facility to be built in St. Helens. Second, Metro's independent Health Impact Review Panel issued findings stating that they could not guarantee that an incinerator would not negatively impact human health.

For solid waste composting, Metro has negotiated a memorandum of understanding with Riedel Environmental Technologies to develop of a 185,000 ton per year facility. This facility would accept mainly mixed residential waste. Some metals and other contaminants would be removed from the waste, and the rest would be composted in a large rotating cylinder to produce a low-grade compost product. Plans for constructing the facility have been delayed while funding problems are being worked out. There also are concerns that some contaminants will be present in the product after composting, and that subsidized solid waste compost would displace the markets for higher-grade products such as yard debris compost. Metro intends to include in their contract with Riedel some provision to limit Riedel's infringement on the yard debris compost markets.

Potential EQC Action on Metro Waste Reduction Program

Since Metro intends to send wastes to the new Gilliam County landfill, and since that new landfill is in an area zoned exclusively for farm use, ORS 459.055, part of the Landfill Siting Act of 1979, requires adoption of a waste reduction program. ORS 459.055 also provides the Environmental Quality Commission authority to order a local government to implement the waste reduction program submitted in conjunction with siting a landfill in an area zoned exclusively for farm use.

In March of 1988 Metro submitted a letter to the Department stating that its 1986 Waste Reduction Program expanded on an earlier waste reduction program from 1981, and that the expanded program fulfilled the requirements of ORS 459.055. The Department accepted the expanded plan as fulfillment of the ORS 459.055 requirements. In reviewing Metro's 1988 report on implementation of the 1986 program, the Department determined that the waste reduction program had not been satisfactorily implemented, and recommended that the Environmental Quality Commission use the authority granted in ORS 459.055 to order Metro to implement the waste reduction program.

At the direction of the Commission, the Department has begun negotiations with Metro on a stipulated order which will require Metro to carry out major portions of the waste reduction program. The Department intends to have this order include specific actions and timelines for 18 key waste reduction activities included in the Metro 1986 waste reduction work plan. Some important items to be included are:

1. developing an area for recovery of lumber and reusable building items at Metro-area disposal sites,

2. a pilot building materials salvage program at disposal sites,

3. technical assistance in multifamily and commercial recycling,

4. pilot recycling container projects,

5. yard debris recycling at disposal sites,

6. new materials recovery centers to serve Clackamas and Washington counties,

7. a pilot waste auditing and consulting service for businesses, office complexes, construction/demolition companies, and shopping centers,

8. procurement policies encouraging the use of many recycled products by local governments and institutions, and

9. scheduled evaluation by Metro of the effectiveness of their programs.

There are some activities in the Metro 1986 waste reduction work plan which will not be included in the order, but which Metro may pursue as resources and feasibility allow. One example is the alternative technology activity previously discussed. The Department believes that Metro will accomplish greater waste reduction by concentrating efforts on recycling, and postponing further work on energy recovery until other elements of the waste reduction program have been implemented. Another example is a Metro-area hazardous waste exchange. Most waste exchanges operate by publishing lists of sources of reusable wastes and companies that wish to acquire certain wastes. The waste exchange will then match requests for wastes with the sources of the wastes. The waste exchange usually does not actually handle material or get involved in the financial

transactions, but instead acts just as a clearinghouse. The Department believes that such a waste exchange would be useful, but agrees with Metro's assessment that a waste exchange would be conducted much more efficiently and effectively on a state-wide or interstate basis, and that Metro should focus on other priorities.

Metro and the Department are in basic agreement as to the appropriateness of a stipulated order and the areas of activities to be included in the order. Appendix B is a copy of a resolution adopted by the Metro Council summarizing the basic activities to be carried out by Metro as part of an EQC order. The specific work items and timelines to be included in a stipulated order are being negotiated between the Department and Metro staff. The Environmental Quality Commission has directed that tight timelines, stipulated civil penalties for non-compliance, and no substantial back-off from the original waste reduction program be included by the Department in the order.

New solid waste staff at Metro have acknowledged that waste reduction activities have been deficient and must be improved. To this end, Metro staff and the Metro Council are working cooperatively with the Department to ensure that an order will be negotiated which causes the most critical elements of the waste reduction program to be implemented by Metro in a timely manner.

C. Recycling and Disposal in the Metro Region

Recycling in the Metro area has increased over the past two years, both in terms of quantity of material and percentage of the waste stream recycled. However, this increase in recycling has not been enough to offset the increase in solid waste generated in the region. As shown in Table 1, the amount of Metro-area waste disposed has increase 28% in the past 5 years, from 779,905 tons to 998,670 tons. Population in the tri-county area has also increased 4% during this time, so the per-capita increase in waste disposal has been 23.5%.

Table 1. Tons of Waste Disposed from the Metro Area 1983-1987.

Year	1983	1984	1985	1986	1987
Tons of waste disposed	779,905	803,558	919,967	969,894	998,670

As shown in Table 2, the total amount of material recycled in the Metro region last year was nearly 350,000 tons, more than a quarter of the entire municipal waste stream. This recycling percentage is among the highest, if not the highest, in the nation. Metro's surveys show recycling continues to increase in the area (Table 3). Although some of the differences between 1986 and 1987 figures shown in Table 3 are due to different methodology used each year, much of the increase is real. Yard

debris has shown a large increase in recycling in the past few years, in large part due to Metro's efforts. Glass recycling has also shown substantial increases. Curbside recycling programs account for part of the increase in glass recycling. However, some of the increase has

Table 2. Metro estimates for recycling and disposal for 1987.

Material	Recycled Tons	Disposed Tons	Total Tons	Percent Recycled
Newspaper	51,808	33,954	85,762	60 %
Corrugated cardboard	73,209	89,880	163,089	45 %
Office paper	18,066	38,948	57,014	32 %
Mixed paper	12,973	130,825	143,798	9 %
Plastics	4,470	71,904	76,374	6 %
Yard debris	31,283	104,860	136,143	23 %
Wood	6,243	128,828	135,071	5 %
Glass	19,658	27,962	47,620	41 %
Ferrous metal	83,100	71,904	155,004	54 %
Non-ferrous metal	35,825	13,980	49,805	72 %
Motor oil	12,749	13,251	26,000	49 %
Other wastes	0	272,374	272,374	0 %
Total	349,384	998,670	1,348,054	26 %

Table 3. Results from Metro 1986 and 1987 recycling surveys. Some of the differences between years is due to different survey methodologies used each year, particularly for scrap metals. Wood and motor oil were not included in 1986 survey.

Material	Tons recycled 1986	Tons recycled 1987	percent change
Newspaper	61,560	51,808	-19 %
Corrugated cardboard	77,220	73,209	- 5 %
Office paper	11,412	18,066	37 %
Mixed paper	13,800	12,973	- 6 %
Plastics	815	4,470	82 %
Yard debris	21,611	31,283	31 %
Glass	14,000	19,658	29 %
Ferrous metal	47,364	83,100	43 %
Non-ferrous metal	20,300	35,825	43 %
Total	268,082	330,392	19 %

resulted from a market shift by the soft drink industry away from refillable bottles to "plastishield" one-way glass bottles. These one-way bottles are still returned under the bottle bill, but are crushed and recycled instead of being reused by the bottler. Metro's recycling survey did not include refilled bottles, but did include glass that is crushed and sent to a glass manufacturer for recycling.

Metro's 1988 report sets a goal of an increase of 2-4% (21,500 - 51,000 tons) of waste recycled or reduced in each of the coming two years. This increase in recycling is expected to result from:

- o increased commercial recycling prompted by higher tipping fees
- o continued promotion and education efforts to encourage the public to use existing opportunities
- o funding by Metro of innovative recovery programs to enhance or expand the existing recovery system
- o use of yard debris recovery options.

D. Metro Solid Waste Budget

Appendix A shows Metro's solid waste operating budget for FY 1988-89 (July 1, 1988 to June 30, 1989). Waste reduction activities account for $935,397, or 3% of the total solid waste budget. Metro staff has determined that this level of funding is insufficient to carry out all of the activities called for in the waste reduction program, and so are requesting an interim supplemental budget and a new budget for the next fiscal year that is sufficient to fund all waste reduction program activities.

Summary

The waste reduction program adopted by Metro in 1986 is an ambitious program, calling for 43 separate waste reduction activities to be carried out in 11 key program areas. However, major portions of the program have not been implemented. Metro has carried out all of the activities related to education and promotion, but major activities such as waste auditing and consulting service, materials recovery facilities, yard debris and salvageable building material recycling at disposal sites, and a recycled materials procurement program have not been completed.

Metro currently spends three percent of its solid waste budget on waste reduction activities. Metro staff has determined that significantly more resources are necessary if the waste reduction program is to be fully implemented, and so is requesting the Metro Council to provide a substantial interim budget increase to provide the necessary resources to implement the program.

Recycling has increased substantially in the Metro region in the past few years. However, the amount of solid waste landfilled that is generated in the Metro region has also regularly increased in each of the past five years.

At the direction of the Environmental Quality Commission, the Department has begun negotiations with Metro on a stipulated order that will require Metro to carry out major portions of the waste reduction program. This order is scheduled to be adopted by January 1989.

Appendix A. Metro Budget: Solid Waste Operating Fund (derived from pages 5, 7, and 11, Metro Solid Waste Department FY 1988-89 Adopted Budget)

Resources:

Fund balance		$ 2,800,000
Rates and Charges		$27,211,660
Interest		$ 145,000
Total resources		$30,156,600

- -

Requirements:

Personal Services		$ 1,347,823
Administration	$ 250,320	
Operations	$ 549,892	
System Planning and Engineering	$ 322,149	
Waste Reduction	$ 225,462	
Materials and Services (includes Public Affairs)		$11,095,463
Administration	$ 27,508	
Operations	$ 8,783,590	
System Planning and Engineering	$ 1,577,930	
Waste Reduction	$ 706,435	
Capital Outlay (includes Public Affairs)		$ 859,965
Administration	$ 5,615	
Operations	$ 850,000	
System Planning and Engineering	$ 850	
Waste Reduction	$ 3,500	
Transfers:		
General Fund		$ 1,296,939
Building Fund		$ 67,103
Insurance Fund		$ 559,684
Solid Waste Debt Fund		$ 683,919
Solid Waste Capital Fund		$ 902,250
Solid Waste Reserve Fund		$10,429,010
Rehabilitation & Enhancement Fund		$ 392,500
Planning Fund		$ 489,625
Contingency		$ 789,050
Unappropriated Balance		$ 1,243,329
Total requirements:		$30,156,660

Appendix B: Metro Resolution on Waste Reduction Program

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF PRIORITIZING THOSE ELEMENTS OF THE WASTE REDUCTION PROGRAM NOT YET COMPLETE AND TO DEVELOP AN IMPLEMENTATION SCHEDULE	)))))	Resolution No. 88-1012 Introduced by Rena Cusma, Executive Officer

WHEREAS, Metro is required by ORS 459.345 to submit a progress report on implementation of the 1986 Waste Reduction Program (WRP) to the Environmental Quality Commission (EQC) on July 1, 1988; and

WHEREAS, Said report was delivered to the Department of Environmental Quality (DEQ) on July 1, 1988; and

WHEREAS, The Department of Environmental Quality evaluation of the report was unfavorable and recommended the Environmental Quality Commission to direct Metro to show cause why Metro should not be ordered to implement the program; and

WHEREAS, The Environmental Quality Commission will determine what, if any, action is necessary to cause Metro to implement the Waste Reduction Plan; and

WHEREAS, Metro and DEQ staff have met to identify programs not yet complete and to discuss a strategy Metro shall employ to achieve the objectives of those programs; and

WHEREAS, The priority programs are identified in Attachment A, Section 3; and

WHEREAS, The Waste Reduction Program must be incorporated into the Solid Waste Management Plan to achieve regional consensus and local government action necessary to implement certain elements of the Waste Reduction Program; now, therefore,

BE IT RESOLVED,

The Council concurs with the Summary of Progress (Attachment A) and the need to accomplish those items in Section 3 expeditiously. The Solid Waste Department staff shall develop a time schedule and work plan and identify resources needed to implement those items for Council concurrence prior to presentation to the EQC.

The Solid Waste Department and the Planning and Development Department shall work to revise the Waste Reduction Program and submit the program to the Council for consideration of incorporating it into the Solid Waste Management Plan.

ADOPTED by the Council of the Metropolitan Service District this ____ day of _____, 1988.

_____

Mike Ragsdale, Presiding Officer

SUMMARY OF PROGRESS

Metro Waste Reduction Program Work Plan

1. The activities in this section, included in the 1986 Waste Reduction Program, have been completed or are on schedule:

PROGRAM NAME	ACTIVITY	SUMMARY
Promotion and Education	Market Research	Regular surveys to assess effectiveness of promotion programs.
	Theme and Graphic Look	Ties together all our work plans, i.e., "Save the Earth with a Brown Paper Bag," etc.
	Multi-Year Campaign	Detailed schedule and budget for promotion work.
	Specific Campaigns	Two major radio and/or television promotions per year and eight community projects.
	Recycling Information Center	Main point of public contact for recycling and reduction inquiries.
	Support for Local Jurisdictions	Monthly calendar of events, ready-to-print materials, assist in work with media.
	Public Involvement	Arrange for various public meetings.

PROGRAM NAME	ACTIVITY	SUMMARY
Reduce and Reuse	Plastics Reduction Task Force	Task Force to research plastic reduction strategies.
	Packaging Reduction	Promote consumer awareness of packaging issues.
Recycle 405 Material	Recycling Information Center (RIC) Enhancement	Upgrade RIC information services, e.g., computer development, community project involvement.
	Regional Promotion and Education	Provide regional campaigns on curbside recycling.
Yard Debris	Materials Recovery Centers	Provide capacity for yard debris processing at St. Johns.
	Promotion and Education	Promote home composting, source separation and market development.
	Principal Recyclable Analysis	Analysis of yard debris as principal recyclable.
	Technical Assistance	Share information from out-of-region
	Rate Incentives	To encourage source separation, continue
	Materials Markets Assistance	Encourage use of recycled yard debris products.

PROGRAM NAME	ACTIVITY	SUMMARY
Materials Markets Assistance	Annual Market Analysis	Identify market strengths and weaknesses and future growth outlook.
	Consumer Education	Educate re: purchase of products made from recycled material.
	Annual Market Survey	Survey companies that purchase recycled materials.
Rate Incentives	Funding Work Plan Commitments	Modify user fees to fund waste reduction programs.

2. The following five items are being pursued by Metro through the "1% For Recycling" Program or other resources. A primary criterion for disbursing "1% for Recycling" funds is how the project meets the objectives of the 1986 Waste Reduction Program.

PROGRAM NAME	ACTIVITY	SUMMARY
Recycle 405	Source Separation	Distribute home and office containers.
	Grants and Loans	Target businesses, local governments and recyclers who support waste reduction.
Yard Debris	Diversion Credits, Loans and Grants	Use to encourage yard debris processing.
Materials Markets Assistance	Grants and Loans: R & D	Target monies to R & D for new methods of utilizing secondary materials.

PROGRAM NAME	ACTIVITY	SUMMARY
Materials Markets Assistance (continued)	Grants and Loans: User Assistance	Monies for users of secondary materials to encourage expanded use of materials.

3. The following activities, some which are partially completed and others not yet initiated, shall be completed in full. The objectives for each program will remain unaltered, but substitution in the method for achieving objectives is acceptable if 1) it will be as effective as the original element, and 2) if it is adopted by Metro Council prior to an agreed upon deadline.

i.) Activities in progress; timeline for completion passed; will reschedule based on resources.

PROGRAM NAME	ACTIVITY	SUMMARY
Reduce and Reuse	Salvageable Building Materials and Items	Examine need and feasibility of programs to promote reuse of building materials before disposal and to develop salvage capability at disposal facilities.
Recycle 405	Technical Assistance	Provide technical assistance to local governments in developing recycling pro-rams, related policies, and promotion and education.
Yard Debris	Bans on Disposal	Ban disposal of source separated yard debris from METRO landfills.

PROGRAM NAME	ACTIVITY	SUMMARY
Post Collection Recycling	Materials Recovery Centers	Establish facilities for material recovery from specific waste substreams.
	Use of Transfer Stations	Include salvage programs and post collection separation of recyclables at transfer stations.
Materials Markets Assistance	Institutional Purchasing	Assist and promote development of policies that favor purchase of products made from recycled materials.
Rate Incentives	Incentives for Post Collection	Provide economic incentive for materials recovery processing
System Measurement	Set Waste Reduction Performance Goals	Based on analysis of waste, set goals for recovery; reexamine periodically.

ii.) Activities not yet initiated; timeline for completion passed; will reschedule based on resources.

PROGRAM NAME	ACTIVITY	SUMMARY
Post Collection Recycling	Waste Audit and Consulting	Advise, assist and/or conduct audits; design programs to help generate high grade loads.

PROGRAM NAME	ACTIVITY	SUMMARY
Materials Markets Assistance	Waste Audit and Consulting	Advise, assist,conduct audits to generage high grade loads
System Measurement	Establish On-going Measurement System	Measure: - success of material recovery - tons recycled and landfilled - quantities recycled and participation rates - effectiveness of achieving goals

iii.) Activities where objective remains intact but method of accomplishment includes collaborative efforts of Metro, local jurisdictions and haulers:

PROGRAM NAME	ACTIVITY	SUMMARY
Recycle 405	Local Collection Service Certification	Assure curbside programs are optimally effective.
Yard Debris	Local Collection Service Certification	Set standards for local jurisdiction yard debris recycling and provide rate incentives.
Certification	Certification, Local Service	Assure maximum feasible waste reduction
Rate Incentives	Rate Incentives to Ensure Local Compliance	Examine Rate structure and implement modifications to assure conpliance with performance standards.

4. The following eight activities shall be reviewed as part of Council FY 89-90 budget process and will either be scheduled for implementation or removed from the plan:

PROGRAM NAME	ACTIVITY	SUMMARY
Reduce and Reuse	Waste Exchange	Develop information clearinghouse for industrial and manufacturing waste.
Alternative Technologies	Materials and Energy Recovery	Direct as much as 48 percent of waste to material and/or energy recovery.
Legislative Program	Legislative Program	Develop and pursue legislative action package on waste reduction issues.
Materials Markets Assistance	Annual Supply Profile	Measure potential growth of supply for recyclable material.
	Legislative Action	Support recycling-related legislation.
	Materials Brokerage	Guarantee market price and supply for recycled products.
	Waste Substream Composition Study (geographic portion)	Identify geographic distribution of waste substream generation points.
	Substream Resource Recovery Study (geographic portion)	Identify geographic location of needed facilities.

REQUEST FOR EQC ACTION

Meeting Date: Jan. 20, 89
Agenda Item: L
Division: HSW
Section: Waste Red.

SUBJECT: Metro Solid Waste Reduction Program: Approval of Stipulated Order

PURPOSE: To ensure that Metro carries out key elements of the Metro Solid Waste Reduction Program

ACTION REQUESTED:

___	Authorize Rulemaking Hearing	
	Proposed Rules (Draft)	Attachment ___
	Rulemaking Statements	Attachment ___
	Fiscal and Economic Impact Statement	Attachment ___
	Draft Public Notice	Attachment ___
___	Adopt Rules	
	Proposed Rules (Final Recommendation)	Attachment ___
	Rulemaking Statements	Attachment ___
	Fiscal and Economic Impact Statement	Attachment ___
	Public Notice	Attachment ___
___	Issue Contested Case Decision/Order	
	Proposed Order	Attachment ___
_x_	Other: (specify)	
	Issue (Endorse) Stipulated Order	Attachment A

AUTHORITY/NEED FOR ACTION:

_x_	Pursuant to Statute: ORS 459.055	Attachment ___
	Enactment Date: 1979	
_x_	Pursuant to Statute: ORS 459.340 - 355	Attachment ___
	Enactment Date: 1987 (HB 2619)	
___	Amendment of Existing Rule: _____	Attachment ___
___	Implement Delegated Federal Program: _____	Attachment ___
___	Department Recommendation:	Attachment ___
___	Other:	Attachment ___

___ Time Constraints: (explain)

DESCRIPTION OF REQUESTED ACTION:

The proposed order would implement 16 key activities of the 1986 Metro waste reduction program. Among these activities are:

- recycling of source-separated salvageable construction materials at all Metro-area disposal sites where feasible, including demolition disposal sites, by January 1, 1991;
- recycling container programs beginning October 1, 1989;
- recycling of source-separated yard debris at all Metro-area disposal sites where feasible by January 1, 1990;
- rate incentives for residential and commercial recycling of yard debris at St. Johns by July 1, 1989, and at all Metro-area sites where yard debris recycling is feasible by January 1, 1990;
- material recovery centers for paper products and for salvageable construction materials, with contracts awarded or construction begun by January 1, 1991; at least one new facility on line by January 1, 1992; and, completion of other facilities targeted for January 1, 1993;
- 25 waste audits to be conducted as a pilot project by October 1, 1989, and continued and expanded if successful, and three waste audit training seminars completed by July 1, 1990;
- promotion of recycled product procurement to Metro area governments, business, and institutions beginning January 1, 1990; and
- ongoing measurement including periodic waste composition studies to determine the results of the waste reduction efforts.

With regard to certification and compliance rate incentive activities in the 1986 waste reduction program, Metro intends to accomplish the goals of these activities by developing and implementing a regional plan for yard debris recycling, and by implementing additional recycling programs for other materials. Metro now believes that it is not feasible to unilaterally implement a certification and rate incentives program, but believes that such a program or equivalent is feasible if local governments and collectors are involved in setting up the program.

The proposed stipulated order recognizes Metro's intentions, but does not order Metro to either do this planning or carry out the original activities. Instead, the proposed order reserves the right of the Commission to unilaterally order the certification

and compliance rate incentive portions of the 1986 Metro waste reduction program if the Department determines that the Metro regional planning process is not producing the level of waste reduction that would have resulted had the original certification and compliance rate incentives been implemented.

DEVELOPMENTAL BACKGROUND:

___	Department Report (Background/Explanation)	Attachment ___
___	Advisory Committee Report/Recommendation	Attachment ___
___	Hearing Officer's Report/Recommendations	Attachment ___
___	Response to Testimony/Comments	Attachment ___
_x_	Prior EQC Agenda Items: Item I, 12/9/88 (part)	Attachment _B_
_x_	Other Related Reports/Rules/Statutes: Metro Resolution 89-1025	Attachment _C_

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

This order is consistent with the hierarchy for solid waste management and other policies set forth in ORS 459.015, and with the provisions of ORS 459.055, ORS 459.340-355, and Chapter 679, Oregon Laws 1985.

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

Metro Council on January 12th adopted a resolution approving in principal the work items called for in the proposed stipulated order, pending final agreement of Metro and Department staff on the wording of the order.

Some environmental groups have expressed concern about the long timelines involved in the planning process, particularly for yard debris, and believe that the Commission should order the original certification and rate incentives program called for in the 1986 plan.

PROGRAMMATIC CONSIDERATIONS:

POLICY ISSUES FOR COMMISSION TO RESOLVE:

Are the activities and timelines in the stipulated order acceptable to the Commission in lieu of ordering the waste reduction program as originally submitted in 1986?

The order is drafted to allow change by mutual consent of the Department and Metro. Should any change in the order require Commission action?

COMMISSION ALTERNATIVES:

1. Approve the proposed stipulated final order as presented by staff. Authorize either the Director or the Commission Chair sign the order after it has been approved by Metro Council, provided that no substantial change has been made to the order. Monitor Metro waste reduction activities including planning and implementation activities outside the purview of the order. This leaves open the possibility of issuing a unilateral order for certification and compliance rate incentives if Metro's planning and implementation activities are falling behind and not producing the desired waste reduction.

2. Indicate changes that must be made in the stipulated final order for acceptance by the Commission, and direct staff to continue negotiations and return with either a new stipulated order or a unilateral order.

3. Not approve the stipulated order, and either issue a unilateral order or direct staff to prepare a unilateral order for adoption at the March EQC meeting.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends that the Commission adopt the first alternative, and approve the proposed stipulated order as presented by staff. The proposed stipulated order covers the most important waste reduction activities of the 1986 plan except for certification and compliance rate incentives. Specific tasks with specific end dates are set, and, in some cases, the tasks outlined in the order go beyond the tasks outlined in the original waste reduction program. For example, the order sets requirements for yard debris recycling and salvage of reusable and recyclable construction material at all Metro-area disposal sites, including the demolition landfills. The 1986 waste reduction plan did not specifically include waste reduction activities at the demolition fills. The proposed order also requires Department concurrence with Metro findings if Metro determines that it is not feasible or appropriate to carry out certain recycling activities called for in the order and in the original waste reduction program. The original waste reduction program did not specify such direct Department oversight.

The Department believes that Metro staff and council are sincere in wishing to fully implement the waste reduction program. Attachment C is a resolution passed by Metro Council on January 12th committing Metro to carry out the

full list of activities that are called for or referenced in the order.

Although the timelines for some activities in the order are longer than the Department would like, overall the order is a positive move forward to achieving greater waste reduction. The Department believes that if the Commission issues a unilateral order at this time or pushes for tighter timelines, Metro will contest the order and the result will be further delay in implementation of the entire program.

INTENDED FOLLOWUP ACTIONS:

If approved by the Commission, the Department will submit the proposed order to Metro for approval by Metro Council. If approved by Metro Council and signed by a Metro representative, the order will be prepared for signature by the Director (pursuant to OAR 340-11-136(1)) as soon as possible, or by the Commission at either the March 3 Commission Meeting or at another (earlier) date to be set by the Commission.

Approved:

Section: David Rozell

Division: Stephanie Hallock

Director: Fred Hansen

Contact: Peter Spendelow

Phone: 229-5253

PHS
\WORDP\METRO\METRORP3.D91
January 18, 1989

**BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON**

DEPARTMENT OF ENVIRONMENTAL QUALITY, OF THE STATE OF OREGON, (Department)	)	STIPULATION AND FINAL ORDER No. WR-89-01 MULTNOMAH COUNTY
v.	)	
METROPOLITAN SERVICE DISTRICT, (Metro)	)	

WHEREAS

1. Metro has adopted and submitted to the Department of Environmental Quality a solid waste reduction program that commits Metro to reduce substantially the volume of waste that would otherwise be disposed of in land disposal sites.

2. Metro submitted this solid waste reduction program to fulfill the requirements of both ORS 459.055, relating to establishment of a disposal site in an area zoned for exclusive farm use, and Section 8, Chapter 679, Oregon Laws of 1985, relating to establishing a new disposal site to serve the Metro area.

3. ORS 459.340 directs Metro to implement the provisions of the solid waste reduction program adopted by Metro pursuant to Section 8, Chapter 679. Oregon Laws of 1985.

4. The Department has reviewed the report submitted by Metro pursuant to ORS 459.345, and has determined that the approved solid waste reduction program has not been adequately implemented.

5. The Department and Metro recognize that ORS 459.055 provides that if a local government unit has failed to implement the waste reduction program, the Environmental Quality Commission may, by order, direct such implementation. However, both Metro and the Department believe that portions of the waste reduction program should be modified. Therefore, the Department and Metro wish to settle on the course of implementation of the waste reduction program, and the dates under which specific activities under the waste reduction program shall be accomplished.

6. Certain activities of the waste reduction program are ongoing or proceeding on schedule, and Metro has committed to carrying out these ongoing activities outside the purview of this stipulation and final order.

7. The Department and Metro recognize that Metro intends to develop a regional yard debris recycling program outside the purview of this stipulated final order as follows:

A. Metro will continue to work with local governments to develop a regional yard debris plan. The regional plan will include an assessment of market capacity, processing capacity, local government collection alternatives, facility impacts, local government financing options, data collection options to evaluate programs and tools to implement effectively the regional plan.

B. The regional yard debris plan will be developed through a regional cooperative process. Local governments, solid waste industry representatives, citizens, DEQ and Metro will work together through a committee process to reach consensus on developing a plan.

C. The regional yard debris plan is expected to be completed and submitted to the Department of Environmental Quality no later than July 1, 1990. The timeframes associated with developing specifics in the plan are subject to the plan development process which will need to be agreed to by the local governments participating in the regional planning process.

D. Local plans that are developed outside of the regional planning process will be incorporated into the regional plan. Upon its completion, the regional yard debris plan will be an integral component of the regional Solid Waste Management Plan. The adopted yard debris plan will be submitted to DEQ for approval as required by OAR 340-61-026(4).

8. The Department and Metro recognize that Metro intends to continue a planning and implementation program for further implementation of recycling and waste reduction activities as follows:

A. This program shall be implemented through a cooperative planning process involving local governments, the solid waste industry, DEQ, and Metro. At a minimum, the program is expected to accomplish the following:

(a) By July 1, 1990, the performance goal setting process relative to local jurisdictions will be defined, and recycling goals will be set.

(b) By July 1, 1990, the reporting procedure for local jurisdictions, including requirements for data for determining participation levels and quantities of materials recycled, will be designed. Metro will also produce reports on regional data by July 1, 1990.

(c) Starting July 1, 1990 or earlier, Metro will begin measuring performance for local jurisdictions relative to the goals established per this subparagraph.

B. Metro expects to develop and implement tools to be used in increasing waste reduction efforts in the region and ensuring that the performance goals set in subparagraph A of this subparagraph are met. A variety of options exist to accomplish this, including:

(a) rate incentives,

(b) certification,

(c) flow control,

(d) functional planning authority, and

(e) cooperative compliance, with implementation by local governments.

9. The Department and Metro recognize that Metro intends to use the regional yard debris plan and other waste reduction planning referred to in paragraphs 7 and 8 of this stipulated final order to meet the goals of the certification and compliance rate incentives programs and activities of the original 1986 waste reduction program. However, the Department and the Environmental Quality Commission reserve the right to enter a unilateral order regarding certification and compliance rate incentives in the event

that the Department determines that the Metro regional planning process is not producing or is not expected to produce the waste reduction that would have resulted had the original certification and compliance rate incentives programs and activities been implemented. Furthermore, this Stipulation and Final Order is not intended to limit, in any way, the Department's right to proceed against Metro in any forum for any past or future violations not expressly settled herein.

NOW THEREFORE, it is stipulated and agreed that:

10. The Environmental Quality Commission shall issue a final order based on the Metro Waste Reduction Program Work Plan:

A. Requiring Metro to implement the "Salvageable Building Materials and Items" activity of the "Reduce and Reuse" program as follows:

(a) By January 1, 1990, Metro shall evaluate all Metro-area disposal sites and transfer stations to determine the feasibility of establishing an area at each site for receiving lumber and reusable or recyclable building material from the residential waste stream. If Metro determines that it is not feasible or appropriate to accept lumber and reusable or recyclable building materials at a site, Metro shall report this determination to the Department by January 1, 1990, along with the reasons why Metro believes that the recycling of these materials is not feasible or appropriate at the site.

(b) Except for those sites that under sub-subparagraph (a) of this subparagraph Metro has determined, with Department concurrence, that acceptance of lumber and reusable or recyclable building material is not feasible or appropriate, all Metro-area disposal sites and transfer stations shall set aside an area by January 1, 1991 for receiving lumber and reusable or recyclable building materials. At these sites, spotters or gate attendants shall be

used to direct loads of salvageable materials to this recycling area.

(c) Metro shall conduct a specific promotion campaign for reusable building materials, similar to the Metro campaigns for yard debris, Christmas trees, or household hazardous waste. This activity shall be initiated by April 1, 1990.

B. Requiring Metro to implement the "technical assistance" activity of the "Recycle 405 Materials" program as follows:

(a) By January 1, 1990, Metro shall identify those areas where multi-family or commercial recycling is not provided, and where technical assistance is most needed to establish multifamily and commercial recycling programs.

(b) By July 1, 1990, Metro shall proactively provide technical assistance as needed to get the desired multifamily and commercial recycling programs established. This assistance should include, at Metro's initiation, direct consultation of Metro staff with appropriate local government officials and collectors.

C. Requiring Metro to implement the "Source Separation Technology Development" activity of the "Recycle 405 Materials" program as follows:

(a) By October 1, 1989, Metro shall implement the pilot residential recycling container project.

(b) By January 1, 1991, Metro shall implement a pilot project involving containers or recycling methods for multi-family residential units.

(c) By August 1, 1990, provided that the pilot project called for in sub-subparagraph (a) of this subparagraph demonstrates that the use of recycling containers is feasible, Metro shall work with local governments of one county to implement a curbside container recycling program, including assistance with financing alternatives, distribution techniques and promotion and education.

D. Requiring Metro to implement the "Materials Markets Assistance" activity of the "Recycle -- Yard Debris" program as follows:

(a) Metro shall implement the institutional purchasing aspects of yard debris materials markets assistance as set forth in subparagraph M of this paragraph.

(b) Metro shall continue to manage quarterly yard debris compost tests for herbicides, nutrients, toxicity, and seed identification.

(c) Metro shall continue work with demonstration plots testing the effects of yard debris compost on plant growth.

(d) Metro shall continue an annual yard debris composting campaign, and shall continue to coordinate and carry out promotion and education, development of materials, and marketing events. These activities shall be aimed at landscapers, nurserymen, and the general public.

E. Requiring Metro to implement the "Bans on Disposal" activity of the "Recycle - Yard Debris" program as follows:

(a) By July 1, 1989, Metro shall evaluate all Metro-area disposal sites and transfer stations to determine the feasibility of establishing an area at each site for receiving source separated yard debris for recycling. If Metro determines that it is not feasible to accept yard debris at a facility, Metro shall report this determination to the Department by July 1, 1989, along with the reasons why Metro believes that the recycling of yard debris is not feasible at the site.

(b) Except for those sites that under sub-subparagraph (a) of this subparagraph Metro has determined, with Department concurrence, that acceptance of yard debris is not feasible or appropriate, Metro shall work with all Metro-area disposal sites and transfer stations to make sure that each has developed an area for receiving yard debris and a mechanism for having yard debris recycled, either on or

off site. These yard debris recycling capabilities shall be in operation by January 1, 1990.

(c) By January 1, 1990, based on the evaluation performed in sub-subparagraph (a) of this subparagraph, Metro shall prohibit the disposal of source separated yard debris at appropriate Metro-area disposal sites if that yard debris is brought to the disposal site uncontaminated by other wastes. This ban on disposal of yard debris may apply to, but is not required to apply to, loads of yard debris that are not source-separated by the generator.

F. Requiring Metro to implement the "Rate Incentives" activity of the "Recycle - Yard Debris" program as follows:

(a) By July 1, 1989, Metro shall adopt a rate structure at all of its disposal sites that provides for acceptance of clean, source-separated yard debris for recycling at a cost that is less than the cost of disposal of contaminated yard debris and mixed waste. This rate incentive need not apply to yard debris accepted for composting at a solid waste composting plant, or to a site that Metro has determined under sub-subparagraph (a) of subparagraph E of this paragraph cannot feasibly accept yard debris for recycling.

(b) By January 1, 1990, Metro shall require all disposal sites that accept yard debris for recycling to adopt a disposal rate structure that provides for acceptance of clean, source-separated yard debris for recycling at a cost that is less than the cost of disposal of contaminated yard debris and mixed waste. This rate incentive does not need to apply to yard debris accepted for composting at a mixed solid waste composting facility.

G. Requiring Metro to implement the "Technical Assistance" activity of the "Recycle - Yard Debris" program as follows:

(a) By January 1, 1990, Metro shall organize and expand its database and library of information on collection and processing of yard debris.

(b) On an ongoing basis, Metro shall promote the use of Recycling Information Center resources, and shall proactively provide assistance to local governments, haulers, and small scale processors such as chipping and gardening services that might compost their own wastes.

H. Requiring Metro to implement the "Materials Recovery Centers" activity of the "Post Collection Recycling/Materials Recovery" program as follows:

(a) By April 1, 1990, based on economic and technical analysis, Metro shall determine if specific geographic areas can support a facility or facilities for the recovery of salvageable construction materials (including lumber) and a facility for paper products. Metro shall submit the results of this determination to the Department by April 1, 1990 for review and concurrence.

(b) By January 1, 1991, based on the analysis performed in sub-subparagraph (a) of this subparagraph, Metro shall either issue request for proposals and award contracts for construction of new or modified facilities for recovery of salvageable construction materials (including lumber) and for paper products, or else shall obtain written documentation demonstrating that such facilities have been or are being constructed. A new facility in a county shall not be required under this order if the county already contains an existing recovery facility recovering each targeted material.

(c) At least one new facility shall be constructed and actually recovering materials referred to in sub-subparagraph (b) of this subparagraph by January 1, 1992. "New facility" includes existing facilities that have been modified to recover materials. All facilities called for under the planning process of sub-subparagraph (a) of this subparagraph shall be operating and recovering material by January 1, 1993, or by another date agreed to by Metro and the Department.

I. Requiring Metro to implement the "Use of Transfer Stations" activity of the "Post Collection Recycling/Materials Recovery" program as follows:

(a) All new transfer stations for municipal refuse that are built to serve the Metro region shall be designed either to recover recyclable or reusable materials from hi-grade loads of waste, or shall provide an area for unloading and temporary storage of materials pending transfer to an appropriate materials recovery facility. Alternatively, if Metro determines that within five miles of a transfer station there exists a facility that can recover materials from certain hi-grade loads, and if that alternative facility is open during the hours that the transfer station is open, Metro may direct high grade loads of waste to the alternative facility in lieu of accepting the material at the transfer station. This five mile limit may be waived if Metro determines, with written concurrence by the Department, that a new transfer station may be effectively served by a more distant materials recovery facility. The effective date of the requirements of this sub-subparagraph shall be the date that the new transfer station begins to accept solid waste for disposal.

(b) Metro shall either redesign the Metro South Station to accept loads of high grade wastes for materials recovery that consist of 75% or higher of recyclable material, or shall identify an alternative facility within five miles that can accept that material, and then direct all high grade commercial loads of waste to that alternative facility. The decision to either use Metro South Station or identify an alternative facility shall be made by April 1, 1990. If Metro decides to implement material recovery at the Metro South Station, Metro shall develop plans to modify Metro South Station for materials recovery by January 1, 1991, and shall have materials recovery on-line by July 1, 1992.

J. Requiring Metro to implement the "Waste Auditing and Consulting" activity of the "Post Collection Recycling/Materials Recovery" program as follows:

(a) By July 1, 1989, Metro shall develop a survey form for conducting waste audits.

(b) By October 1, 1989, Metro shall perform waste audits on 25 representative moderate to large businesses, office complexes, construction/demolition companies, and shopping centers. In these audits Metro shall determine the quantity and roughly estimate the composition of wastes produced by the business, and shall demonstrate to the business what materials could be effectively recovered through source-separation, and what wastes could be made available to a materials recovery center.

(c) By January 1, 1990, Metro staff shall prepare a report to the Department and to the Metro Council on the effectiveness of the 25 waste audits.

(d) If the initial 25 audits demonstrate that the waste auditing and consulting service would be effective at reducing the wastes generated by certain classes of businesses or institutions, Metro shall conduct an inventory of the Metro-area businesses and institutions in those classes, and shall offer waste auditing and consulting services to all those targeted businesses by July 1, 1992.

(e) By January 1, 1990, Metro shall develop a waste auditing training seminar for generators and collectors.

(f) By July 1, 1990, Metro shall conduct three seminars for generators and collectors on reducing waste.

K. Requiring Metro to implement the "Incentives for Post-Collection Recycling" activity of the "Rate Incentives" program as follows:

(a) By January 1, 1990, Metro shall conduct a study of the effectiveness of present rate incentives at reducing waste, and possible modifications to the rate structure that would further

encourage the recovery of paper products, yard debris, metals, lumber, other salvageable building materials, asphalt, and other materials.

(b) Based on the results of the study outlined in sub-subparagraph (a) of this subparagraph, Metro staff shall make appropriate proposals to amend the disposal rate structure, scheduled to be adopted and in effect by October 1, 1990 or by the date that materials recovery facilities come on line for the specific materials, whichever is later.

L. Requiring Metro to implement the "Recycled Products Survey" activity of the "Materials Markets Assistance" program as follows:

(a) By July 1, 1989, Metro shall complete a survey and report to the Department on the products available for purchase in the Metro region that are made from recycled paper, yard debris, tires, and used oil. This survey shall include where appropriate the price of items made from recycled material as compared to the price of similar items made from virgin material. Metro shall also distribute results of the study to local governments and businesses upon request.

(b) By January 1, 1990 Metro shall complete a survey and report to the Department on the products including paving and construction materials, insulation and building materials, reusable containers, fuels derived from recycled oils or other reclaimed products, and recycled plastic products that are available for purchase in the Metro region and that are made from recycled materials. This survey shall include where appropriate the price of items made from recycled material as compared to the price of similar items made from virgin material. Metro shall also distribute results of the study to local governments and businesses upon request.

M. Requiring Metro to implement the "Institutional Purchasing" activity of the "Materials Markets Assistance" program as follows:

(a) By July 1, 1989, Metro shall develop a model procurement policy for the purchase of recycled paper products, composted yard debris products, and other products made from recycled materials.

(b) By January 1, 1990, Metro shall provide all Metro-area local governments and major businesses and public institutions with the model recycled products procurement policies, and with encouragement and assistance in adopting the procurement policies.

(c) Starting by January 1, 1990, Metro shall provide local governments, businesses, and public institutions that are potential large users of items made from recycled material with technical assistance on the purchase and use of recycled products. This assistance shall include demonstration projects and provision of samples of materials, as Metro determines is appropriate.

(d) Metro shall continue work to promote the use of composted yard debris products with local governments and other potential large users of composted yard debris materials.

(e) By July 1, 1990, Metro shall provide the Department with a copy of the model procurement policies developed, and with information concerning the procurement of composted yard debris products and other recycled products by local governments and institutions that resulted in part due to Metro's procurement promotion efforts.

N. Requiring Metro to implement the "Set Waste Reduction Performance Goals" activity of the "System Measurement" program by adoption of goals by Metro Council prior to May 1, 1989.

O. Requiring Metro to implement the "Establish Ongoing Measurement" activity of the "System Measurement" program as follows:

(a) Metro shall regularly monitor the waste quantity and composition generated in the Metro area by conducting a composition

and quantification study every three years, or more frequently as deemed appropriate by Metro. This study shall include four seasonal samplings of the waste stream. The first sampling shall be completed by July 1, 1989, and the next three samplings shall be conducted each quarter, to be completed by April 1, 1990. The survey methodology shall be consistent with the methodology used in the 1986-87 Metro waste characterization study, although the number and size of samples may be reduced as is appropriate for a periodically-repeated monitoring survey.

(b) By July 1, 1990, Metro shall report to the Department on the results of the 1989-1990 waste composition monitoring study.

(c) Metro shall develop periodic wastestream update reports for use in promotion and education.

(d) Metro shall annually survey recycling markets and brokers for information on the quantity of material recycled in the Metro region each year, and for other information on the effectiveness of recycling programs. The survey on quantity of materials may be done in conjunction with a recycling quantification survey conducted by the Department.

P. Requiring Metro to report to the Department on the implementation of the waste reduction program as follows:

(a) Metro shall periodically report to the Department in writing on the implementation of the waste reduction program. In addition to reports required under ORS 459.345, Metro shall provide written reports on or before July 1, 1989, January 15, 1990, July 1, 1990, and January 15, 1991.

(b) Within 45 days of the date Metro submits each report, Metro and the Department staff shall meet to review the progress of implementation of the waste reduction program under this stipulated final order.

Q. Requiring Metro, upon receipt of a written notice from the Department for any violations of the Stipulation and Final Order, to pay civil penalties in the amount of $100 for each day of each violation of the terms of this order set forth above in this paragraph.

11. If any event occurs that is beyond Metro's reasonable control and that causes or may cause a delay or deviation in performance of the requirements of this Stipulation and Final Order, Metro shall immediately notify the Department verbally of the cause of this delay or deviation and its anticipated duration, the measures that have or will be taken to prevent or minimize the delay or deviation, and the timetable by which Metro proposes to carry out such measures. Metro shall confirm in writing this information within five (5) working days of the onset of the event. It is Metro's responsibility in the written notification to demonstrate to the Department's satisfaction that the delay or deviation has been or will be caused by circumstances beyond the control and despite due diligence of Metro. If Metro so demonstrates, the Department shall extend times of performance of related activities under the Stipulation and Final Order as appropriate. Circumstances or events beyond Metro's control include, but are not limited to, acts of nature, unforeseen strikes, work stoppages, lawsuits that block or delay the siting of a facility, fires, explosion, riot, sabotage, or war. Increased cost of performance, lack of staff resources, or consultant's failure to provide timely reports shall not be considered circumstances beyond Metro's control.

12. For those items in paragraph 10 of this Stipulation and Final Order that require Department concurrence with Metro findings, the Department agrees to provide prompt review and determination, and agrees not to arbitrarily and unreasonably withhold concurrence.

13. The terms of this Stipulation and Final Order may be amended by the mutual agreement of the Department and Metro.

14. Metro 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 Stipulation and Final order. Therefore, should Metro commit any violation of the Stipulation and Final Order, Metro hereby waives any rights it might have to an ORS 468.125(1) advance notice prior to assessment of civil penalties. However, Metro does not waive its rights to an ORS 468.135(1) notice of assessment of civil penalty.

15. The Department and Metro have agreed to the entry of this Stipulation and Final Order. For the purpose of this Stipulation and Final Order, Metro admits that the Department has jurisdiction over this matter and agrees not to contest the Department's authority to enter into and issue this Stipulation and Final Order. Metro retains its rights to notice and an opportunity to request a contested case hearing on whether a violation has occurred.

DEPARTMENT OF ENVIRONMENTAL QUALITY

_____ By _____
Date Fred Hansen
Director

METRO

_____ By _____
Date (Name _____)
(Title _____)

IT IS SO ORDERED:

ENVIRONMENTAL QUALITY COMMISSION

_____ By _____
Date William P. Hutchison
Chair

_____ By _____

Date

Emery N. Castle
Vice Chair

_____ By _____
Date
Wallace B. Brill
Member

_____ By _____
Date
Genevieve P. Sage
Member

_____ By _____
Date
William Wessinger
Member

Draft 5b date: January 18, 1989

NEIL GOLDSCHMIDT
GOVERNOR

Attachment B
Agenda Item L
1/20/89, EQC Meeting

Environmental Quality Commission

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

INFORMATIONAL REPORT

Agenda Item I, December 9, 1988 EQC Meeting

Informational Report: Review of Metro Solid Waste Reduction Program.

ISSUES

To preserve landfill space and reduce the need to use good farmland for landfills, state law requires jurisdictions to adopt a waste reduction program before opening a new landfill in an area zoned exclusively for farm use. Also, the 1985 Legislature, in response to the pending landfill closure crisis in the Portland area, required Metro to submit a waste reduction program for approval by the Commission. This report examines whether Metro has fulfilled its obligations to reduce wastes, and if not, what action the Commission should take.

SUMMATION

- The Commission approved Metro's required waste reduction program in 1986. In May 1988, Metro submitted the same waste reduction program to fulfill the requirements for use of the new Gilliam County landfill.

- The Department reported to the Commission on September 9, 1988 that Metro had not adequately implemented major portions of their waste reduction program. The Commission then authorized a hearing, which was held October 12th, to determine the best course of action.

- The Department believes that the best course of action is to negotiate a stipulated order, with penalties, covering activities in eight key elements of the Metro Waste Reduction Program. This order is scheduled to be adopted at the January 20, 1989 Commission meeting. Some important items to be in the order include salvage of lumber and reusable building materials and yard debris recycling at disposal sites, technical assistance in multifamily and commercial recycling, pilot recycling container projects, a pilot waste auditing and consulting service, and a recycled material procurement program.

- Metro staff agree that a negotiated order would be an appropriate course of action, and concur in the basic elements to be included.

DIRECTOR'S RECOMMENDATION

The Department recommends that the Commission direct the Department to negotiate a stipulated order to be prepared for adoption at the January 20, 1989 EQC meeting.

Attachment B
Agenda Item L
1/20/89, EQC Meeting

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item I, December 9, 1988 EQC Meeting

Informational Report: Review of Metro Solid Waste Reduction Program.

Background and Problem Statement

In order to preserve landfill space and reduce the need to use good farm land for landfills, the 1979 Legislature passed SB 925, requiring jurisdictions which intend to open a new landfill in an area zoned exclusively for farm use to adopt a waste reduction program, and giving the Commission authority to order the jurisdiction to follow the waste reduction program (ORS 459.055). In 1985, the Legislature responded to the pending landfill closure crisis in the Portland area by requiring Metro to submit a waste reduction program for approval by the Commission prior to July 1, 1986 (SB 662, Chapter 679, Oregon Laws of 1985). Metro's plan was approved by the Commission on June 27, 1986. In May 1988, Metro submitted the same Waste Reduction Program to fulfill the requirements of ORS 459.055 relating to siting landfills in an exclusive farm use zone.

Metro was further required by the 1987 Legislature to implement its waste reduction program and to report to the Commission by July 1, 1988, and every two years thereafter, on implementation of the program (ORS 459.340 to 345). The Commission in turn is required to report to the Legislature on Metro's implementation of the program (ORS 459.350 to 355).

Metro submitted its report for Departmental review on June 30, 1988. The Department reported to the Commission at the September 9th meeting that major portions of Metro's waste reduction program have not been adequately implemented. The Commission then authorized 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) to determine whether the Commission should order implementation of the approved Waste Reduction Plan pursuant to ORS 459.055.

A public hearing was held October 12, 1988. The hearings officer's report is included as Attachment B. Based on testimony received and discussion with Metro staff and other interested persons, the Department still concludes that, as stated in the report to the Commission on September 9, Metro has not implemented the approved waste reduction program. The Department has determined, however, that some activities have been

completed or are on a path to completion and that other activities are not practical to complete at this time. A full analysis of implementation status and the Department's item-by-item findings is provided as Attachment A.

As described starting on page 4 of Attachment A, the Department recommends that the Commission issue a stipulated order to implement 18 activities in eight of the eleven key elements of the Waste Reduction Program. These eight elements are:

Reduce and Reuse
Recycle 405 Materials
Yard Debris
Post-collection Recycling
Certification for Local Collection
Rate Incentives
Materials Market Assistance
System Measurement

Some important items that are a part of these eight key elements are:

1. developing an area for recovery of lumber and reusable building items at Metro-area disposal sites,
2. a pilot building materials salvage program at disposal sites,
3. technical assistance in multifamily and commercial recycling,
4. pilot recycling container projects,
5. yard debris recycling at disposal sites,
6. new materials recovery centers to serve Clackamas and Washington counties,
7. a pilot waste auditing and consulting service for businesses, office complexes, construction/demolition companies, and shopping centers,
8. procurement policies encouraging the use of many recycled products by local governments and institutions, and
9. scheduled evaluation by Metro of the effectiveness of their programs.

Specific program activities to be included and suggested timelines are included in Attachment A starting on page 4. The Department is working with Metro to prepare an order which will stipulate timelines and due dates. Dates shown in Attachment A will be negotiated with Metro. If final agreed upon dates and timelines are not met, Metro will be subject to civil penalties for violation of the order. Metro staff agree that a stipulated order is appropriate, and the Metro Council has adopted a resolution concurring with the Department as to what activities need to be implemented (see Attachment E, draft resolution). Metro staff have stated their commitment to carry out the Waste Reduction Program, and will be requesting from the Metro Council an interim budget appropriation to obtain new staff resources to carry out the program's work plan. To allow review time by the Metro Council, the stipulated order is being prepared for the January 1989 EQC meeting. A report to the legislature on Metro's implementation of the waste reduction program will also be prepared for Commission review at the January meeting.

There are three key elements of the Metro waste reduction program that the Department does not plan to include in a stipulated order. For "Promotion, Education, and Public Involvement", the Department believes that each activity in this element has been completed or is progressing on schedule. For "Legislative Program", the Department recommends that Metro pursue the activities listed in the work plan, but believes it is not appropriate for legislative and lobbying efforts to be included as part of a stipulated order.

For "Alternative Technologies", Metro took major steps towards siting an energy recovery facility in St. Helens to accept Metro wastes. However, the City of St. Helens voted against allowing the incineration facility to be constructed there, and Metro's own independent health impact review panel said it could not guarantee that the energy recovery facility would not negatively impact the health of surrounding residents. Metro also negotiated a memorandum of understanding with Riedel Environmental Technologies to build a mass composting plant for 185,000 tons of waste per year. Progress on this plant has been slowed while Riedel seeks funding for construction.

The Department believes that although specific plans for alternative technologies have fallen through or been delayed, that Metro has lived up to the spirit of its waste reduction program for this program element. The Department believes that Metro will accomplish greater waste reduction by concentrating efforts on recycling and postponing further work on energy recovery until the other elements of the waste reduction program have been implemented.

Alternatives and Evaluation

The Commission could order Metro to implement its existing Waste Reduction Program without change. The Department believes, however, that some modification to the program is appropriate, as outlined above and in Attachment A. In addition, a negotiated order would allow the Department and Metro to be more specific about the timelines and activities to be undertaken than is present in the original waste reduction program. Finally, since the new staff at Metro have stated their commitment to carrying out an effective waste reduction program, the Department believes it would be better to work cooperatively with Metro than to work in confrontation.

The Commission could decide to take no action on the Metro Waste Reduction Program. The Department believes that to do so would neglect our responsibility under ORS 459 to make sure that the waste reduction programs and priorities of waste management are carried out.

The Commission could, as recommended, approve proceeding with program revisions and a stipulated order to be prepared for the January EQC meeting. The Department believes that an agreement should be reached at the earliest time feasible on the eight key elements of the program.

Adopting a stipulated order earlier than January would not allow sufficient time for Metro staff to coordinate with Metro Council.

Summation

1. The Department has reviewed the report submitted by Metro on the implementation of its waste reduction program and has determined that major portions of the program have not been implemented or are not on schedule.

2. On September 9, 1988, the Commission directed the Department to hold a public hearing to determine the best course of action regarding the Metro Waste Reduction Program.

3. The Department believes that the best course of action is to negotiate a stipulated order, with penalties, covering the points considered in Attachment A, to be adopted at the January 20, 1989 Commission meeting.

4. Metro staff agree that negotiating a stipulated order would be an appropriate course of action.

Director's Recommendation

Based on the summation, it is recommended that the Commission direct the Department to negotiate a stipulated order to be prepared for adoption at the January 20, 1989 EQC meeting.

Fred Hansen
Director

Attachments
A. Memo on Status of Metro Waste Reduction Program
B. Hearings Offer's Report, October 12, 1988 hearing
C. ORS 459.055 and ORS 459.340 to 355
D. Notice of Public Hearing
E. Draft Metro Resolution

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

PHSPENDE\WORDP\METRO\STAFFREP.D8N (METRORP3.B)

STATE OF OREGON

Department of Environmental Quality

Memo to: David Rozell, Waste Reduction Manager Date: November 21, 1988

From: Peter Spendelow, Recycling Specialist

Regarding: Metro Waste Reduction Program

Based on the September staff report, the testimony received at the public hearing, meetings with Metro, and other information received, here is an update on the status of Metro in implementing their waste reduction program, and the items that should be included in a stipulated order.

The Metro waste reduction program work plan listed 49 specific activities making up 11 distinct program areas. Some of these activities were listed in the work plan as optional. There is some overlap among activities, such as the education and promotion, markets assistance, and grants and loans components of many of the program areas.

1. **Completed or On Schedule**

There are 18 specific activities that the Department and Metro concur have been completed satisfactorily or are on schedule. These activities (and program names) are:

Program Name:	Activity:
Promotion and Education	Market Research
	Theme and Graphic Look
	Multi-year Campaign
	Specific Campaigns
	Recycling Information Center
	Support for Local Jurisdictions
	Public Involvement
Reduce and Reuse	Plastics Reduction Task Force
	Packaging Reduction
Recycle 405 Materials	Recycling Information Center Enhancement
	Regional Promotion and Education
Yard Debris	Materials Recovery Centers
	Promotion and Education
	Yard Debris Principal Recyclable Material
Materials Markets Assistance	Annual Market Analysis
	Annual Market Survey
	Consumer Education

For materials market assistance, the annual market survey activity was originally listed in the September staff report as being behind schedule.

However, Metro published their 1987 Annual Market Survey in September, 1988. so this item is now listed as completed.

2. **Optional Programs**

Six of the forty-nine activities were listed as optional activities in the Metro Waste Reduction Program work plan. These are:

Program Name:	Activity:
Recycle 405 Materials	Source Separation Technology Development Grants and Loans
Yard Debris	Diversion Credits, Loans and Grants
Materials Markets Assistance	Grants and Loans: Research and Development Grants and Loans: User Assistance Materials Brokerage

Metro plans to pursue most of these through their newly-passed "one percent for recycling" grants and loans program. This program should raise more than $300,000 per year to fund new recycling activities. Metro states that one of the main criteria for grants and loans will be whether issuing the assistance will further the goals of the waste reduction program. Metro is already actively pursing source separation technology development (research and pilot project on furthering source separation through the use of recycling containers or other mechanisms). The one activity that Metro does not plan to pursue at this time, except possibly on a pilot basis in conjunction with grants and loans, is the development of a specific materials brokerage program. Metro believes that for most materials it would be impractical for them to serve as a "market of last resort" at this time.

3. **Activities not to be included in a DEQ - Metro Order**

These seven items have either been substantially completed with only minor tasks remaining, have been postponed or not completed for various reasons, or are inappropriate to include in a negotiated order. The Department believes that some of these items, particularly the two concerning legislative programs, should be pursued by Metro but are inappropriate for a stipulated order. The Department does not feel it necessary for Metro to complete the remaining items at this time, but recommends that Metro reexamine the items in the future:

Program Name:	Activity:
Reduce and Reuse	Waste Exchange
Alternative Technologies	Materials and Energy Recovery
Legislative Program	Legislative Program
Rate Incentives	Fund Work Plan Commitments
Materials Markets Assistance	Annual Supply Profile
	Legislative Action
System Measurement	Waste Substream Composition Study (geographic portion)
	Substream Resource Recovery Study (geographic portion)

A waste exchange would be a valuable component of a waste management system. However, Metro believes that a waste exchange would be much more valuable and effective if it operated on a state-wide or interstate basis rather than just the Metro region. The Department agrees with that assessment, and anticipates that if a waste exchange to serve the Northwest were to start up, that Metro and the Department would be involved in helping to implement the program. The Washington State Department of Ecology has requested federal funding to do a feasibility study for a regional waste exchange.

For alternative technologies, Metro has devoted the staff time and effort called for in their work plan in attempting to implement the program, culminating in the Metro Council authorizing the negotiation of a memorandum of understanding with Combustion Engineering Inc. (C-E) for construction of a 350,000 tons per year refuse-derived fuel facility. However, two events have since caused Metro to suspend negotiations with C-E. First, Metro's independent Health Impact Review Panel issued findings stating that they could not guarantee that an incinerator would not negatively impact human health. This resulted in the Council adopting a resolution in May 1988 to suspend negotiations with C-E. Second, the City of St. Helens voted in May 1988 to prohibit the construction of an incineration facility in the city. St. Helens was the site of the C-E proposed facility, and C-E has not located an alternative location.

The Metro Council also approved a memorandum of understanding with Riedel Environmental Technologies (RET) for construction of a waste composting plant with a capacity to handle 185,000 tons per year. The facility is scheduled to be operational 18 months after financing is arranged.

The Department believes that although specific plans for alternative technologies have fallen through or been delayed, Metro has lived up to the spirit of their waste reduction program and the state priorities for waste management regarding alternative technologies. The Department recommends that Metro reexamine this program after further work in recycling implementation has been accomplished, and that alternative technologies not be required in any negotiated order between the Commission and Metro.

Regarding the activity of funding work plan commitments, Metro did amend their user fee to fund different waste reduction activities under their work plan, but it is clear that the staff resources dedicated to waste reduction have not been sufficient to fully implement the Metro program. However, the Department prefers that the order specify just the work plan commitments to be carried out, and not to specify how Metro intends to fund those commitments.

The annual supply profile was a small activity by which Metro would estimate annually the changes in the amount of material available for recycling. The Department believes this survey would have value, but that it can be done less frequently than an annual basis.

Regarding system measurement, Metro has conducted and published an excellent study of the overall composition of the Metro waste stream. The study is certainly among the best in the nation for a single jurisdiction. The one part of Metro's system measurement work plan that was not included in this study was an estimation of the geographic distribution of wastes generated that contain recyclable materials. This estimation was to be used to determine the best locations for siting materials recovery facilities. The Department believes that such a study would be helpful, but that Metro can use other methods for determining appropriate locations for new materials recovery facilities.

4. **Items to be included in a DEQ - Metro Negotiated Order**

Some of the activities listed here have been nearly or partially completed by Metro. Others have not been pursued at all. The Department believes that each of the activities listed below contain work elements that should be a part of a stipulated order.

Program Name:	Activity:
Reduce and Reuse	Salvageable Building Materials and Items
Recycle 405 Materials	Technical Assistance
	Local Collection Service Certification
Yard Debris	Materials Markets Assistance
	Technical Assistance
	Rate Incentives
	Local Collection Service Certification
	Bans on Disposal (required by ORS 459.195)
Post Collection Recycling	Materials Recovery Centers (Clackamas+Wash.)
	Use of Transfer Stations
	Waste Auditing and Consulting
Certification: Local Collection	Certification for Local Collection Services
Rate Incentives	Rate Incentives to Insure Compliance
	Incentives for Post-Collection Recycling

Materials Markets Assistance	Recycled Products Survey Institutional Purchasing
System Measurement	Set Waste Reduction Performance Goals Establish Ongoing Measurement

A discussion of each of these programs and activities follows, along with a list of those work elements and timelines that the Department would like to see in a stipulated order. These lists and timelines will be subject to negotiation with Metro.

Program: Reduce and Reuse.

Activity: Salvageable Building Materials and Items.

1) All disposal sites and transfer stations that accept significant amounts of building materials or demolition debris for disposal should set aside an area for recovering lumber and reusable building items. This should be accomplished at the Metro general-purpose landfills and transfer stations by January 1, 1990, and at the demolition fills by January 1, 1991. Spotters or gate attendants should be used to direct loads of salvageable materials to this recycling area. Existing facilities such as the ambitious Marin County, California facility or the Glenwood Receiving Station (Eugene) could be used as models for recovery of these materials.

2) Metro should also carry out a pilot project in which a disposal site sets aside an area where high-grade loads of debris could be dumped and salvageable materials removed. This pilot project should be in effect and recovering material by September 1, 1989. If this pilot project is successful, it should be expanded to all other Metro-area disposal sites that accept significant amounts of demolition or building material for disposal. The Metro Solid Waste Reduction Goals Committee recently recommended that Metro adopt a lumber recovery program, a goal that could be combined with other salvage programs referred to above.

3) Metro should conduct a specific promotion campaign for reusable materials, similar to the Metro campaigns for yard debris, Christmas trees, or household hazardous waste.

4) Metro should develop a model policy for local governments to implement that would require contractors and demolition companies to indicate what materials they will be able to recover in their demolition work before the local government will grant a demolition or remodeling building permit.

Program: Recycle 405 materials

Activity: Technical Assistance

The original work plan called for a high degree of effort in providing technical assistance services to local governments in developing single and multifamily curbside collection programs and effective promotion and

education programs in accordance with SB 405. Included were specific items including designation of a project manager for technical assistance, the holding of workshops, and direct consultation through the formation of a technical assistance team. Metro has provided some technical assistance, but should provide the degree of effort called for in the work plan. This assistance should be concentrated in the areas most in need of development, including multifamily collection, commercial collection, and yard debris. Two work elements are suggested:

1) Metro should identify those areas where multi-family or commercial recycling is not provided, and where technical assistance is most needed to establish multifamily and commercial recycling programs.

2) Metro should proactively provide technical assistance as needed to get the desired multifamily and commercial recycling programs established. This assistance should include, at Metro's initiation, direct consultation of Metro staff with appropriate local government officials and collectors.

Activity: Source Separation Technology Development

This activity was listed as optional in the Waste Reduction Program Work Plan, but subsequent legislation (ORS 459.305) requires Metro to provided residential recycling containers as a pilot project not later than July 1, 1989.

1) Metro should continue with their pilot project, modified as necessary to ensure implementation by the July 1 date.

2) Metro should implement a pilot project involving containers for multi-family residential units.

The local collection service certification activity is discussed below under the program by that same name.

Program: Recycle -- Yard Debris

Activity: Materials Markets Assistance

In many respects, Metro has gone well beyond the activities listed in the original work plan in providing assistance to the yard debris processors. However, the activities relating to institutional purchasing have not been completely carried out, except for the extensive purchase of composted yard debris products for the St. John's landfill.

1) By July 1, 1989, Metro should contact all of the Metro area local governments, including parks departments and the Port of Portland, to make them aware of the availability of composted yard debris and to see if they can substitute composted yard debris for peat moss or other soil amendments that they may presently using.

2) Metro should draft a model procurement policy for composted yard debris products, and then work with local governments and institutions to have them adopt and follow that procurement policy.

3) For institutions that Metro determines can use significant amounts of composted yard debris, Metro should provide samples and demonstrate to the institution that composted yard debris can be used effectively.

4) Metro should continue their good work helping the yard debris processors develop markets, purchasing composted yard debris for their own projects, and providing promotion and education for recycling yard debris.

Activity: Bans on disposal

1) Metro should work with all the disposal sites in the region to make sure that each develops a mechanism for having yard debris recycled, either by setting aside an area for processing yard debris or to receive source-separated yard debris for later shipment to a yard debris processor. This recycling capability should be implemented at all Metro-area general purpose and demolition landfills by July 1, 1989.

2) By July 1, 1989, Metro should prohibit the disposal of source separated yard debris at all Metro-area disposal sites.

Activity: Rate Incentives

Metro currently accepts source-separated yard debris at the St. John's landfill. Residents who bring in their own source-separated yard debris pay a lower disposal fee for that material than they would for mixed waste, giving them an incentive to keep contaminants out of the yard debris. However, commercial generators and collectors who pick up source separated yard debris are not given any rate incentive to keep their yard debris loads clean.

1) Metro should, as soon as possible, provide all users of its transfer stations and landfills with economic incentives to have yard debris recycled and kept clean of contaminants.

2) Metro should use its authority to ensure that other Metro-area disposal sites that accept yard debris for recycling have economic incentives for source-separation of yard debris. These incentives should go into effect at the time the disposal sites develop yard debris recycling capabilities.

3) Metro should adopt economic incentives to influence local governments or collection services to provide yard debris collection service.

Activity: Technical Assistance

Metro has provided great assistance to the two major yard debris processors. However, Metro should expand these efforts to take a more proactive role in providing assistance to local governments, haulers, and small scale processors such as chipping and gardening services that might compost their own waste.

Activity: Local Collection Service Certification.

Metro committed in their work plan to develop standards for yard debris recycling by jurisdiction, and to charging higher disposal rates for those jurisdictions that do not implement adequate yard debris collection and/or processing systems. Since the work plan was adopted, the Commission has adopted rules listing yard debris as a principal recyclable material in the entire Metro area. Although the newly-adopted yard debris rules do not require an action on Metro's part, it would be more efficient if a single entity, such as Metro, were to do the planning and development for an area-wide program. In addition, Metro could use rate incentives and their proposed certification program to help provide an orderly and more equitable way to phase in yard debris collection under the Recycling Opportunity Act. The discussion in the Certification for Local Collection Service Program lists specific work activities for this item.

The **Materials Markets Assistance** activity is listed as completed because, although no processing operation was set up to serve north Portland as called for in the work plan, Metro accepted source separated yard debris at a reduced disposal fee at the St. John's landfill for shipment to an existing processor. The Department considers that this arrangement satisfactorily substitutes for having a yard debris processor operate in the north part of Portland as long as the fee Metro charges for accepting yard debris at St. Johns is close to the fees charged by yard debris processors at their own facilities.

Program: Post Collection Recycling/Materials Recovery

Metro's Waste Reduction Program made a strong commitment to working to develop adequate materials recovery facilities to serve the region. The summary of tasks for this program show 7350 staff hours to be dedicated to this program in 1986 and 1987 (nearly two FTE for the two years). Only a small portion of this time has actually been spent on the activities of this program. Metro has completed some aspects of this program, but needs to devote considerably more effort to effectively implement a post collection recovery program.

Activity: Materials Recycling Centers

1) Metro should determine the geographic areas that could economically support a materials recovery center where no such Metro-franchised center now exists. This determination should be made by September 1, 1989. The

Department believes that Clackamas County and Washington County could each support a materials-recovery facility.

2) Metro should work to ensure that sufficient materials recovery facilities are built to result in efficient recovery of recyclable materials throughout the entire Metro region. If Metro determines that an area exists that could economically support a materials-recovery facility, and if no private or Metro-franchised facility fills this need, then Metro should issue a request for proposal to construct and operate such a facility in the area by January 1, 1990. Each area that can support a materials-recovery facility should have a facility on-line and operating by January 1, 1992.

Activity: Use of Transfer Stations

All transfer stations in the Metro region should be designed either to recover recyclable materials from hi-grade loads of waste, or to provide an area for unloading and temporary storage of material pending transfer to an appropriate materials recovery facility. This capability for materials recovery shall be provided in all new transfer stations, and in existing transfer stations by January 1, 1990. Alternatively, if Metro finds it impractical to establish materials recovery capabilities at a transfer station, Metro should use its flow control authority to refuse to accept any wastes at the transfer station that could be accepted and processed at a materials-recovery facility.

Activity: Waste Auditing and Consulting

1) Metro should conduct a pilot project, to be initiated by March 1, 1989 and completed by October 1, 1989, to provide waste auditing and consulting to fifty representative moderate to large businesses, office complexes, construction/demolition companies, and shopping centers. In this pilot project Metro should determine the quantity and composition of the wastes produced by each business, and shall demonstrate to the business what materials could be effectively recovered through source-separation, and what wastes could be made available to a materials recovery center.

2) By January 1, 1990, Metro staff should prepare a report to DEQ and to the Metro Council on the effectiveness of the waste auditing and consulting pilot project.

3) If the pilot project demonstrates that the waste auditing and consulting service was effective at reducing the wastes generated by certain classes of businesses or institutions, Metro shall conduct an inventory of the Metro-area businesses and institutions in those classes, and shall offer waste auditing and consulting services to all of those businesses by July 1, 1992.

4) Metro should prepare and distribute written information targeted at waste reduction in certain classes of businesses.

5) In conjunction with the waste auditing and consulting service, Metro should work with affected haulers to help set up routes for high-grade loads that could be delivered to a materials recovery facility.

Program: Certification for Local Collection Services

This program, and the rate incentives program linked with it, was considered by the Department to be one of the strongest aspects of the Metro Waste Reduction Program when it was adopted.

1) Metro shall adopt standards for yard debris recycling programs that are consistent with OAR 340-60-035, 040, 115, 120, and 125. These standards should be adopted by September 1, 1989.

2) Metro shall review the yard debris recycling programs offered in all local government units within the Metro area, and shall certify the yard debris recycling programs that meet the Metro standards.

3) Haulers delivering wastes from certified areas shall be charged $4.50 less per ton as compared to haulers delivering wastes from non-certified areas. The effective date of this differential shall be January 1, 1990. The figure of $4.50 per ton was adopted by the 1987 Metro rate study as an appropriate differential to use in that event that a local government does not implement the opportunity to recycle.

4) Metro shall examine and modify its rate structure as necessary to recover its costs and to maintain a differential that would be effective in ensuring compliance with the Metro standards.

5) By January 1, 1990, Metro shall also adopt standards for multi-family recycling and for commercial recycling and the generation of high-grade loads of wastes, plus standards for other recycling or education activities. Jurisdictions or haulers meeting these standards shall also be offered a further rate differential as an incentive for meeting these standards. This rate differential should be put into effect by January 1, 1991. Other activities that Metro should consider in their standards include the distribution of recycling containers, frequency of service, and notification, education, and promotion.

While there is room to modify the work elements of this program any agreement negotiated with Metro should include activities that will still effectively accomplish the program goals.

Program: Rate Incentives

See above for the portion of the rate incentive program that is tied to certification of local jurisdictions.

Activity: Incentives for Post-Collection Recycling

1) The existing waiver of minimum charge for individuals who drop off recyclable material is a good policy, and should be continued. Metro should consider expanding this incentive by adopting further recycling credits, such as has been so successful in Deschutes and Lane Counties.

2) By March 1, 1989, Metro should examine the effectiveness of its present rate structure and rate incentives for materials processing facilities. If the rate incentives are not producing the desired waste reduction effect agreed to by Metro and the Department, then Metro should propose and adopt new rate structures to produce the desired materials-recovery and waste reduction.

3) Metro should examine and propose similar rate incentives that could result in materials other than paper being pulled out of the waste stream. One other incentive that should be continued and expanded is the lower disposal rates for source-separated yard debris (see yard debris program above). Metro should also consider incentive rates for high-grade loads of paper, cardboard, lumber, or salvageable demolition waste delivered to transfer stations where no appropriate processor is nearby.

Program: Materials Markets Assistance Program

The Department recognizes that the newly-adopted "one percent for recycling" program could be a valuable addition to this program.

Activity: Recycled Products Survey

Metro should complete its survey of recycled products available for purchase in the Metro region by July 1, 1989. This survey should include:

1) recycled paper products
2) reusable containers
3) recycled plastic products
4) paving and construction materials
5) ground covers and soil amendments
6) recycled rubber products
7) lubricating oils
8) fuels derived from recycled oil or other recycled products
9) insulation and building materials

The survey should also include the price of the recycled material in comparison to the price of similar items made from virgin materials.

Activity: Institutional Purchasing

1) Based on the survey of recycled products, Metro should develop model policies for procurement of these products, and work with local governments and institutions to have this procurement policy adopted and implemented.

2) Metro should obtain samples of the recycled products, and should work with potentially large users to demonstrate the feasibility of using the recycled products.

Program: System Measurement

Activity: Set Waste Reduction Performance Goals

The Department recognizes that a Metro advisory committee has prepared a recommendation regarding performance goals, and expects that Metro will complete this process and that the Metro Council will adopt goals by March 1, 1989.

Activity: Establish Ongoing Measurement

1) By July 1, 1989, Metro should establish a protocol for periodic sampling of wastes delivered to Metro-area facilities to determine the quantities of recyclable materials that are being disposed. This sampling should be conducted and published annually. The protocol should be established in such a way that the effectiveness of major elements of the waste reduction program, such as paper recovery from businesses or lumber recovery programs, can be estimated.

2) Metro should annually publish a report detailing the amount of waste delivered to each Metro-area disposal or materials recovery facility, and the percentage of waste going to each facility that was sent to landfill. This report should also include Metro-area waste that is sent to facilities outside the Metro region, including Yamhill and Marion county facilities.

Attachment C
Agenda Item L
1/20/89, EQC Meeting

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF SETTING TIME-LINES FOR IMPLEMENTING PRIORITY PROGRAMS OF METRO'S 1986 WASTE REDUCTION PROGRAM	))))	Resolution No. 89-1025 Introduced by Rena Cusma, Executive Officer

WHEREAS, Metro Resolution No. 88-1012 recognized fourteen (14) action elements of the 1986 Waste Reduction Program (WRP) as priority elements to implement; and

WHEREAS, Metro Resolution No. 88-1012 also required Solid Waste Department staff to develop a time schedule and work plan and identify resources needed to implement those programs; and

WHEREAS, The Department of Environmental Quality (DEQ) staff and Metro staff are negotiating a stipulated order for adoption by the Environmental Quality Commission (EQC) which must include program implementation timelines; and

WHEREAS, The Planning and Development Department shall work cooperatively with Solid Waste staff to accomplish the goals and objectives of the priority programs; now, therefore

BE IT RESOLVED,

The Council endorses Attachment "A" which depicts elements of the draft Environmental Quality Commission Stipulated Order to be negotiated between Metro and the Department of Environmental Quality. Attachment "A" also includes additional financial and staff resources necessary to implement the work. Council recognizes that additional resources will require a budget amendment to implement the programs on this schedule. It is understood that meeting this schedule is contingent upon Council adoption of the budget amendment.

Metro reserves the right to alter timelines as necessity may dictate. Solid Waste staff shall outline a process for rescheduling tasks and for measuring conformance to be included in the stipulated order.

ADOPTED by the Council of the Metropolitan Service District this 12th day of January, 1989

Mike Ragsdale

Mike Ragsdale, Presiding Officer

ATTACHMENT A

ELEMENTS OF DRAFT ENVIRONMENTAL QUALITY COMMISSION STIPULATED ORDER

Program Name	Work Output	Schedule
A. Salvageable Building Materials	I. (a) Make assessment of building material currently being disposed from residential waste stream that can be salvaged for reuse by:	01/01/90
	(b) based on this assessment, implement appropriate salvage programs at disposal facilities and/or other facilities deemed appropriate.	01/01/91
	II. Conduct a specific promotional campaign for reusable materials by:	04/01/90
	III. If facility planning work demon-strates a reusable/recyclable building products facility not necessary, Metro shall:	
	(a) Carry out a pilot project at a disposal site, transfer station or other facility to salvage reusable materials from high-grade loads of demolition/construction debris started by:	08/01/90
	(b) report findings of first six months of pilot to DEQ;	06/01/91
	(c) if pilot demonstrates such a program is technically and economically feasible, implement program regionally by:	

ELEMENTS OF DRAFT ENVIRONMENTAL QUALITY COMMISSION STIPULATED ORDER

Program Name	Work Output	Schedule
B./C. Technical Assistance (Recycle 405)	I. (a) Identify areas where multi-family or commercial recycling is not provided and where technical assistance is most needed to establish such recycling programs;	01/01/90
	(b) proactively provide technical get multi-family and commercial recycling programs established.	06/01/90
	II. (a) Implement residential curbside container pilot project; by:	10/01/89
	(b) implement a pilot involving containers or recycling methods for multi-family residential units by:	01/01/91
	(c) work with local governments of one county to implement a curbside container recycling program by:	08/01/90
D. Materials Markets Assistance - Yard Debris	I. (a) Continue to manage quarterly yard debris compost tests for herbicides, nutrients, toxicity and seed identification;	ongoing
	(b) continue work with demonstration plots testing effects of yard debris on plant growth;	ongoing
	(c) continue annual yard debris promotional campaign.	ongoing
E. Bans on Disposal	I. (a) Conduct assessment of current and future capacity at disposal sites to accept source separated yard debris; and of processor capacity;	07/01/89
	(b) based on assessment, make decisions for timing of any future bans on disposal by:	01/01/90

ELEMENTS OF DRAFT ENVIRONMENTAL QUALITY COMMISSION STIPULATED ORDER

Program Name	Work Output	Schedule
F. Rate Incentives - Yard Debris	I. (a) Adopt rate structure at all Metro disposal sites which sets the fee for clean, source separated yard debris lower than disposal fee for contaminated yard debris or other mixed waste (this does not apply to yard debris accepted for composting at MSW Compost Plants) by:	07/01/89
	(b) same as above except at <u>all</u> disposal sites by:	01/01/90
	(c) adopt economic incentives to encourage local government or collection service providers to yard debris recycling programs.	
G. Technical Assistance Yard Debris	I. (a) Organize and expand database and library information on collection and processing of yard debris;	01/01/90
	(b) proactively provide assistance to local governments, haulers, and small scale processors regarding yard debris composting.	ongoing
H. Local Recycling Service Coordination - Yard Debris	I. (a) Complete regional plan by:	07/31/90
I. Materials Recovery Centers	I. (a) Determine if geographic areas can economically support facility(ies) for recovery of lumber, building materials and paper products by	04/01/90
	(b) according to feasibility analysis in (a), issue request for proposals and award contracts for construction of a new, or modification of existing, facility(ies) for recovery of lumber, building materials and paper products by:	01/01/91
	(c) at least one new facility should be on-line and recovering materials listed in (b) by:	01/01/92

ELEMENTS OF DRAFT ENVIRONMENTAL QUALITY COMMISSION STIPULATED ORDER

Program Name	Work Output	Schedule
J. Use of Transfer Stations	I. (a) All new transfer stations for municipal refuse shall be designed to recover recyclable or reusable materials from high-grade loads of waste.	ongoing
	(b) Metro South shall be redesigned to accept load of 75% or greater recyclable material or identify an alternate facility within five miles to direct such high-grade loads.	ongoing
K. Waste Audit and Consulting Service	I. (a) Develop a survey form for conducting waste audits by:	07/01/89
	(b) develop waste audit training seminars for generators and collectors by:	01/01/90
	(c) conduct three waste audit seminars by:	07/01/90
	(d) perform 25 waste audits, estimate waste composition, and determine material available for source separated recycling and/or material recovery centers by:	10/01/89
	(e) prepare report to DEQ on effectiveness of audits by:	01/01/90
	(f) if waste audits determined successful or increasing commercial recycling, conduct inventory of businesses and institutions that could benefit from waste audit service and offer it to them by:	08/01/92

ELEMENTS OF DRAFT ENVIRONMENTAL QUALITY COMMISSION STIPULATED ORDER

Program Name	Work Output	Schedule
L. Local Recycling Service Coordination	I. (a) Define performance goal setting process with local jurisdictions by:	06/01/90
	(b) establish recycling goals by:	06/01/90
	(c) performance measurement.	ongoing
	II. Develope implementaion tools.	
M. Incentive for Post Collection Recycling	I. (a) Conduct study of rate structure to determine possible modifications to increase recycling by:	01/01/90
	(b) based on results of study, make appropriate amendments to rate structure by:	10/01/90
N. Recycled Products Survey	I. Conduct survey on products made recycled products available for purchase in the Metro region.	
	(a) - Paper - Yard Debris - Tires - Used Motor Oil	01/01/89
	(b) - Reusable Containers - Plastic Products - Paving and Construction Materials - Fuels - Insulation and Building Materials	07/01/89

ELEMENTS OF DRAFT ENVIRONMENTAL QUALITY COMMISSION STIPULATED ORDER

Program Name	Work Output	Schedule
O. Institutional Purchasing	I. (a) Develop model procurement policy for purchase of recycled paper products, yard debris compost and other products made from recycled material;	01/01/89 07/01/89
	(b) provide local governments, major businesses and public institutions with model procurement policies and assistance in adopting same by:	01/01/90
	(c) provide institutions listed in (b) with assistance to purchase products made from recycled materials;	01/01/90 ongoing
	(d) provide DEQ with model procurement policy by:	07/01/90
P. Set Waste Reduction Goals	I. (a) Present System Measurement Study to Metro Council by:	05/01/89
Q. Establish Ongoing System of Measurement	I. (a) Perform one seasonal sort of waste by:	07/01/89
	(b) perform three seasonal sorts of waste by:	04/01/90
	(c) report findings to DEQ by:	07/01/90
	(d) develop periodic waste stream update reports for use in promotion and education;	ongoing
	(e) annually survey recycling markets to determine recycling program effectiveness.	ongoing

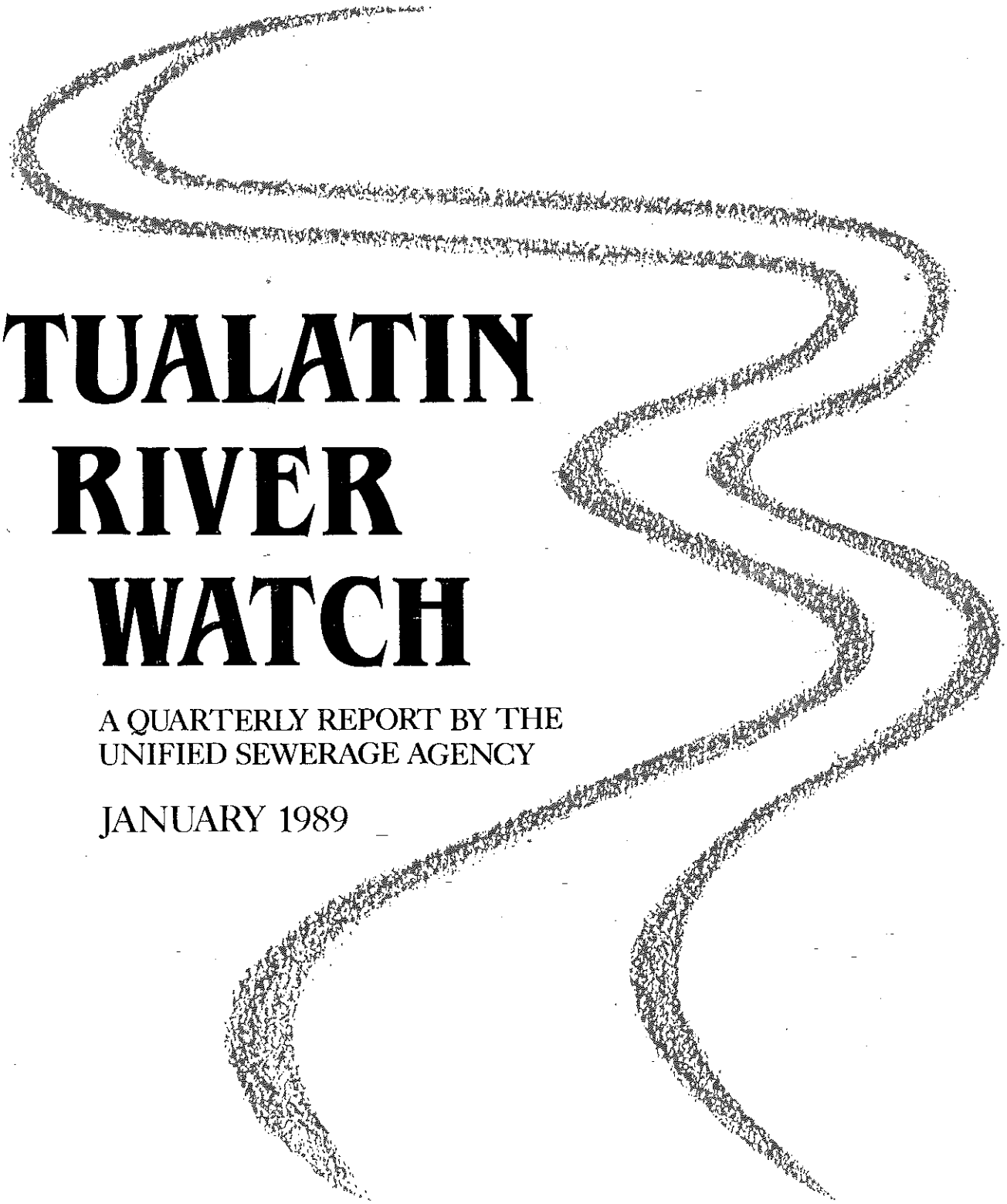
In case Fred didn't see

Date: 1-19-89 3:32pm
From: Deanna Mueller-Crispin:HSW:DEQ
To: fjHansen:od, sHallock:hsw
cc: spGreenwood:hsw, dmCrispin:hsw
Subj: Change in Proposed Hearing Date

The hearing dates we originally proposed for the revisions in the waste tire rules (going before the EQC 1/20) were Feb. 15, 16 & 17. The Feb. 15 hearing was to be in Ontario.

I just found out yesterday that AQ will be holding a hearing on Feb. 15 in Durkee on the ~~Oak~~ Grove Cement tire chip burning proposal. So that waste tire staff can attend that hearing, I have changed the Ontario hearing to Feb. 16. That means we will have two hearings on the waste tire rules on Feb. 16, one in Ontario and one in Grants Pass.

You may want to point out the date change to the EQC.



TUALATIN RIVER WATCH

A QUARTERLY REPORT BY THE
UNIFIED SEWERAGE AGENCY

JANUARY 1989

TUALATIN RIVER WATCH
A Quarterly Report By The Unified Sewerage Agency

In September of 1988, the Environmental Quality Commission (EQC) established phosphorus and ammonia nitrogen limits for the Tualatin River. The Unified Sewerage Agency's (USA) wastewater treatment plants contribute nearly all the ammonia nitrogen found in the Tualatin River and approximately 80% of the phosphorus. The remaining 20% of the phosphorus comes from nonpoint sources (runoff from streets, yards, cropland) or is naturally present in soils and vegetation.

The EQC action requires compliance with the ammonia and phosphorus limits by June 1993.

This report is designed to inform the EQC and other interested groups of USA's progress in meeting the water quality requirements by the June 1993 deadline.

The Deadlines

1988	Dec 9	USA submits program plan for reducing ammonia nitrogen and phosphorus from wastewater treatment plants (point sources)
	Dec 9	DEQ makes interim allocations of ammonia nitrogen and phosphorus limits to point and nonpoint sources
1989	Jan 9	DEQ issues guidance for nonpoint source program plans
	Mar 9	DEQ proposes to EQC rules regarding new developments
	Apr 9	EQC approves or rejects point source program plans
1990	Mar 9	USA submits to DEQ program plan for controlling water quality from urban runoff
1993	Jun 30	DEQ requires compliance with point and nonpoint source limits

Progress on Point Source Program Plan

On November 22, the Unified Sewerage Agency (USA) staff and Board of Directors discussed a rough outline of their program plan for reduction of ammonia nitrogen and phosphorus from USA treatment plants.

The DEQ guidelines for the plan characterize the goal as a "plan for a plan" that outlines what kinds of specific planning will take place to determine what is needed to meet the ammonia nitrogen and phosphorus limits. The USA plan includes both short term and long term plans, including pilot projects that have already begun. The plan was submitted to DEQ on December 9.

USA staff and their team of consultants have completed their submittal to DEQ and are now working with DEQ staff to address DEQ's concerns and comments about the document.

Cost to Date: $30,000

Pilot Projects Test Most Viable Options

In order to meet the phosphorus limits by the June 1993 deadline, USA will need to select the wastewater treatment measures by Fall of 1989. With very little time to select, build and test these measures, USA is implementing a number of pilot projects to test possible solutions.

Why pilot test the methods? It may seem that if a method works in one place, it will work in another. That is not necessarily true. Characteristics of wastewater vary around the country, depending on the types and mixes of industry, business, residential areas and even the hardness of the water. Climate can have an impact. These and other characteristics can make a method work like a charm in one area and fail miserably in another.

Here is the status of USA pilot testing:

TYPE	STATUS
Biological Nutrient Removal	Testing completed, found to be prone to biological upsets and will not produce results necessary to meet DEQ phosphorus limits. **Cost: $45,000**
Constructed Wetlands	Excavations on the first of three units are complete, waiting until spring and summer for testing; technical literature suggests wetlands do not remove enough phosphorus to meet DEQ limits but may be useful in conjunction with other methods. The project will be operated for 3-5 years to determine effectiveness and possible impacts on soil and groundwater; Oregon Graduate Center may be brought into the pilot project. **Cost: $175,000**
High Lime	Pilot equipment to be received and installed by February 1989; testing at Rock Creek Facility to be complete by June, at Durham Facility by November. **Cost: $280,000**

Effluent Reuse/ Irrigation	Program to begin in 1990 to determine levels of pretreatment needed for safety with various crops, demonstrate safe use and demonstrate benefits to crops. **Cost: $450,000**

New Program Documents Infiltration and Inflow, Provides Background For Work Plans

USA's budget for fiscal 1989 included two new positions and $52,500 in equipment that are devoted to documenting infiltration and inflow (I&I) problems and moving toward solution of those problems. Over a 3-5 year period, that program will grow to four employees and estimated capital outlays of $260,000.

Infiltration and inflow are the cause of excess water in the sewer line system and treatment plants during rainy periods. An on-going problem for all sewerage agencies, it is considered extremely difficult to assure full "water-tightness" of every inch of line. In part this is because of things like pipes cracking as ground settles and manholes becoming submersed in flooded areas. It is complicated by the fact that USA controls only about 40% of the sewer lines feeding its system.

USA currently maintains 570 miles of sewer line. The cities within USA maintain another 900 miles. Private property owners are responsible for maintaining sewer lines from the street to their home. It is estimated that these private lines account for another 100 miles of line.

While the difficulty of the task is immense, it is important to point out that the impact of infiltration and inflow is also very large. During rainy periods, flows into the treatment plants can increase as much as 10 times the normal flow.

New Structure Will Reduce Ammonia Nitrogen From Rock Creek Facility

Construction of a new process to remove ammonia nitrogen at the Rock Creek Facility is scheduled to be placed into operation about May of 1989. This project will substantially reduce the discharge of ammonia nitrogen and improve the dissolved oxygen in the receiving stream. USA initiated this project about four years ago. It will cost approximately $16 million to build.

Other Projects Focus On General Water Quality Improvement

Expansion of the Durham facility to include additional raw sewage pumping facilities, headowrks, and primary clarification is expected to get started in late 1989. The purpose of this project is to eliminate wet weather overflows that can occur when groundwater or surface water infiltrates the sewer systems, increasing our flows as much as 10 times normal. The estimated cost of this project is $12 million and will require approximately 18 to 24 months to build.

Plans for removing the Gaston facility from service have been completed. We expect to get the project under way by early 1989 and complete it the same year. All flows previously treated at the Gaston plant will be rerouted to the Forest Grove facility. The estimated cost of this project is $2 million.

Washington County Urban Area Addresses Nonpoint Source Pollution

Eight cities and Washington County have banded together under the leadership of USA to address stormwater and nonpoint source pollution from the urban areas of the county. The cooperative program was developed to accomplish two major tasks:

1) establish an urban area surface water management authority, and
2) complete a watershed management plan for controlling water quality impacts from runoff, as required by EQC by March 1990.

At present, no single agency exists to handle quality and quantity problems resulting from runoff. The jurisdictions involved in this project feel that an areawide approach to drainage and water quality control makes sense.

Two approaches are being taken to establish an urban area management authority. The first is an effort to form a service district or expand USA's authority as a service district. To accomplish this in time to have a management authority in place by March 1990 (deadline for submitting nonpoint source program plan), the jurisdictions must have a proposal submitted to the Boundary Commission by late April 1989.

The second approach, which would take the place of the first approach, is to explore a legislative action that would allow expansion of USA's authority to include surface water management.

The watershed management plan for DEQ (the nonpoint source program plan) will be completed as a part of this joint city/county/USA effort. **Cost for the district formation and watershed management plan: $240,000**

Two community workshops will be held in January to both give and receive information on this topic:

January 17, 1989
7:00 p.m.
Tigard High School

January 18, 1989
7:00 p.m.
Tuality Education Center

An Update: NEDC et al v. USA

On Friday, December 16, 1988 the Unified Sewerage Agency (USA) filed the following documents with the US District Court in Portland, Oregon, in the case of Northwest Environmental Defense Center et al v. Unified Sewerage Agency:

1) Motion for partial dismissal and summary judgment or alternatively, for stay of the action and for Rule 11 sanctions
2) Memorandum in support of the motion
3) USA's opposition to plaintiff's motion for summary judgment

The plaintiffs have alleged some 12,800 violations of discharge permits for Unified Sewerage Agency treatment plants, dating back to 1983.

USA's motion asks for dismissal of thousands of the plaintiffs' allegations in the lawsuit because they are: 1) beyond the statute of limitations, 2) erroneous because of a miscalculation or error in understanding of USA's permit requirements, 3) outside the subject matter jurisdiction of the court, or 4) outside the scope of citizens' lawsuit under the Clean Water Act (section 505).

USA stated in its motion and memorandum that, in many cases, it already recognized and corrected past problems at its facilities. Over 3,000 of the allegations relate to conditions in permits that have expired or have been superseded or are problems that have been corrected.

In addition, over three thousand of the allegations relate to application of effluent to irrigation of agricultural land. These latter claims, according to USA, are not within the scope of a citizens suit under the Clean Water Act.

While disputing many of the violations, USA stated in its memorandum filed with the court that, even assuming that all of NEDC's claims were correct, USA would still have a compliance rate of 97%, based on over one-half million permit requirements for the five year period.

USA has asked the court to impose sanctions against the plaintiffs for some of the allegations in the complaint. Under Rule 11 of the Federal Rules of Civil Procedure, when allegations in a complaint are not based upon a reasonable inquiry into the facts, a court may require the plaintiffs to pay to the defendants the costs and attorney fees to defend against them.

In this case, USA supplied to the plaintiffs three weeks prior to the filing of the complaint, sworn affidavits and a memorandum of law, detailing the specific allegations that were factually in error, the subject of expired permit conditions or had been corrected. The plaintiffs nevertheless included these allegations in their complaint.

The motion also asked for the remainder of the action to be stayed (held in abeyance) pending administrative action by the Oregon Department of Environmental Quality.

USA has met with DEQ staff to discuss issues of compliance with permits at the treatment plants. USA General Manager, Gary Krahmer said that he is "hopeful that any remaining compliance issues can be resolved by mutual agreement with DEQ."

Such an agreement could include assessment of civil penalties against USA and a schedule of actions and time schedules needed to attain compliance. Based upon the work performed to date and continuation of this work in the near future, USA has requested the court to "stay the action" pending development of such a schedule by DEQ and USA.

It is expected that the plaintiffs' motion for summary judgment and USA's motions will be set for hearing before Judge Helen Frye on January 30, 1988.

The Sunset Corridor Association on December 14, 1988 filed a motion to intervene in this case.

Questions Or Comments

If you have questions or comments about this report, please call Gary Krahmer at 648-8621.

SWM
SURFACE WATER MANAGEMENT
IN WASHINGTON COUNTY

150 N. FIRST AVENUE, RM. 302
HILLSBORO, OREGON 97124

BULK RATE
U.S. POSTAGE
PAID
PERMIT NO. 282
HILLSBORO, OR 97124

UPDATE

RUNOFF IS CREATING PROBLEMS IN OUR URBAN AREAS

Washington County is the fastest growing urban area in the state. Our buildings and pavement cover much of the ground that used to absorb rainfall. Water that would have been absorbed is now overloading both our natural and manmade drainage systems — and is carrying pollutants directly from our streets and yards to our streams and rivers. Now, state and federal agencies have set strict new regulations and deadlines for protecting the Tualatin River, and other Oregon streams, from this urban stormwater runoff.

WE AS A COMMUNITY MUST FACE THESE PROBLEMS IMMEDIATELY

Washington County, nine cities within the county, and the Unified Sewerage Agency (USA) have banded together to deal with these problems by first accomplishing the following tasks:

TASK 1: Establish a surface water management — SWM — authority for the urban area of Washington County.

TASK 2: Prepare an Urban Area Nonpoint Source Watershed Management Plan, as required by Oregon Department of Environmental Quality (DEQ).

By *completing* these first two tasks, this cooperative SWM project will have *begun* work on the larger task:

ONGOING: Develop and implement a SWM program for managing drainage and water quality in the urban area.

We hope this newsletter and the two community workshops (discussed below) will answer many of your questions about SWM.

COMMUNITY WORKSHOPS

Are you concerned about:

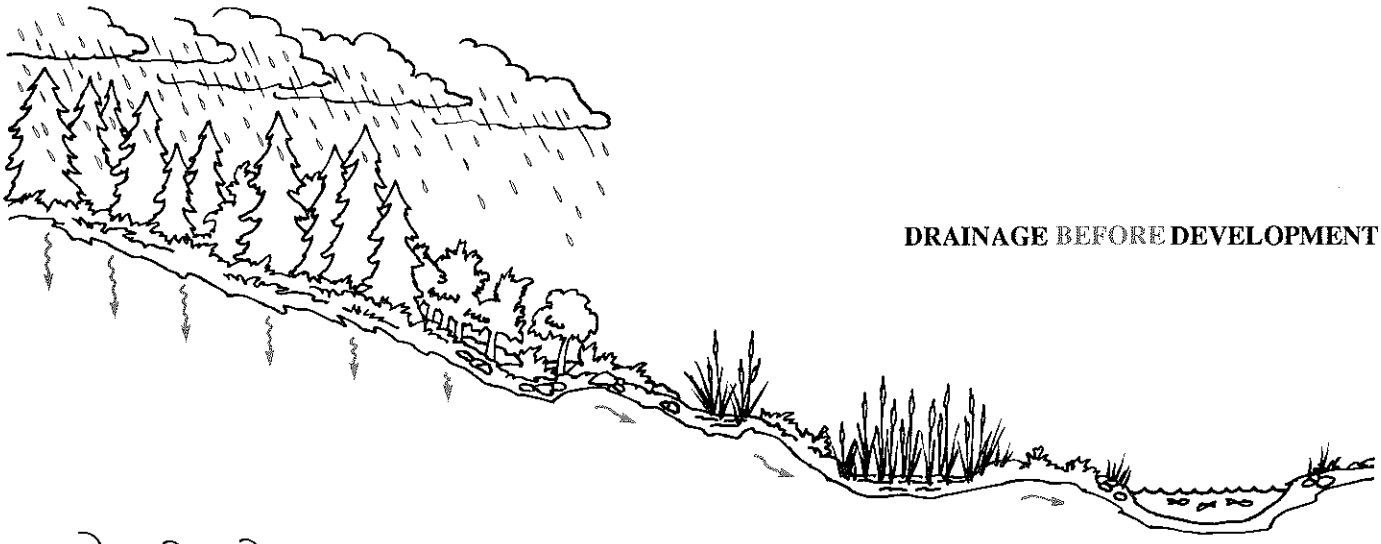
- *Quality of our streams and rivers?*
- *Flooded streets and yards?*
- *Development runoff controls?*
- *Erosion?...*

Then come to one of the following meetings:

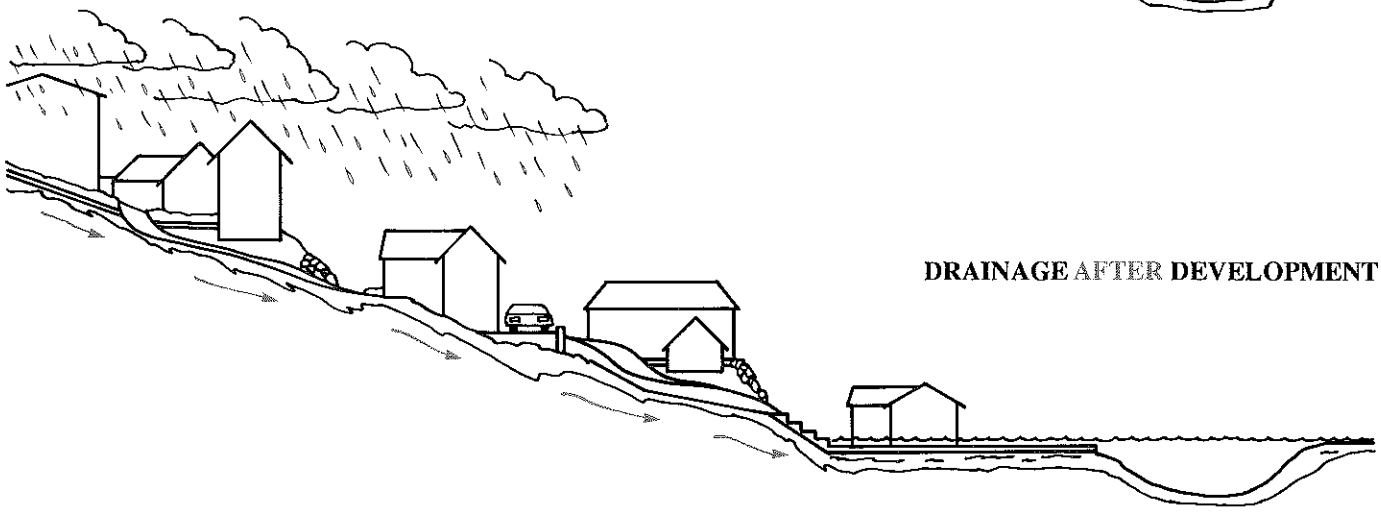
TUESDAY, JANUARY 17
Tigard High School
Cafeteria
9000 Durham Rd., Tigard
7:00 p.m.

WEDNESDAY, JANUARY 18
Tuality Health Education Ctr.
Large Conference Room
334 S.E. 8th, Hillsboro
7:00 p.m.

We need your comments!



DRAINAGE BEFORE DEVELOPMENT



DRAINAGE AFTER DEVELOPMENT

THE PROBLEMS

"HOW BAD ARE THE DRAINAGE PROBLEMS?"

County records — *not including cities* — show that in 1987 there were 394 requests for action on drainage problems, and 454 in 1986. These problems included flooding and erosion of streets, yards and homes. Studies have long stated that local drainage systems are unable to cope with drainage needs. In many areas, there is little or no maintenance of the current system, and much of the stream system is not even under public ownership.

"WHAT ARE THE WATER QUALITY PROBLEMS?"

Pollution from "nonpoint sources" — runoff from yards, streets, parking lots, farms — has become one of our country's biggest challenges in water pollution control. Studies indicate that nationally:

- Over 4 billion tons of sediment from construction sites, farms, and other sources are delivered annually to our streams and rivers.
- Nonpoint sources account for over 98% of total fecal coliform (animal/human waste) in our waterways.
- Nonpoint sources also contribute oils, fertilizers, pesticides, detergents, and other pollutants.

All jurisdictions in Washington County contribute runoff to the streams of the Tualatin River Basin. Like the rest of the country we now must address our runoff problems. In September 1988, DEQ mandated that the jurisdictions develop a plan by March 1990 to meet new urban runoff water quality standards by June 1993.

In addition to addressing problems listed above, the county must meet new DEQ standards for phosphorous in the Tualatin River Basin. Excessive phosphorous in the river system has promoted algae growth, which violates the federal Clean Water Act.

TASK 1.
ESTABLISH A SWM AUTHORITY

"WHY DO WE NEED AN AREA-WIDE AUTHORITY?"

No one agency currently has authority to direct a SWM program for the full urban area of Washington County — it's every jurisdiction for itself. Two drainage studies done in the early 1980's concluded that both the problems and the best solutions tended to cross jurisdictional (cities and county) lines. They recommended a regional approach as the most effective way to coordinate storm drainage.

For instance, without coordination, one city may develop a program to detain its own stormwater and control pollution only to receive additional runoff and pollution from a city upstream. A regional approach also allows jurisdictions to pool resources and thus provide services more cost effectively.

"HOW WILL IT BE ESTABLISHED?"

The Steering Committee (see inset) is exploring three options:

- Expand USA's authority as a sanitary sewage district to include surface water operations.
- Form a new service district.
- Form a network among jurisdictions through inter-local agreements.

Past studies have recommended the first option because USA's boundaries already cross jurisdictional lines, and its current responsibilities are similar to storm drainage functions. To accomplish either of the first two options prior to the DEQ March 1990 deadline, a proposal must be submitted to the Boundary Commission by April 1989. As an alternative, new legislation is being drafted that could expand USA's authority.

TASK 2.
PREPARE URBAN AREA WATERSHED MANAGEMENT PLAN

"WHAT IS THE PURPOSE OF THIS PLAN?"

This plan (due March 1990 to DEQ — see "Problems"), will provide a schedule and an outline of a program to meet DEQ's June 1993 water quality deadline. It will also specify how the jurisdictions will develop that program.

THE SWM TEAM

The Unified Sewerage Agency has been asked to coordinate this initial project. Three committees have been established to help guide the process. Together they comprise the SWM Team.

THE STEERING COMMITTEE is the main decision-making body for the project. One representative from each of the nine city councils that are funding this project — Beaverton, Cornelius, Durham, Forest Grove, Hillsboro, King City, Sherwood, Tigard and Tualatin — and from the Washington County Commission serves on this committee.

THE INTER-GOVERNMENTAL COORDINATING COMMITTEE includes representatives of over 30 agencies that may affect or be affected by the policies and programs that are developed. They will help identify viable technical solutions.

THE CITIZENS ADVISORY COMMITTEE will ensure that key community concerns and values are addressed in the decision-making process. This committee has representatives of several key environmental, business, civic, and neighborhood interest groups.

ONGOING DEVELOPMENT AND IMPLEMENTATION OF A SWM PROGRAM

"WHAT IS THE SWM PROGRAM?"

As the program evolves, it will specify regulatory, maintenance, engineering, land use, financial, public education and other measures and schedules to meet water quality and drainage management needs.

"HOW WILL THIS PROGRAM BE DEVELOPED?"

The initial program will be developed in stages over the next few years, beginning with maintenance and water quality programs. Once a SWM authority is in place, that agency will lead the effort in developing the rest of the program, including regulations, capital improvements, and other measures to be implemented. Development of the entire program will be guided by Project Objectives, which will be identified through the Community Workshops and the Citizens Advisory Committee.

COST AND BENEFITS

"HOW MUCH WILL THIS COST ME?"

In order to support a fulltime SWM effort, different financing methods (service charges, tax, developer fees) are still being evaluated. Currently, a service charge is preferred over a tax for general revenue; the choice will be based on which is most equitable and effective. However, we all contribute runoff to the system, so we all have to be part of the solution.

"WHAT WILL WE GET?"

As we grow our current problems can only get worse — unless we do something about them now. With a SWM program, we get a double benefit; we have a way to improve and protect the quality of our streams, and a means to reduce flooding and erosion.

HAVE A COMMENT?

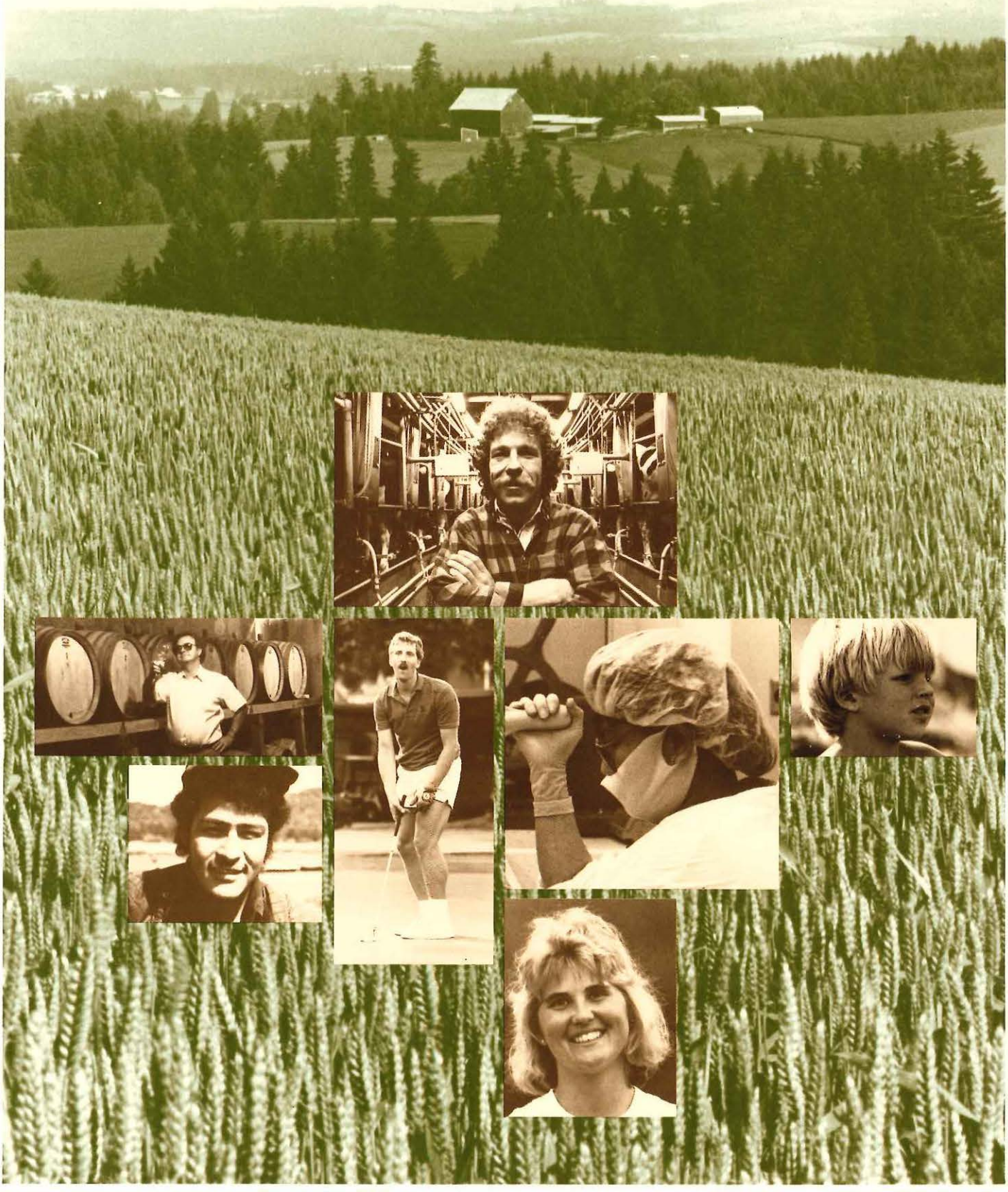
WANT TO PUT YOUR NAME ON THE MAILING LIST?

CALL OR WRITE:

Debie Garner or Robert Cruz
Unified Sewerage Agency
150 N. First Ave. ■ Hillsboro, OR 97124
(503) 648-8621

Washington County 2000

Where Agri-Business, High Technology and Industry Grow Together



The Greenest Welcome Mat In Oregon For Industry And High Technology

Washington County's emergence as the leading business development area in Oregon is no accident. Careful planning by local government and close cooperation between industry associations, state and local government, business leaders and community groups has been in place since the mid-1970's. Great pains have been taken to preserve the quality of life while providing the best facilities available anywhere.

The architecture of new industrial parks blends with the gentle, rolling land on either side of our technology corridors. Deep in the County, strawberry fields and gleaming new buildings co-exist in harmony. Not only is this pleasant to the eye, but it reflects the County's commitment to coordinated growth.

New office parks and flexible space for light industry have increased options for new firms and expanding businesses. The growing high tech industry is only part of the picture. The County is home to equally successful firms in other industries. Light manufacturing, construction, specialty agriculture, distribution companies, service firms, medical and electrical industries are all well represented.

Local trade associations and economic development councils have served major roles as catalysts — representing business interests to the County, addressing the region's short-term and long-term business needs, and working to help make the County's full potential a reality. Business leaders have strongly supported Washington County's long-range planning efforts, organized under the theme, "County 2000 – Meeting the Future Now."

Ten Largest Employers

Presently the ten largest employers in Washington County, ranging from 400 to 10,000 employees, are:

- Tektronix
- Intel Corporation
- St. Vincent Hospital and Medical Center
- Floating Point Systems
- Nike
- GTE Northwest
- Electro Scientific Industries
- Mentor Graphics
- Stanton Industries
- Leupold and Stevens

Sites For More Eyes In Business And Industry

Industrial and commercial sites are available throughout the County. Less than two years ago, 7,270 acres of vacant industrial land were available.

Nearly all zoned land is already served by utilities. Even where utilities are not yet in place, they are less than 1,000 feet away in most cases. Industrial sites are well served by roads and rail.

Costs are low. The cost to buy land, build on it, or lease is highly competitive with other Oregon locations and most competitive with other West Coast sites. Other cost savings accrue from the Northwest's low power rates and the year-round gentle climate. These cost advantages exist in addition to the area's excellent accessibility, lifestyle and business climate.

The area is well diversified and many prospective tenants benefit from the County's broad range of business and industry. Whether a business benefits from cross-pollination of ideas or the availability of required goods and services, the fact that Washington County is not a "one-industry" economy is a decided advantage.

The Greenest Welcome Mat in Oregon is out for you. Let us get *you* in our sites!

County *On The Move*... Distribution And Warehousing

From its earliest days, Washington County was challenged to solve transportation and distribution problems. As farms started to dot the valley in the 1800s, getting products to market was of paramount importance. Timber, too, had to be moved in days when only horses and oxen could be pressed into service. The County was, and is, *on the move.*

Linked to Interstate-5 by Highway 217, and crossed by the Sunset Highway, Washington County is an integral part of Metropolitan Portland's impressive highway network. The Portland metro region is the West Coast's only distribution hub capable of reaching all north-south points from Vancouver, B.C., to San Diego within 24 hours. Interstate-84 provides an important link to the east.

The Portland-Hillsboro Airport (PHA) is the second busiest airport in Oregon. As more international and national firms locate in the County, the facilities have been expanded to provide aircraft repair facilities, hangar space and runways capable of handling executive jets with international range. The Portland International Airport is easily accessible by freeway. The County is served by rail and truck lines and is readily accessible to the Port of Portland which dominates West Coast shipping in several key areas.

The same economies achieved in industrial site selection are evident in the County's warehousing costs. Partly due to solid planning, and partly due to relatively abundant space, Washington County keeps the costs of storing goods as reasonable as the costs of moving them.

Agriculture And Forest Products... A Legacy Still Growing!

In the early 1800s, Washington County's economy was spurred by its agriculture and its forest products. Even as the County spearheaded new development into the exotic world of high tech, its mainstays — farms and forests — continued their reliable, steady course and played a vital role in the County's growing economy.

Agriculture Means Business For Washington County

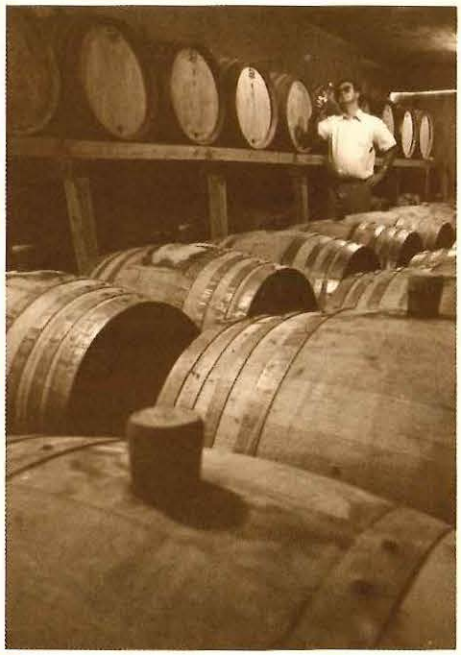
You have only to drive the back roads of Washington County to appreciate what agriculture has done to give us beauty and enhance the state's overall economy. While one of the state's smaller counties geographically, it is second in population and fifth in agricultural production value of all thirty-six Oregon counties.

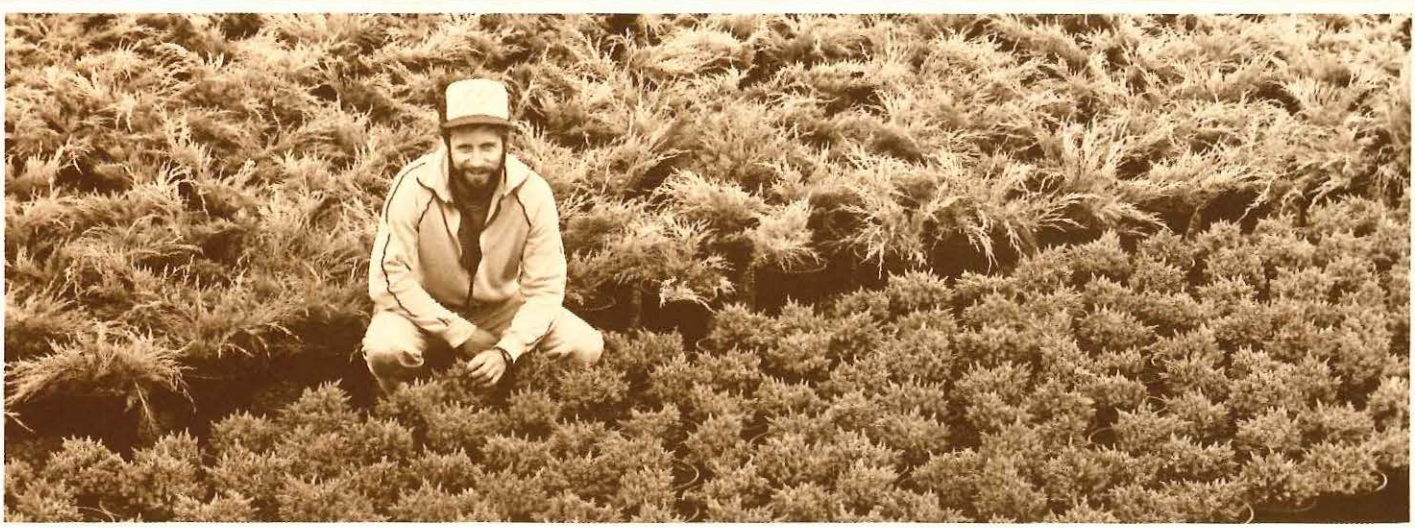
This is one of the most productive and diversified farming areas in the world, for here can be grown successfully most of the fruits and vegetables native to the temperate zone. Washington County farmers grow most everything from tree fruits and nuts, berries and vegetables to nursery and field crops. Food distributors and retailers locally, nationally and overseas find Washington County a dependable source of supply for a "full line" of quality food products. This makes agri-business, including growing, processing and distribution, the most important industry with the greatest economic impact in the County.

We're Not Out Of The Woods Yet...

Even long-term County residents are frequently surprised to learn that nearly 270,000, almost 60% of Washington County's acres, are commercial forest. Acreage has actually increased in recent years as a result of the County's growing Christmas tree industry. Ownership of this important resource is still dominated by private owners (60%), with state and public lands accounting for most of the balance (37%). About 3% of the County's forests are owned by the federal government.

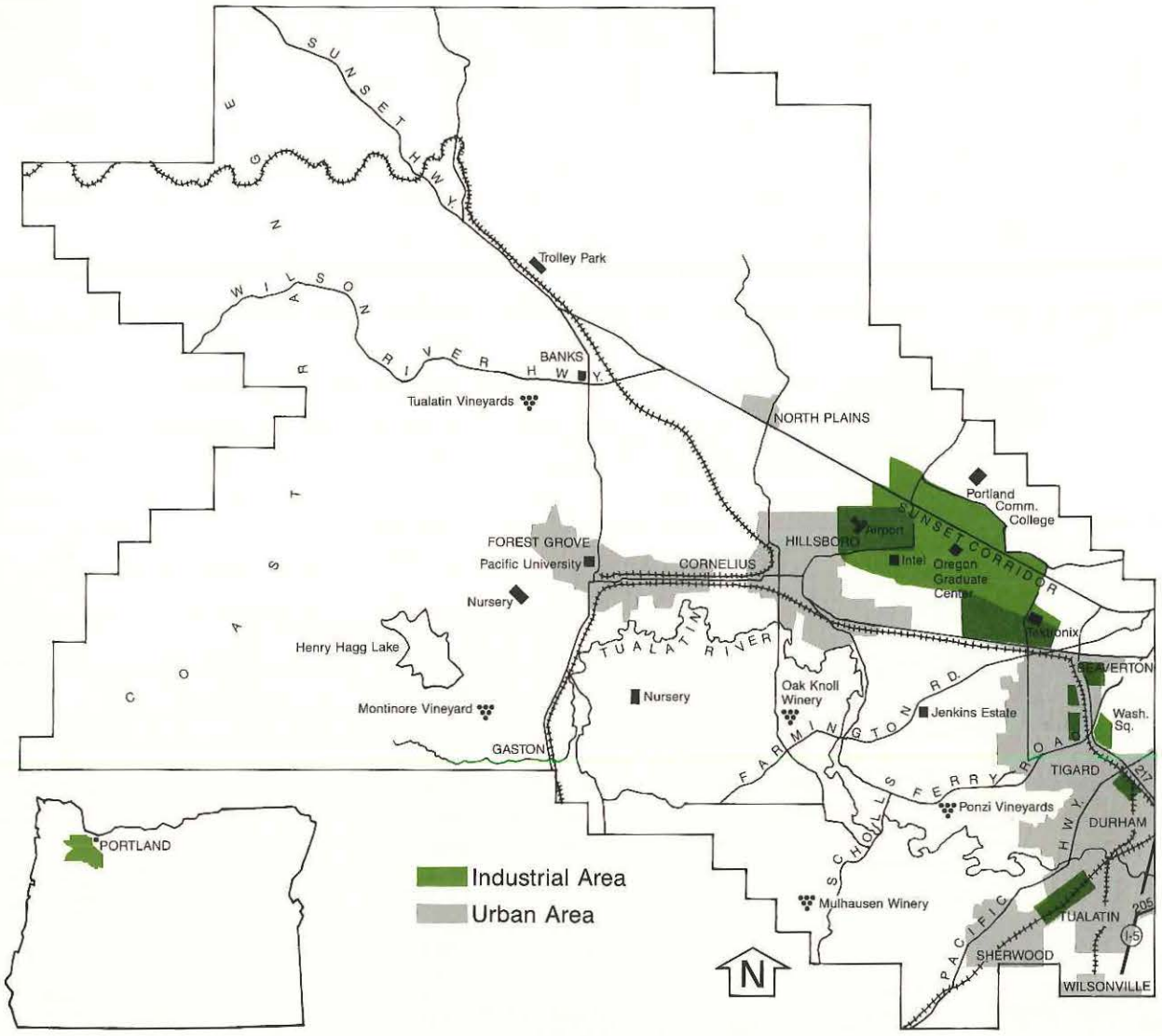
The forests, concentrated in the County's northern and western reaches, consist of Pacific Douglas fir, red alder, Oregon white oak, Douglas fir, western hemlock and cotton-wood. In 1986, over 39 million board feet of timber were harvested in the County, generating $9.1 million in revenue.





Washington County 2000

The Greenest Welcome Mat in Oregon



From East To West This Land Is Best

From the posh hills of Western Portland on the east, to the summit of the Coast Range on the west, much of the County is lush, green, gently rolling land. Most of the land drains eastward to the Tualatin River which rises in the western coastal mountains. The County is ideally situated for today's multi-option lifestyle. Just beyond its borders, mountains shimmer in the east, the ocean beckons in the west, a major city pulsates only minutes away.

Our Mild Climate Has Visitors Green With Envy

Only 23 miles inland from the Pacific Ocean, Washington County officially has "a modified marine climate." Westerly winds moving across the valley from the ocean moderate the cold of winter and the heat of summer. The gentle winter rains account for most of the annual precipitation — snow may fall once or twice a year to last a day or so.

County Service Industries Grow Apace

While the County has been increasing dramaticly in both population and industry, the service industry has been closely following suit. For example, since 1980 the banking industry in Washington County has seen an increase of 6.5% versus the state as a whole, which has seen a 2% increase.

Washington County's dynamic growth can also be demonstrated by results of the County Economic indicators report that in recent years Washington County has grown six times the growth rate of the state as a whole.

Washington County Metropolitan Magnet for Shopping and Dining

Ranging in size from 21,000 square feet to Washington Square's 2.1 million square feet, shoppers in Washington County have 55 different shopping centers and hundreds of free-standing retail outlets from which to choose. In fact, a recent survey has shown that Washington County, with its 15 major and numerous specialty restaurants, is one of the primary locations in the Portland metropolitan area for tri-county residents to do their shopping and dining.

Health Care Facilities, All Within Minutes

Anyone living or working in Washington County can rest assured knowing that hospitals, clinics and emergency medical facilities are just minutes away from any given location.

Hospitals that dot the County include: Cedar Hills Hospital, Forest Grove Community Hospital, Meridian Park Hospital, Oregon Surgery Center, St. Vincent Hospital and Tuality Community Hospital.

Partners In Progress: Business And Education

Early in 1984, a dynamic partnership was forged between the County's Chambers of Commerce and the public schools. Goals of the program were to:

- Promote educational excellence.
- Expand educational and research opportunities.

The program was designed to support the County's existing business community and to attract new industry.

The idea of a business-education partnership had already been tried, with great success, in many areas. Called the Business/Education Compact of Washington County, the effort may involve public school teachers working on intern and assistant programs in private business or, conversely, business professionals sharing their expertise in a classroom.

Oregon Graduate Center

Created to support and stimulate science based industry in the Tualatin Valley area, the Center is a major regional resource. Funded primarily by research grants, the OGC plays a strong role in high tech development, but also has conducted important research in such areas as welding research and medicine.

Lintner Center

Growing out of the Compact, the Lintner Center is located on the Rock Creek campus of Portland Community College and devoted to continuing post-secondary education through both skills and degree-oriented courses.

Oregon Center For Advanced Technology Education

OCATE was created in 1984 to support the growth of the County's high tech industry and offers both degree and non-degree instructional programs, as well as seminars and workshops.

Oregon Regional Primate Center

The Center conducts research to advance biomedical knowledge. It is one of seven centers of the National Institute of Health.

Colleges And Universities

Washington County is home to Pacific University in Forest Grove and Portland Community College in Rock Creek. Pacific University established a Business Resource Institute in 1986 to focus on the needs of the business community.

Other institutes of higher education within an hour's driving time include Portland State University, University of Portland, Lewis & Clark, Linfield, Reed, Willamette and Oregon State University.

The Skill And The Will To Work In Washington County

When all is said and done, the County's greatest asset is its human resource: People. Washington County workers are well educated. The County's business-education partnership will ensure even better worker education. Vocational training is broadly available and supported by several agencies including the Private Industry Council (PIC) which provides customized training programs and a pool of highly skilled workers. Other vocational training is available through the County's research and educational institutions.

Employee Stability

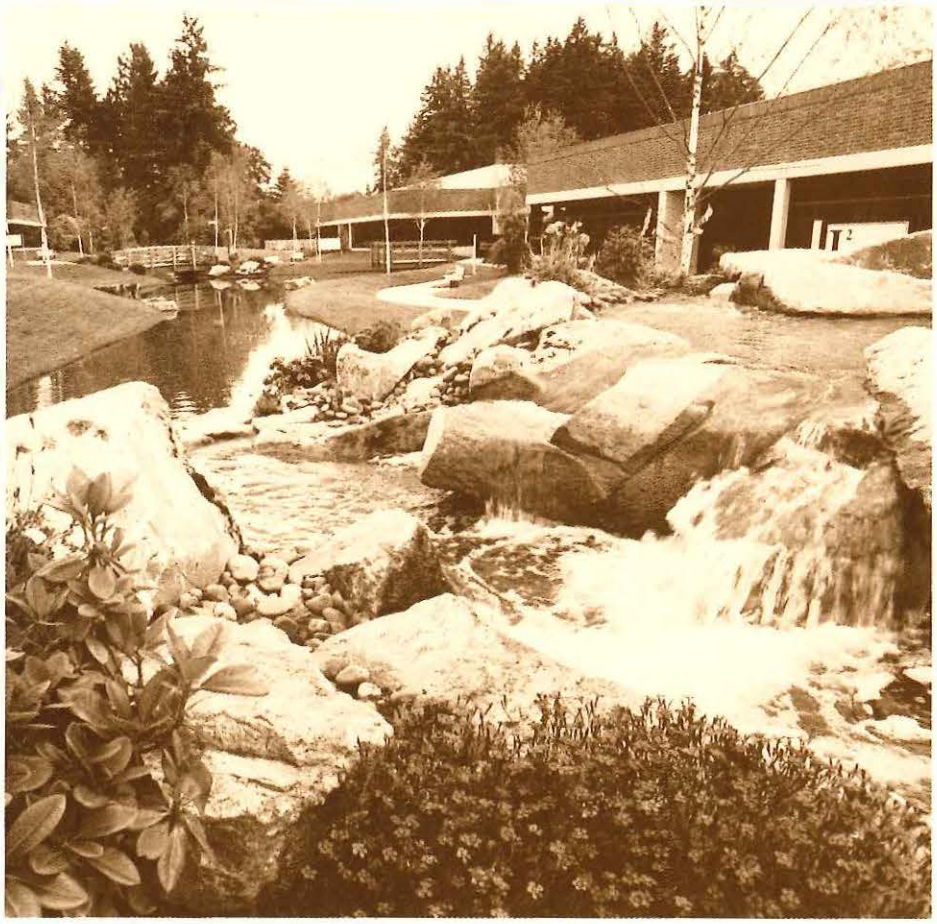
Washington County workers don't job-hop as much as their counterparts in other areas. In fact, in high tech industries, Oregon has the lowest turnover rate in the nation . . . almost half the national average.

High Productivity

Washington County workers put more into their jobs . . . and the payoff is increased productivity rates for employers. In electric and electronic equipment, the state's workers add a third more value per production worker hour than workers in California.

Motivation

Washington County workers are motivated. Whatever may have happened to the work ethic elsewhere in America, it is alive and well in Washington County. It's evident in any industrial or commercial establishment you might visit at random. No doubt about it, Washington County *works*! Why not put it to work for you?



County 2000/Meeting The Future Now

Washington County government is vigorously preparing now for the onset of the 21st Century. Programs are underway to take the County aggressively ahead while protecting the quality of life that makes the region so desirable.

A Future-Oriented County

Washington County is one of the four original Oregon Territorial counties, yet today the County is the state's most future-oriented. It is the fastest growing in population, ascending recently by rapid development in industry and commerce. At the same time, the traditional basic industries of agriculture and timber remain strong.

County 2000 programs establish new goals and objectives for the County responding to situations and challenges never faced before by county government.

Washington County 2000 in every respect represents the future dynamism of the State of Oregon.

How Green Is Our Valley. . .

Washington County is no "ordinary" place. Its near-legendary livability may well be its most important characteristic. As the 21st Century approaches, the County's quality of life has acquired new and important significance as more and more people know the truly good life is not all "nine-to-five."

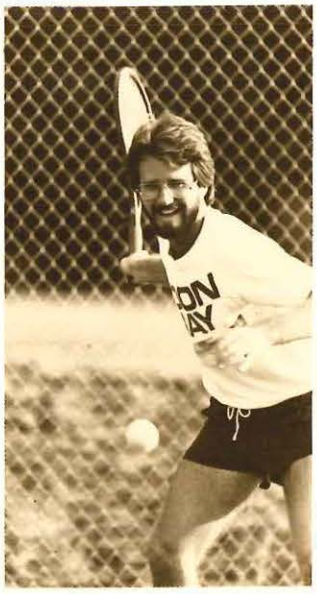
Oregon's Living End For Recreation, Sports And Entertainment

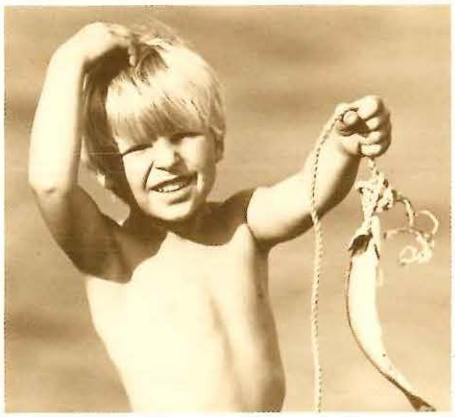
Washington County's lifestyle is active, outdoor, health-conscious and sophisticated. The list of supported, popular activities is virtually endless. . . boating, fishing, horseback riding, golf, tennis, skiing, swimming, camping, hiking. With the great outdoors only minutes away from any County resident, the emphasis is on the outdoors — a Northwest tradition particularly relevant to the emerging values of the next generation.

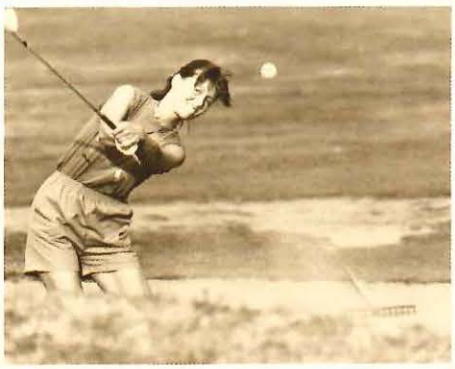
Culturally, because of the lure provided by the state's highest median income, County residents have an astounding range of local entertainment choices. In addition, nearby Portland supports a major symphony orchestra, ballet and opera, and has just completed a world-class performing arts center.

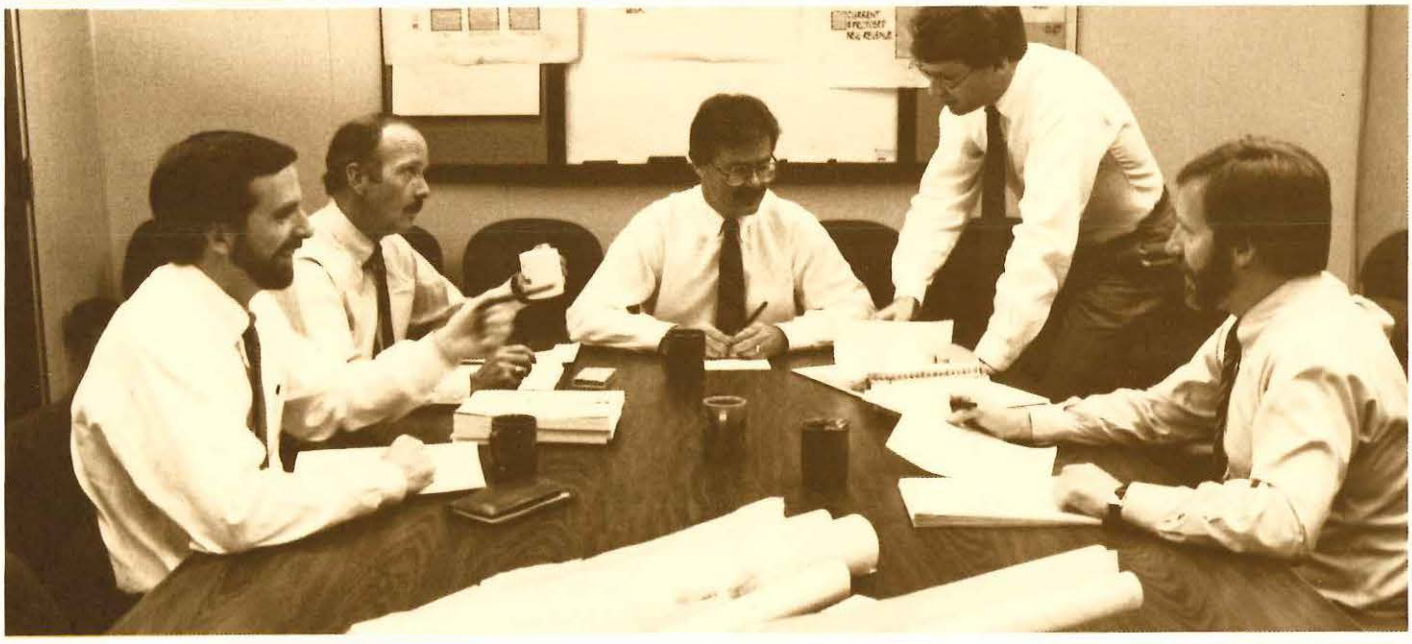
Our Homes Are Not Over Your Head

The valley features highly affordable homes with average home prices in the $70,000 range. Even luxury homes, crafted in the best Northwest tradition, are available for prices under $150,000. The County has traditionally guarded its enviable way of life by careful zoning and prudent building codes. The area's abundant hydropower resources result in low-cost electricity; the mild climate lowers heating and space conditions costs even further. And, virtually any location is a gardener's delight!









SURFACE WATER MANAGEMENT IN WASHINGTON COUNTY

Intergovernmental Coordinating Committee

December 30, 1988

Purpose: To provide technical and policy advice and be responsible for ensuring that viable alternatives are developed. Will work toward consensus among the agencies. Members need to be able to represent their agency's interests and be responsible for policy and technical supervision. Coordination with affected decision makers within their organization is essential.

Membership:

Environmental Protection Agency	Ralph Rogers
DEQ	John Jackson
Oregon Dept. of Fish & Wildlife	Gene Herb
Division of State Lands	Bill Parks
LCDC	Jim Sitzman
District Corps of Engineers	Bill Akre
FEMA	Chuck Steele
THPRD	Bruce Muller
Water Resources Department	Tom Paul
Clackamas County	Bruce Erickson
Unified Sewerage Agency	Stan LeSieur
Wolf Creek Hwy Water District	Gene Seibel
WCSWCD/TVID	Cal Krahmer
City of Portland	Bill Gaffi
City of Lake Oswego	Paul Haines
City of Beaverton	Steve Baker
City of Beaverton	Dave Winship (alt.)
City of Cornelius	Frank Neyes
City of Forest Grove	John Burdett
City of Hillsboro	Roy Gibson
City of King City	Lenore Akerson
City of Sherwood	Tad Milburn
City of Tigard	Randy Wooley
City of Tualatin	Mike McKillip
DLUT, Washington County	Bruce Warner
Oregon Dept. of Transportation	Jeff Kaiser
US Dept. of Fish & Wildlife	Carol Schuler
Oregon Dept. of Agriculture	Allen Youse
Oregon Economic Development Dept.	Henry Marcus
US Soil Conservation Service	Robert K. App
Oregon Dept. of Forestry	Dave Degenhardt
Oregon Dept. of Forestry	Lee Oman (alt.)
NW Oregon RC & D Area	Dave Dickens

SURFACE WATER MANAGEMENT IN WASHINGTON COUNTY

Citizen Advisory Committee
December 30, 1988

Purpose: This group will be the focus of consensus building among the key interest groups. Members should be well respected by and in regular communication with their constituents. They must be willing to communicate and participate openly and fully. One member will serve as liaison with the IGCC.

Membership:

Dennis Stanfill	Citizens for Community Involvement, CPO 6
Rosalie Morrison	Lower Tualatin Homeowners Association
Mike Houck	Audubon Society
Ethan Seltzer	Tualatin Riverkeepers
Jack Broom	Wetlands Conservancy
Jack Schwab	I-5 Corridor Association, Tualatin Valley Economic Development Commission
Charles Hales	Homebuilders Association of Metropolitan Portland
George Sturm	Sunset Corridor Association
Doug Krahmer	Farm Bureau
Gerd Hoeron	Lake Oswego Corporation
Bob Alexander	Forest Grove-Cornelius Economic Development Council
Forrest Soth	Steering Committee Liaison

SURFACE WATER MANAGEMENT IN WASHINGTON COUNTY

Steering Committee
December 30, 1988

Purpose: To oversee the USA Surface Water Management program process and to ensure that there is full communication and understanding between the jurisdictions and project participants. Members should be elected officials (commissioner or mayor) or else be in full communication with and be given the full negotiating authority of the city council.

Membership:

City of Beaverton	Honorable Larry Cole Forrest C. Soth, City Council
City of Cornelius	Honorable Linda Finley Jerry Taylor, City Manager
City of Durham	Jeanne Percy, City Manager
City of Forest Grove	Kip Kujala, City Council Connie Fessler, City Manager
City of Hillsboro	Honorable Shirley Huffman Eldon Mills, City Manager
City of King City	Fred Clagett, City Council Lenore Akerson, City Manager
City of Sherwood	Walt Hitchcock, City Council Jim Rapp, City Manager
City of Tigard	John Schwartz, City Council Randy Wooley, City Engineer
City of Tualatin	Bill Gleason, City Council Mike McKillip, City Engineer
Washington County	John Meek, Board of Commissioners John Junkin, County Counsel

Portland Area Ozone Exceedances
exceedances per year

Site	'85	'86	'87	'88	'89*
Sauvie Island	0	0	1	0	2
Milwaukie	1	3	1	1	1
Carus	2	1	0	2	1
Molalla	-	-	-	1	2

* number of exceedances tolerable in '89 before violating standard

WORK PLAN

PROGRAM NAME: CERTIFICATION FOR LOCAL COLLECTION SERVICES

PROGRAM DESCRIPTION:

Purpose: To assure participation of local jurisdictions and the collection industry in waste reduction efforts to accomplish maximum feasible reduction through those programs which require changes in the collection system.

State Hierarchy Addressed: Recycle

Action Elements: (Framework, p.12)

Certification for Local Collection Services: Local jurisdictions, which have exclusive regulatory control over solid waste collection, will be encouraged to participate fully in waste reduction efforts through Metro certification.

Standards and measurements will be developed to assure effective local collection programs which meet source separation goals for principle recyclable materials, remove yard debris from the waste stream, and provide high-grade loads of mixed waste.

The program will begin with the DEQ's standards to meet SB 405 requirements. The standards for the second year will address collection systems for yard debris and, if appropriate, the generation of high-grade loads. Each year in this phase new requirements for certification may be added depending on results of previous programs.

new

Program Objectives:

1. To work in cooperation with local jurisdictions and the collection and recycling industry to establish cost-effective standards of performance, which can reasonably be met by those entities, in order to accomplish the following:

    a. Maximum feasible accomplishment of waste reduction through source separated recycling and curbside collection of SB 405 materials.

    b. Maximum feasible reduction of yard debris in the waste stream.

    c. Maximum feasible generation of high-grade loads of waste materials which can be recovered at established materials recovery centers.

2. To effectively, accurately and equitably measure the performance of local jurisdictions and the collection and recycling industry in meeting those standards.

3. To provide an incentive which effectively encourages local jurisdictions and the collection and recycling industry to voluntarily meet those standards.

Potential Waste Stream Impact:

The direct waste stream impact of this program will be in the increased effectiveness of the implementation of:

- Recycle -- 405 Materials
- Recycle -- Yard Debris
- Post-Collection Recycling/Materials Recovery.

See the potential waste stream impacts of those programs.

Other Related Programs:

This program enhances the implementation of the programs described above through providing a mechanism for increasing the materials which they remove from the waste stream.

The incentive for local jurisdictions, collectors and recyclers to be certified will be provided through the Rate Incentives Program.

The technical support for establishing standards will be provided by the System Measurement Program.

PROGRAM STRATEGY:

Metro will structure and design a Local Collection Service Certification Program that includes an identification of the following:

1. the actors who will be involved,
2. the responsibilities and authorities of those actors,
3. the structure of requirements and measurements of compliance (excluding the specific requirements for each year of the program),
4. the methods, responsibilities and time lines for developing specific program goals, standards and criteria, and
5. the methods of financial incentives.

Administration:

The Metro Council holds final responsibility for governance of the certification program. Metro staff will be responsible for its operation and administration.

In order to provide direct involvement in the administration of the program to those who will be directly effected, SWPAC will be assigned responsibilities for certification by the Metro Council. A Local Government Advisory Committee on Certification will be formed to develop recommendations to SWPAC on standards and goals. The certification functions of SWPAC will be staffed by Metro.

Objective #1: Standards of Performance:

Goals and standards which must be met by local jurisdictions and haulers for certification will be reviewed and revised annually. Standards for each year of the first phase of the Waste Reduction Program will be set to achieve a new goal for the removal of material from the waste stream.

Yearly certification goals will be defined by the Metro Council. Standards will be developed by SWPAC with the advice and assistance of the Local Government Advisory Committee on Certification and recommended to the Council for adoption. These standards must be readily and objectively measurable. Specific criteria and the methods of measuring compliance with the standards will be defined.

The goal for 1986 (beginning July 1, 1986) will be to assure the effective implementation of SB 405 curbside recycling and promotion and education programs. DEQ will set standards which assure that the opportunity to recycle is being provided by each jurisdiction and will measure compliance. No additional requirements or approval process over those specified by DEQ will be instituted for the first year. However, the full implementation of curbside recycling efforts will be expected.

1987 certification goals will address collection systems for yard debris. Additional 1987 certification goals will be applied to the generation of high-grade loads if the waste composition study demonstrates that certification program incentives will be necessary to achieve maximum feasible reduction of recyclable materials which can be recovered through high-grade loads. Other waste reduction elements may also be addressed.

Standards for subsequent years will address additional waste reduction issues, such as:

a. further requirements to recover more source separated materials, for example,

- frequency of curbside collection
- more extensive promotion/education efforts
- per capita material recovery goals or participation rate goals
- collection of additional materials over those required by DEQ

b. removal of yard debris from the waste stream,

c. the generation of high-grade loads, and

d. others as developed by SWPAC.

Since local jurisdictions vary considerably in size, each jurisdiction will designate Certification Unit(s). Small jurisdictions may be wholly included in a single unit; larger jurisdictions may be subdivided in a manner approved by SWPAC. Certification (or non-certification) will be applied to the certification unit.

Objective #2: Performance Measurement:

Local jurisdictions will submit evidence of compliance to the Metro staff, except for the first year, which will be determined from DEQ's wasteshed report approval. Based on the criteria, the staff will review the submissions and any other important evidence and recommend certification (or non-certification) for each applicant to SWPAC. SWPAC will review the staff findings and pass recommendations for programs which should be certified on to the Metro Council for final action.

SWPAC will hold hearings on the request of the local jurisdiction. The Council may, upon its own initiative, also hold hearings on certification determinations.

Objective #3: Incentive Mechanism:

Differential disposal rates for certified versus non-certified areas, and the potential availability of grants or loans for certified areas, will be utilized to motivate local jurisdictions and the collection and recycling industry to conform to the requirements for certification. See the Rate Incentives Work Plan for the specific mechansms.

Differential could go to cities

SUMMARY OF TASKS:

Program Set Up

1. Metro Council assigns certification responsibilities to SWPAC through By-Law amendments and Local Government Advisory Committee on Certification is formed. 3/86

2. Metro issue a request to local jurisdictions to designate certification units. (est. FTE hours: 90) 3/86

3. Deadline for receipt of proposed certification units from local jurisdictions. 5/86

Tina - Please forward to each Commissioner + put into record - as requested

Oregonian

Sewage project in works

1-12-89

☐ Monthly sewer bills could increase $1.25 if the Durham plant expansion is lumped with two other projects and financed by revenue bonds

By ASHBEL S. GREEN
of The Oregonian staff

DURHAM — The Unified Sewerage Agency is close to completing plans for a $14 million expansion of the Durham sewage treatment plant, the agency's general manager said this week.

Washington County sewerage district rate payers will fund the two-year project, which is expected to begin this summer, general manager Gary F. Krahmer said Monday.

Sewer bills could increase as much as $1.25 per month — from $12.15 to $13.40 — beginning July 1 if the Durham project is lumped with two other agency construction projects, and all three are financed through the sale of $18 million in state revenue bonds, Krahmer said.

The $18 million funding package will be recommended to the Washington County Board of Commissioners in the spring, he said.

The monthly increase could be just the beginning.

The sewerage agency expects to spend between $15 million and $25 million annually over the next five years on capital improvements, primarily to meet new pollution standards set by the state for the Tualatin River, Krahmer said.

The $14 million Durham project has been planned for five years to meet anticipated growth in the county, but it also could help the sewerage agency reduce the amount of phosphorus and ammonia that flow into the Tualatin River through treatment plants, he said.

The state Environmental Quality Commission in September strictly limited the amounts of phosphorus, which stimulates the growth of algae, and ammonia, which drives away fish, allowed in the Tualatin.

State environmental officials do not believe the two pollutants are a hazard to human health.

The Durham project, which is expected to be let out for bids in early March, will expand and modify the plant's raw sewage pump station, pressure pipes and facilities used in initial stages of sewage treatment, said Dennis Lively, a division engineer for the sewerage agency.

The expansion should eliminate problems with occasional flooding during the winter and allow the plant to handle future sewer needs in the county, Lively said Monday.

The level of treatment also will be raised, he said.

Krahmer said it would be least expensive for the agency to sell as much as $18 million in state revenue bonds to pay for the Durham project and two other projects at the Rock Creek and Forest Grove treatment plants.

The county commissioners could choose to put off the three projects, but "if economic development and growth is going to continue, in my opinion, these things have to be done," he said.

The sewerage agency still will have to spend between $196 million and $222 million over the next decade to meet phosphorus and ammonia standards in the Tualatin, Krahmer said, and monthly rates could climb as high as $27 by 1995.

Such increase would occur only if the sewerage agency could not find other funding, such as federal grants, he said, adding that no alternatives yet have been discovered.

A $13 million Rock Creek construction project, which will reduce the amount of ammonia in the Tualatin, is expected to be completed this summer, Lively said.

Date	Div	Type	Topic
January 19, 1989 Work Session			
01-19-89	OD	Work Session	Interagency Coordination Policy
01-19-89	WQ	Work Session	State Revolving Loan Fund Program
January 20, 1989 Regular Meeting			
01-20-89	HSW	Hearing Auth.	Waste Tire Economic Feasibility Rules
01-20-89	WQ	Hearing Auth.	State Revolving Loan Fund (SRF) Rules
01-20-89	ECD	Rule Adoption	Facility Inventory Delisting Rules
01-20-89	HSW	Rule Adoption	Certification of Opportunity to Recycle for Out of State Wastes Coming into a Regional Landfill in Oregon
01-20-89	HSW	Rule Adoption	UST Installer, Decommissioner, Tester, and Inspector Certification Rules
01-20-89	HSW	Approval	Compliance Order for Douglas County Road Department to Resolve Solid Waste Permit Violations at the Roseburg Landfill
01-20-89	HSW	Approval	Implementation of the Opportunity to Recycle Act: Report to the Legislature
01-20-89	HSW	Approval	METRO Implementation of the Solid Waste Reduction Program: Report to the Legislature
01-20-89	HSW	Approval	METRO Solid Waste Reduction Program: Approval of Stipulated Order
01-20-89	ECD	Information	Inventory List of Confirmed Releases of Hazardous Substances
March 2, 1989 Work Session			
03-02-89	OD	Field Trip	Waste Tech, Tire Shredder, Smurfit Newsprint Deinking Facility
03-02-89	ECD	Work Session	Policy on Delegation of Programs
03-02-89	WQ	Work Session	Beneficial Uses of Water: General Discussion
March 3, 1989 Regular Meeting			
03-03-89	AQ	Hearing Auth.	Emission Exceedances: New Rule to Define where Exceedances due to Start-up, Shut-down, or Malfunction Situations Could be Allowed.
03-03-89	AQ	Hearing Auth.	Hardboard Plant Regulations: Modifications
03-03-89	AQ	Hearing Auth.	Kraft Mill Regulations: Modifications to Correct Deficiencies, Add Opacity Standard for Recovery Boilers, Clarify Monitoring Requirements
03-03-89	HSW	Hearing Auth.	Hazardous Waste Fee Rules: Revision of Compliance Fees for Generators and TSDF's
03-03-89	HSW	Hearing Auth.	Hazardous Waste Rules: General RCRA Program Rule Revisions including Adoption of New Federal Rules (by reference)
03-03-89	HSW	Hearing Auth.	Update of Definition of Recyclable Materials and Principal Recyclable Materials
03-03-89	HSW	Hearing Auth.	UST Compliance Program: Rules to Provide for Local Administration

Date	Div	Type	Topic
03-03-89	HSW	Hearing Auth.	UST Program: Technical and Financial Responsibility Rules
03-03-89	WQ	Hearing Auth.	Container Nurseries: Proposed Rules for Controlling Discharges
03-03-89	WQ	Hearing Auth.	Increased Wastewater Discharges: Rule Modification
03-03-89	WQ	Hearing Auth.	TMDL's: for Bear Creek and the Yamhill River
03-03-89	WQ	Hearing Auth.	Tualatin Basin: Interim Stormwater Control Rules
03-03-89	RO	Rule Adoption	Enforcement Policy and Penalty Matrix
03-03-89	WQ	Rule Adoption	Groundwater Rules: Revision
03-03-89	HSW	Approval	CSSI Permit: Modifications
03-03-89	WQ	Approval	North Albany Mandatory Health Hazard Annexation -- Approval of Plans
03-03-89	WQ	Approval	Stipulated Consent Agreement: Prineville
03-03-89	WQ	Approval	USA/Washington County: Program to meet TMDL

April 13, 1989 Work Session -- Corvallis or Halsey Area

04-13-89	OD	Field Trip	Halsey Pulp Mill Area
04-13-89	OD	Field Trip ?	Underground Storage Tank Site (or view video tape)
04-13-89	OD	Field Trip ?	Portland Sewage Treatment Plant and Compost Facilities
04-13-89	OD	Field Trip ?	Waste Tire Pile and Utilization -- Les Schwab in Prineville
04-13-89	WQ	Work Session	Halsey Pulp Mill Expansion

April 14, 1989 Regular Meeting -- Corvallis or Halsey Area

04-14-89	AQ	Hearing Auth.	SIP Control Strategies for PM10 in Medford, Grants Pass, and Klamath Falls
04-14-89	ECD	Hearing Auth.	Leaking Underground Storage Tanks -- matrix for evaluating cleanup levels in soils
04-14-89	HSW	Hearing Auth.	Ash Disposal: Proposed Rules
04-14-89	HSW	Hearing Auth.	Corrective Action Rules
04-14-89	HSW	Hearing Auth.	Solid Waste Fee Rules: Proposed Increase
04-14-89	WQ	Hearing Auth.	Clean Water Strategy Criteria
04-14-89	WQ	Hearing Auth.	NPDES/WPCF Rules: Modification of Procedures and Fees
04-14-89	WQ	Hearing Auth.	On-Site Sewage Disposal Rules: Modification to Revise Design Flow Basis for Sizing Systems
04-14-89	WQ	Hearing Auth.	Sewage Treatment Facility Design Criteria: Modification to add criteria for Septic Tank Effluent Pump (STEP) Systems

Date	Div	Type	Topic
04-14-89	WQ	Hearing Auth.	Surety Bond Rules: Modification to Clarify Applicability to Mobile Home Parks
04-14-89	HSW	Rule Adoption	Out of State Hazardous Waste: Permanent Rule
04-14-89	HSW	Rule Adoption	Waste Tire Economic Feasibility Rules
04-14-89	WQ	Approval	Pope & Talbot Pulp Mill Expansion: Request for Increased Winter Waste Loads
04-14-89	MSD	Information	Annual State/EPA Agreement

June 1, 1989 Work Session -- Medford Area

06-01-89	OD	Field Trip ?	Hardboard Plant (Medford Area)
06-01-89	OD	Field Trip ?	Plywood/Particleboard Plant (Medford Area)

June 2, 1989 Regular Meeting -- in Medford

06-02-89	AQ	Hearing Auth.	New Source Performance Standards (NSPS) and New National Emission Standards for Hazardous Air Pollutants (NESHAPS): Proposed Adoption of New Federal rules
06-02-89	HSW	Hearing Auth.	Spill and Release Reportable Quantity Rules: Amendments to Maintain Consistency with Federal Rules
06-02-89	WQ	Hearing Auth.	Revolving Loan Fund: Draft Priority List
06-02-89	AQ	Rule Adoption	Emission Exceedances: New Rule to Define where Exceedances due to Start-up, Shut-down, or Malfunction Situations Could be Allowed.
06-02-89	AQ	Rule Adoption	Hardboard Plant Regulations: Modifications
06-02-89	AQ	Rule Adoption	Industrial PM10 Rules for Medford, Grants Pass, and Klamath Falls
06-02-89	AQ	Rule Adoption	Kraft Mill Regulations: Modifications to Correct Deficiencies, Add Opacity Standard for Recovery Boilers, Clarify Monitoring Requirements
06-02-89	HSW	Rule Adoption	Hazardous Waste Fee Rules: Revision of Compliance Fees for Generators and TSDF's
06-02-89	HSW	Rule Adoption	Hazardous Waste Rules: General RCRA Program Rule Revisions including Adoption of New Federal Rules (by reference)
06-02-89	HSW	Rule Adoption	Update of Definition of Recyclable Materials and Principal Recyclable Materials
06-02-89	HSW	Rule Adoption	UST Compliance Program: Rules to Provide for Local Administration
06-02-89	HSW	Rule Adoption	UST Program: Technical and Financial Responsibility Rules
06-02-89	WQ	Rule Adoption	Increased Wastewater Discharges: Rule Modification
06-02-89	WQ	Rule Adoption	State Revolving Loan Fund (SRF) Rules
06-02-89	WQ	Rule Adoption	TMDL's: for Bear Creek and the Yamhill River

Date	Div	Type	Topic
July 13, 1989 Work Session			
07-13-89	OD	Field Trip	Brooks Garbage Incinerator/Woodburn Ash Disposal
07-13-89	OD	Field Trip	Onsite Sewage System/Alternative Sewage System
07-13-89	WQ	Work Session	Disinfection Requirements
July 14, 1989 Regular Meeting			
07-14-89	AQ	Hearing Auth.	Woodstove Certification Program: Proposed Modifications to Conform to New EPA Requirements
07-14-89	WQ	Hearing Auth.	Disinfection Requirements: Proposed Rule Modification
07-14-89	AQ	Rule Adoption	SIP Control Strategies for PM10 in Medford, Grants Pass, and Klamath Falls
07-14-89	ECD	Rule Adoption	Leaking Underground Storage Tanks -- matrix for evaluating cleanup levels in soils
07-14-89	HSW	Rule Adoption	Ash Disposal: Proposed Rules
07-14-89	HSW	Rule Adoption	Corrective Action Rules
07-14-89	HSW	Rule Adoption	Solid Waste Fee Rules: Proposed Increase
07-14-89	WQ	Rule Adoption	Clean Water Strategy Criteria
07-14-89	WQ	Rule Adoption	NPDES/WPCF Rules: Modification of Procedures and Fees
07-14-89	WQ	Rule Adoption	On-Site Sewage Disposal Rules: Modification to Revise Design Flow Basis for Sizing Systems
07-14-89	WQ	Rule Adoption	Sewage Treatment Facility Design Criteria: Modification to add criteria for Septic Tank Effluent Pump (STEP) Systems
07-14-89	WQ	Rule Adoption	Surety Bond Rules: Modification to Clarify Applicability to Mobile Home Parks

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMORANDUM

DATE: January 18, 1989

TO: Environmental Quality Commission

FROM: Fred Hansen

SUBJECT: Field Trip - Friday Morning January 20, 1989

We have scheduled a 2 hour field trip prior to the start of the Friday EQC meeting.

Recent air quality deliberations have dealt with the Volatile Organic Compounds (VOC) and P_M10 issues. Future deliberations will deal with CO and Ozone attainment. The purpose of this tour will be to see where and how these parameters are measured. Dennis Duncan, Air Quality Monitoring Manager at the Laboratory will be the tour guide.

The schedule is as follows:

0730 Leave the Executive Building (single van load)

0800 Arrive at the Portland residential air quality monitoring site (5824 S.E. Lafayette)

0800-0845 Tour the site. See air monitors (CO, neph.) and particulate samplers (HV, MV, PM_{10}) and data transfer electronics.

0845-0915 Drive by other sampling sites (Hollywood, Portland Postal Building)

0930 Return to Executive Building for Start of Regular EQC Meeting

Coffee will be available in Room 4 between 7:00 and 7:30 for those who arrive prior to the 7:30 departure time.

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMORANDUM

DATE: January 19, 1989

TO: Fred Hansen

FROM: Harold Sawyer

SUBJECT: EQC Schedule

Potential schedule items to discuss with the EQC are as follows:

1. April Field Trip to Arlington -- Special All Day Trip

   Solid Waste indicates April will be the best time to visit the regional landfill -- to see liner installation in progress. A visit to CSSI at the same time would be desirable before permit issues that are scheduled for EQC action in June.

   If this is to be done, we need to schedule and arrange it.

2. Pope & Talbot

   We keep slipping the schedule for this based on their process for developing information on color removal. They have just filed a revised application -- expansion from 550 to 1550 tons per day -- up 200 from the previous application. It now looks like a possibility in June. June is also the target for Air Quality issues for Medford, Grants Pass, Klamath Falls that would make Medford a likely meeting location.

   We may need to consider a special meeting for Pope & Talbot if either it or the AQ issues don't slip further on their own merits.

3. Work Sessions

   Is there anything about legislative schedules that would cause us to revise the approach to work sessions until the legislature adjourns?

4. March or April Meeting Locations -- Salem ???

   Do we want to try for Salem in March or April? There do not appear to be any issues that would dictate any particular location for either meeting.

Date	Div	Type	Topic
March 2, 1989 Work Session			
03-02-89	OD	Field Trip ??	Tektronix: Waste Minimization, Groundwater Monitoring Complex source example of Hazardous Waste Minimization, management, groundwater monitoring, and cleanup.
03-02-89	OD	Field Trip ??	Waste Tech, Tire Shredder, Smurfit Newsprint Deinking Facility
03-02-89	ECD	Work Session	Policy on Delegation of Programs August Retreat Followup
03-02-89	OD	Work Session	Permit Limit Exceedances: Policy Discussion Standards and Conditions are generally written to apply to normal operating conditions -- and may be exceeded during startup, shutdown, malfunctions.
03-02-89	WQ	Work Session	Beneficial Uses of Water: General Discussion August Retreat Followup
March 3, 1989 Regular Meeting			
03-03-89	AQ	Hearing Auth.	Emission Exceedances: New Rule to Define where Exceedances due to Start-up, Shut-down, or Malfunction Situations Could be Allowed.
03-03-89	AQ	Hearing Auth.	Hardboard Plant Regulations: Modifications
03-03-89	AQ	Hearing Auth.	Kraft Mill Regulations: Modifications to Correct Deficiencies, Add Opacity Standard for Recovery Boilers, Clarify Monitoring Requirements
03-03-89	HSW	Hearing Auth.	Hazardous Waste Rules: General RCRA Program Rule Revisions including Adoption of New Federal Rules (by reference)
03-03-89	HSW	Hearing Auth.	Update of Definition of Recyclable Materials and Principal Recyclable Materials
03-03-89	MSD	Hearing Auth.	State/EPA Agreement (SEA) Authorize Hearing to obtain public input relative to SEA. Hold Hearing before either EQC or HO on April 14, 1989. Final EQC review of SEA at June Meeting.
03-03-89	WQ	Hearing Auth.	Increased Wastewater Discharges: Rule Modification Followup on previous worksession discussions and Commissioner Castle's draft of criteria for approval of increased discharges.
03-03-89	WQ	Hearing Auth.	TMDL's: for Bear Creek and the Yamhill River
03-03-89	WQ	Hearing Auth.	Tualatin Basin: Interim Stormwater Control Rules
03-03-89	HSW	Rule Adoption	UST Installer, Decommissioner, Tester, and Inspector Certification Rules Hearing Authorized 11/4/88
03-03-89	RO	Rule Adoption	Enforcement Policy and Penalty Matrix
April 13, 1989 Work Session			
04-13-89	OD	Field Trip	Arlington: Landfill and Hazardous Waste Facility (Full Day Trip) Observe landfill under construction (liner installation) and Hazardous Waste Disposal Facilities.
04-13-89	HSW	Work Session	Recycling Program Performance Standards

Date	Div	Type	Topic
			Proposed discussion of Performance Standards for evaluating SB 405 Recycling Programs.
04-13-89	OD	Work Session	Permit Fees: Background and Policy Discussion Background discussion preliminary to Commission consideration of proposed rule amendments to increase fees.
04-13-89	WQ	Work Session	Container Nurseries: Proposed Strategy for Controlling Discharges Tualatin Basin Rules require Ag/DEQ to develop strategy by Mid-March.
April 14, 1989 Regular Meeting			
04-14-89	AQ	Hearing Auth.	SIP Control Strategies for PM10 in Medford, Grants Pass, and Klamath Falls Hearing Authorized 11/4/88 for Industrial portions of SIP
04-14-89	ECD	Hearing Auth.	Leaking Underground Storage Tanks -- matrix for evaluating cleanup levels in soils
04-14-89	HSW	Hearing Auth.	Ash Disposal: Proposed Rules
04-14-89	HSW	Hearing Auth.	Corrective Action Rules
04-14-89	WQ	Hearing Auth.	Clean Water Strategy Criteria
04-14-89	WQ	Hearing Auth.	On-Site Sewage Disposal Rules: Modification to Revise Design Flow Basis for Sizing Systems
04-14-89	WQ	Hearing Auth.	Sewage Treatment Facility Design Criteria: Modification to add criteria for Septic Tank Effluent Pump (STEP) Systems
04-14-89	WQ	Hearing Auth.	Surety Bond Rules: Modification to Clarify Applicability to Mobile Home Parks
04-14-89	HSW	Rule Adoption	Out of State Hazardous Waste: Permanent Rule
04-14-89	HSW	Rule Adoption	Waste Tire Economic Feasibility Rules
04-14-89	WQ	Approval	Stipulated Consent Agreement: Prineville
04-14-89	WQ	Approval	USA/Washington County: Program to meet TMDL
June 1, 1989 Work Session			Corvallis or Medford Area
06-01-89	OD	Field Trip ??	Halsey Pulp Mill Area Field Trip to view Pope & Talbot Pulp Mill Area in relation to proposed expansion.
06-01-89	OD	Field Trip ??	Hardboard Plant (Medford Area)
06-01-89	OD	Field Trip ??	Plywood/Particleboard Plant -- Medford Area
06-01-89	WQ	Work Session	Halsey Pulp Mill Expansion
June 2, 1989 Regular Meeting			Corvallis or Medford Area
06-02-89	AQ	Hearing Auth.	New Source Performance Standards (NSPS) and New National Emission Standards for Hazardous Air Pollutants (NESHAPS): Proposed Adoption of New Federal rules

Date	Div	Type	Topic
06-02-89	HSW	Hearing Auth.	Spill and Release Reportable Quantity Rules: Amendments to Maintain Consistency with Federal Rules
06-02-89	WQ	Hearing Auth.	Revolving Loan Fund: Draft Priority List
06-02-89	AQ	Rule Adoption	Emission Exceedances: New Rule to Define where Exceedances due to Start-up, Shut-down, or Malfunction Situations Could be Allowed.
06-02-89	AQ	Rule Adoption	Hardboard Plant Regulations: Modifications
06-02-89	AQ	Rule Adoption	Industrial PM10 Rules for Medford, Grants Pass, and Klamath Falls Hearing Auth. 11/4/88
06-02-89	AQ	Rule Adoption	Kraft Mill Regulations: Modifications to Correct Deficiencies, Add Opacity Standard for Recovery Boilers, Clarify Monitoring Requirements
06-02-89	HSW	Rule Adoption	Hazardous Waste Rules: General RCRA Program Rule Revisions including Adoption of New Federal Rules (by reference)
06-02-89	HSW	Rule Adoption	Update of Definition of Recyclable Materials and Principal Recyclable Materials
06-02-89	WQ	Rule Adoption	Increased Wastewater Discharges: Rule Modification
06-02-89	WQ	Rule Adoption	State Revolving Loan Fund (SRF) Rules
06-02-89	WQ	Rule Adoption	TMDL's: for Bear Creek and the Yamhill River
06-02-89	HSW	Approval	CSSI Permit: Modifications Commission approval of modifications to the permit for the Hazardous Waste Disposal Facility at Arlington.
06-02-89	WQ	Approval	Pope & Talbot Pulp Mill Expansion: Request for Increased Winter Waste Loads EQC review and approval of proposed increase in winter time discharge loads to accommodate an increase in production capacity of the Pulp Mill at Halsey.
06-02-89	MSD	Review/Approval	State/EPA Agreement (SEA) Final EQC Review of proposed State/EPA Agreement priorities and expected accomplishments.
July 13, 1989 Work Session			
07-13-89	OD	Field Trip	Brooks Garbage Incinerator/Woodburn Ash Disposal
07-13-89	WQ	Work Session	Discussion of Significant New Waste Discharge to Columbia River: Proposed WTD Pulp Mill Background on proposed new WTD Pulp Mill to be located at the old Beaver Army Terminal Site.
07-13-89	WQ	Work Session	Disinfection Requirements Note Rule Proposal
July 14, 1989 Regular Meeting			
07-14-89	AQ	Hearing Auth.	Woodstove Certification Program: Proposed Modifications to Conform to New EPA Requirements
07-14-89	HSW	Hearing Auth.	Hazardous Waste Fee Rules: Revision of Compliance Fees for Generators and TSDF's

Date	Div	Type	Topic
07-14-89	HSW	Hearing Auth.	Solid Waste Fee Rules: Proposed Increase Rule Modifications to increase fees to account for inflation and changes in program emphasis.
07-14-89	WQ	Hearing Auth.	Disinfection Requirements: Proposed Rule Modification
07-14-89	WQ	Hearing Auth.	NPDES/WPCF Rules: Modification of Procedures and Fees Rule update and Fee increase to account for inflation and increased program costs.
07-14-89	WQ	Hearing Auth.	On-Site Sewage Disposal Program Rules: Modification of Fee Schedule Rule update and Fee increase to account for inflation and increased program costs.
07-14-89	AQ	Rule Adoption	SIP Control Strategies for PM10 in Medford, Grants Pass, and Klamath Falls Hearing Authorized 3/3/89
07-14-89	ECD	Rule Adoption	Leaking Underground Storage Tanks -- matrix for evaluating cleanup levels in soils
07-14-89	HSW	Rule Adoption	Ash Disposal: Proposed Rules
07-14-89	HSW	Rule Adoption	Corrective Action Rules
07-14-89	WQ	Rule Adoption	Clean Water Strategy Criteria
07-14-89	WQ	Rule Adoption	On-Site Sewage Disposal Rules: Modification to Revise Design Flow Basis for Sizing Systems
07-14-89	WQ	Rule Adoption	Sewage Treatment Facility Design Criteria: Modification to add criteria for Septic Tank Effluent Pump (STEP) Systems
07-14-89	WQ	Rule Adoption	Surety Bond Rules: Modification to Clarify Applicability to Mobile Home Parks
07-14-89	WQ	Review/Approval	Approval of Significant New Waste Discharge to Columbia River: Proposed WTD Pulp Mill Approval of Proposed new discharge pursuant to policy that requires EQC approval of significant new waste discharges.
August 1989 Meeting			
08--89	OD	Field Trip	Sludge Management -- USA or Salem Land Utilization Operations Related to adoption of Sludge Rules
08--89	WQ	Work Session	Ontario Aquifer Management Plan
08--89	WQ	Work Session	Sludge Program Delegation and Sludge Rules
08--89	WQ	Hearing Auth.	Malheur Basin Aquifer Management Plan: Proposed Rules
08--89	WQ	Hearing Auth.	Tualatin River: Implementation Plan Schedules
08--89	AQ	Rule Adoption	New Source Performance Standards (NSPS) and New National Emission Standards for Hazardous Air Pollutants (NESHAPS): Proposed Adoption of New Federal Rules
08--89	HSW	Rule Adoption	Spill and Release Reportable Quantity Rules: Amendments to Maintain Consistency with Federal Rules
08--89	WQ	List Adoption	Revolving Loan Fund: Draft Priority List

UNIFIED SEWERAGE AGENCY OF WASHINGTON COUNTY

December 7, 1988

Sawyer

Mr. Richard Nichols
Department of Evironmental Quality
Water Quality Division
811 S.W. Sixth Ave., Sixth Floor
Portland, OR 97204-1334

Dear Dick:

Would you please provide us a ten minute spot on the Environmental Quality Commission's January meeting agenda. This will allow us the opportunity to fulfill our commitment to report on our progress to improve water quality in the Tualatin Basin.

Very truly yours,

Gary F. Kraahmer
General Manager

/jt

150 North First Avenue, Room 302 Hillsboro, Oregon 97124 Phone:503/648-8621